



UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

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

PepsiCo, Inc.

(Exact Name of Registrant as Specified in Its Charter)

North Carolina  
(State or Other Jurisdiction of  
Incorporation or Organization)

13-1584302  
(I.R.S. Employer  
Identification Number)

700 Anderson Hill Road  
Purchase, New York 10577  
(914) 253-2000

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

Thomas H. Tamoney, Jr.  
Senior Vice President, Deputy General Counsel and Assistant Secretary  
PepsiCo, Inc.

700 Anderson Hill Road  
Purchase, New York 10577  
(914) 253-2000

Fax: (914) 253-3123  
(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)

Copy to:

Joseph A. Hall  
Davis Polk & Wardwell  
450 Lexington Avenue  
New York, NY 10017  
(212) 450-4000  
Fax: (212) 450-4800

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

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

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

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

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

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

Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☐ Smaller reporting company ☐  
(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to Be Registered	Amount to Be Registered/Proposed Maximum Offering Price Per Unit/Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee(1)
Common stock, par value 1 <sup>2</sup> / <sub>3</sub> cents per share		
Debt securities		
Guarantees of debt securities		
Warrants		
Units		

(1) An indeterminate aggregate initial offering price and number or amount of the securities of each identified class is being registered as may from time to time be sold at indeterminate prices. In accordance with Rules 456(b) and 457(r), the registrant is deferring payment of all of the registration fee.

PROSPECTUS

**PepsiCo, Inc.**  
**COMMON STOCK**  
**DEBT SECURITIES**  
**GUARANTEES OF DEBT SECURITIES**  
**WARRANTS**  
**UNITS**

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We may offer from time to time common stock, debt securities, guarantees of debt securities, warrants or units. Specific terms of these securities will be provided in supplements to this prospectus. You should read this prospectus and any supplement carefully before you invest.

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

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

**The date of this prospectus is October 15, 2008.**

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You should rely only on the information contained in or incorporated by reference in this prospectus, in any accompanying prospectus supplement or in any free writing prospectus filed by us with the Securities and Exchange Commission (the “SEC”) and any information about the terms of securities offered conveyed to you by us, our underwriters or our agents. We have not authorized anyone to provide you with different information. We are not making an offer of these securities in any state where the offer is not permitted. You should not assume that the information contained in or incorporated by reference in this prospectus or any prospectus supplement or in any such free writing prospectus is accurate as of any date other than their respective dates.

The terms “PepsiCo”, “we,” “us,” and “our” refer to PepsiCo, Inc.

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## THE COMPANY

We are a leading global snack and beverage company. We manufacture, market and sell a variety of salty, convenient, sweet and grain-based snacks, carbonated and non-carbonated beverages and foods in approximately 200 countries, with our largest operations in North America (United States and Canada), Mexico and the United Kingdom.

We are comprised of three business units, as follows:

- (1) PepsiCo Americas Foods (PAF), which includes Frito-Lay North America (FLNA), Quaker Foods North America (QFNA) and all of our Latin American food and snack businesses (LAF), including our Sabritas and Gamesa businesses in Mexico;
- (2) PepsiCo Americas Beverages (PAB), which includes PepsiCo Beverages North America (PBNA) and all of our Latin American beverage businesses; and
- (3) PepsiCo International (PI), which includes all PepsiCo businesses in the United Kingdom, Europe, Asia, Middle East and Africa.

Our three business units are comprised of six reportable segments, as follows:

### ***Frito-Lay North America***

Frito-Lay North America, or FLNA, manufactures or uses contract manufacturers, markets, sells and distributes branded snacks. These snacks include Lay's potato chips, Doritos tortilla chips, Tostitos tortilla chips, Cheetos cheese flavored snacks, branded dips, Fritos corn chips, Ruffles potato chips, Quaker Chewy granola bars, SunChips multigrain snacks, Rold Gold pretzels, Santitas tortilla chips, Grandma's cookies, Frito-Lay nuts, Munchies snack mix, Gamesa cookies, Funyuns onion flavored rings, Quaker Quakes corn and rice snacks, Miss Vickie's potato chips, Stacy's pita chips, Smartfood popcorn, Chester's fries, branded crackers and Flat Earth crisps. FLNA branded products are sold to independent distributors and retailers.

### ***Quaker Foods North America***

Quaker Foods North America, or QFNA, manufactures or uses contract manufacturers, markets and sells cereals, rice, pasta and other branded products. QFNA's products include Quaker oatmeal, Aunt Jemima mixes and syrups, Life cereal, Cap'n Crunch cereal, Quaker grits, Rice-A-Roni, Pasta Roni and Near East side dishes. These branded products are sold to independent distributors and retailers.

### ***Latin America Foods***

Latin America Foods, or LAF, manufactures, markets and sells a number of leading salty and sweet snack brands including Gamesa, Doritos, Cheetos, Ruffles, Sabritas and Lay's. Further, LAF manufactures or uses contract manufacturers, markets and sells many Quaker brand cereals and snacks. These branded products are sold to independent distributors and retailers.

### ***PepsiCo Americas Beverages***

PepsiCo Americas Beverages, or PAB, manufactures or uses contract manufacturers, markets and sells beverage concentrates, fountain syrups and finished goods, under various beverage brands including Pepsi, Mountain Dew, Gatorade, 7UP (outside the U.S.), Tropicana Pure Premium, Sierra Mist, Mirinda, Propel, Tropicana juice drinks, Dole, SoBe Life Water, Naked juice and Izze. PAB also manufactures or uses contract manufacturers, markets and sells ready-to-drink tea, coffee and water products through joint ventures with Unilever (under the Lipton brand name) and Starbucks. In addition, PAB licenses the Aquafina water brand to its bottlers and markets this brand. PAB sells concentrate and finished goods for some of these brands to authorized bottlers, and some of these branded products are sold directly by us to independent distributors and retailers. The bottlers sell our brands as finished goods to independent distributors and retailers. PAB's volume reflects sales to its independent distributors and retailers, as well as the sales of beverages bearing our trademarks that bottlers have reported as sold to independent distributors and retailers. Bottler case sales

(BCS) and concentrate shipments and equivalents (CSE) are not necessarily equal during any given period due to seasonality, timing of product launches, product mix, bottler inventory practices and other factors. While our revenues are not based on BCS volume, we believe that BCS is a valuable measure as it measures the sell-through of our products at the consumer level.

#### ***United Kingdom & Europe***

United Kingdom & Europe, or UKEU, manufactures, markets and sells through consolidated businesses as well as through noncontrolled affiliates, a number of leading salty and sweet snack brands including Lay's, Walkers, Cheetos, Doritos and Ruffles. Further, UKEU manufactures or uses contract manufacturers, markets and sells many Quaker brand cereals and snacks. UKEU also manufactures, markets and sells beverage concentrates, fountain syrups and finished goods, under various beverage brands including Pepsi, 7UP and Tropicana. These brands are sold to authorized bottlers, independent distributors and retailers. However, in certain markets, UKEU operates its own bottling plants and distribution facilities. In addition, UKEU licenses the Aquafina water brand to certain of its authorized bottlers. UKEU also manufactures or uses contract manufacturers, markets and sells ready-to-drink tea products through a joint venture with Unilever (under the Lipton brand name).

#### ***Middle East, Africa & Asia***

Middle East, Africa & Asia, or MEAA, manufactures, markets and sells through consolidated businesses as well as through noncontrolled affiliates, a number of leading salty and sweet snack brands including Lay's, Doritos, Cheetos, Smith's and Ruffles. Further, MEAA manufactures or uses contract manufacturers, markets and sells many Quaker brand cereals and snacks. MEAA also manufactures, markets and sells beverage concentrates, fountain syrups and finished goods, under various beverage brands including Pepsi, Mirinda, 7UP and Mountain Dew. These brands are sold to authorized bottlers, independent distributors and retailers. However, in certain markets, MEAA operates its own bottling plants and distribution facilities. In addition, MEAA licenses the Aquafina water brand to certain of its authorized bottlers. MEAA also manufactures or uses contract manufacturers, markets and sells ready-to-drink tea products through the joint venture with Unilever (see United Kingdom & Europe above).

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Our principal executive offices are located at 700 Anderson Hill Road, Purchase, New York 10577 and our telephone number is (914) 253-2000. We maintain a website at [www.pepsico.com](http://www.pepsico.com) where general information about us is available. We are not incorporating the contents of the website into this prospectus.

#### **ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the SEC utilizing a "shelf" registration process. Under this shelf process, we may sell any combination of the securities described in this prospectus in one or more offerings. This prospectus provides you with a general description of the securities we may offer. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with additional information described under the heading "Where You Can Find More Information."

#### **WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any document that we file at the Public Reference Room of the SEC at 100 F Street, N.E., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. In addition, the SEC maintains an Internet site at <http://www.sec.gov>, from which interested persons can electronically access the registration statement including the exhibits and schedules thereto.

The SEC allows us to “incorporate by reference” the information we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below and any future filings we make with the SEC under Sections 13(a), 13(c), 14, or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) (other than, in each case, documents or information deemed to have been furnished and not filed in accordance with SEC rules), on or after the date of this prospectus until we sell all of the securities covered by this registration statement:

- Annual report of PepsiCo, Inc. on Form 10-K for the fiscal year ended December 29, 2007;
- Definitive proxy statement of PepsiCo, Inc. on Schedule 14A filed with the SEC on March 24, 2008;
- Quarterly reports of PepsiCo, Inc. on Form 10-Q for the twelve, twenty-four and thirty-six weeks ended March 22, 2008, June 14, 2008 and September 6, 2008; and
- Current reports of PepsiCo, Inc. on Form 8-K filed with the SEC on February 25, 2008, March 24, 2008, April 7, 2008, May 21, 2008, August 6, 2008 and October 14, 2008 (except for the information furnished pursuant to Item 2.02 of Form 8-K and the furnished exhibit relating to that information).

Our current report on Form 8-K filed with the SEC on April 7, 2008 provides revised historical segment information on a basis consistent with our current segment reporting structure, as described above under “The Company.” As a result of the change in reporting structure, the segment discussions within Item 7 — Management’s Discussion and Analysis of Financial Condition and Results of Operations and Notes 1, 3 and 4 to our consolidated financial statements included in our annual report on Form 10-K for the fiscal year ended December 29, 2007 have been revised and are included in Exhibit 99.1 to our current report on Form 8-K filed with the SEC on April 7, 2008.

You may request a copy of these filings at no cost, by writing or telephoning the office of Manager, Shareholder Relations, PepsiCo, Inc., 700 Anderson Hill Road, Purchase, New York 10577, (914) 253-3055.

#### **SPECIAL NOTE ON FORWARD-LOOKING STATEMENTS**

We discuss expectations regarding our future performance, such as our business outlook, in our annual and quarterly reports, press releases, and statements incorporated by reference in this prospectus. These statements, and statements other than statements of historical facts included or incorporated by reference in this prospectus, including, without limitation, statements regarding our future financial position, business strategy, budgets, projected costs and plans and objectives of management for future operations, are forward-looking statements. These “forward-looking statements” are based on currently available information, operating plans and projections about future events and trends. They inherently involve risks and uncertainties, and investors must recognize that events could turn out to be significantly different from our expectations. All subsequent written and oral forward-looking statements attributable to us, or persons acting on our behalf, are expressly qualified in their entirety by these cautionary statements. We do not undertake to update our forward-looking statements to reflect future events or circumstances, except as may be required by applicable law.

#### **USE OF PROCEEDS**

Unless otherwise indicated in a prospectus supplement, the net proceeds from the sale of the securities will be used for general corporate purposes.

**RATIO OF EARNINGS TO FIXED CHARGES**

The following table sets forth our ratio of earnings to fixed charges for the periods indicated. "Fixed charges" consist of interest expense, capitalized interest, amortization of debt discount, and the interest portion of net rent expense which is deemed to be representative of the interest factor. The ratio of earnings to fixed charges is calculated as income from continuing operations, before provision for income taxes and cumulative effect of accounting changes, where applicable, less net unconsolidated affiliates' interests, plus fixed charges (excluding capitalized interest), plus amortization of capitalized interest, with the sum divided by fixed charges.

36 Weeks Ended		Year Ended				
September 6, 2008	September 8, 2007	December 29, 2007	December 30, 2006	December 31, 2005	December 25, 2004	December 27, 2003
20.70	24.10	22.01	19.99	19.03	22.00	20.37



## DESCRIPTION OF CAPITAL STOCK

The following description of our capital stock is based upon our Amended and Restated Articles of Incorporation (“Articles of Incorporation”), our By-Laws, as amended to February 2, 2007 (“By-Laws”) and applicable provisions of law. We have summarized certain portions of the Articles of Incorporation and By-Laws below. The summary is not complete. The Articles of Incorporation and By-Laws are incorporated by reference as exhibits to the registration statement of which this prospectus forms a part. You should read the Articles of Incorporation and By-Laws for the provisions that are important to you.

### Authorized Capital Stock

Our Articles of Incorporation authorizes us to issue 3,600,000,000 shares of common stock, par value one and two-thirds cents (1<sup>2</sup>/<sub>3</sub> cents) per share and 3,000,000 shares of convertible preferred stock, no par value per share.

### Common Stock

As of September 6, 2008 there were 1,557,630,468 shares of common stock outstanding which were held of record by 182,261 shareholders.

Each holder of a share of PepsiCo common stock is entitled to one vote for each share held of record on the applicable record date on all matters submitted to a vote of shareholders. Holders of PepsiCo common stock are entitled to receive dividends as may be declared from time to time by PepsiCo’s Board of Directors out of funds legally available therefor. Holders of PepsiCo common stock are entitled to share pro rata, upon any liquidation or dissolution of PepsiCo, in all remaining assets available for distribution to shareholders after payment or providing for PepsiCo’s liabilities and the liquidation preference of any outstanding PepsiCo convertible preferred stock. Holders of PepsiCo common stock do not have the right to subscribe for, purchase or receive new or additional capital stock or other securities.

### Convertible Preferred Stock

As of September 6, 2008 there were 274,653 shares of convertible preferred stock outstanding, which were held of record by 2,183 shareholders. The convertible preferred stock was issued, in connection with our merger with the Quaker Oats Company, to Fidelity Trust Management Co., as trustee of the Quaker 401(k) plans for hourly and salaried employees, which subsequently merged into the PepsiCo 401(k) Plan for Salaried Employees and the PepsiCo 401(k) Plan for Hourly Employees. These shares are held in the ESOP portion of these plans, which we refer to as the PepsiCo ESOP. If the shares of convertible preferred stock are transferred to any person other than a successor trustee, the shares of convertible preferred stock will automatically convert into shares of common stock.

*Ranking.* The convertible preferred stock ranks ahead of our common stock with respect to the payment of dividends and the distribution of assets in the event of our liquidation or dissolution.

*Dividends.* Subject to the rights of the holders of any capital stock ranking senior to convertible preferred stock, holders of convertible preferred stock will receive cumulative cash dividends when, as and if declared by our Board of Directors. Dividends of \$5.46 per share per year accrue on a daily basis, payable quarterly in arrears on the fifteenth of January, April, July and October to holders of record at the start of business on that dividend payment date.

So long as any shares of convertible preferred stock are outstanding, no dividend may be declared or paid on any other series of stock of the same rank, unless all accrued dividends on the convertible preferred stock are paid. Generally, if full cumulative dividends on the convertible preferred stock have not been paid, we will not pay any dividends or make any other distributions on any other class of stock or series of our capital stock ranking junior to the convertible preferred stock until full cumulative dividends on the convertible preferred stock have been paid.

*Voting Rights.* Holders of convertible preferred stock will be entitled to vote as one voting group with the holders of common stock on all matters submitted to a vote of the shareholders. The holder of each share of convertible preferred stock will be entitled to a number of votes equal to the number of shares of common stock into which each share of convertible preferred stock could be converted on the relevant record date, rounded to the nearest one-tenth of a vote. Whenever the conversion price is adjusted for dilution, the voting rights of the convertible preferred stock will be similarly adjusted.

Except as otherwise required by law, holders of the convertible preferred stock will not have any special voting rights and their consent will not be required, except to the extent that they are entitled to vote with the holders of the common stock, for the taking of any corporate action. The approval of at least two-thirds of the outstanding shares of the convertible preferred stock, voting separately as one voting group, will be required if an alteration, amendment or repeal of any provision of our Articles of Incorporation would adversely affect their powers, preferences or special rights.

*Rights upon Liquidation, Dissolution or Winding Up.* In the event of any voluntary or involuntary liquidation, dissolution or winding up of us, the holders of convertible preferred stock will be entitled to receive, before any distribution is made to the holders of common stock or any other series of stock ranking junior to the convertible preferred stock, a liquidation preference in the amount of \$78.00 per share, plus accrued and unpaid dividends. If the amounts payable with respect to convertible preferred stock and any other stock of the same rank are not paid in full, the holders of convertible preferred stock and any stock of equal rank will share pro rata in any distribution of assets. After payment of the full amount to which they are entitled, the holders of shares of convertible preferred stock will not be entitled to any further right or claim to any of our remaining assets.

*Mandatory Redemption by PepsiCo.* We must redeem the convertible preferred stock upon termination of the PepsiCo ESOP in accordance with the PepsiCo ESOP's terms. We will redeem all then outstanding shares of convertible preferred stock for a per share amount equal to the greater of \$78.00 plus accrued and unpaid dividends or the fair market value of the convertible preferred stock. We, at our option, may make payment in cash or in shares of our common stock or in a combination of shares and cash.

*Optional Redemption by the Holders.* Holders of the convertible preferred stock may elect to redeem their shares if we enter into any consolidation or merger or similar business combination in which we exchange our common stock for property other than employer securities or qualifying employer securities. Upon notice from us of the agreement and the material terms of the transaction, each holder of convertible preferred stock will have the right to elect, by written notice to us, to receive a cash payment upon consummation of the transaction equal to the greater of the fair market value of the shares of convertible preferred stock to be so redeemed or \$78.00 per share plus accrued and unpaid dividends. Additionally, holders of convertible preferred stock may redeem their shares under other limited circumstances more fully described in the Articles of Incorporation.

*Conversion.* On or prior to any date fixed for redemption, a holder of convertible preferred stock may elect to convert any or all of his or her shares into shares of common stock at a conversion ratio (which is subject to adjustment for a number of dilutive events) more fully described in the Articles of Incorporation.

*Preemptive Rights.* Holders of the convertible preferred stock do not have the right to subscribe for, purchase or receive new or additional capital stock or other securities.

#### **Transfer Agent and Registrar**

The Bank of New York Mellon is the transfer agent and registrar for PepsiCo common stock.

#### **Stock Exchange Listing**

The New York Stock Exchange is the principal market for PepsiCo's common stock, which is also listed on the Chicago and Swiss stock exchanges.

## **Certain Provisions of PepsiCo's Articles of Incorporation and By-Laws; Director Indemnification Agreements**

*Advance Notice of Proposals and Nominations.* Our By-Laws provide that shareholders must provide timely written notice to bring business before an annual meeting of shareholders or to nominate candidates for election as directors at an annual meeting of shareholders. Notice for an annual meeting is timely if it is received at our principal office not less than 90 days nor more than 120 days prior to the first anniversary of the preceding year's annual meeting. However, if the date of the annual meeting is advanced by more than 30 days or delayed more than 60 days from this anniversary date, such notice by the shareholder must be delivered not earlier than the 120th day prior to the annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such annual meeting was first made. The By-Laws also specify the form and content of a shareholder's notice. These provisions may prevent shareholders from bringing matters before an annual meeting of shareholders or from nominating candidates for election as directors at an annual meeting of shareholders.

*Limits on Special Meetings.* A special meeting of the shareholders may be called by our corporate secretary upon written request of the shareholders owning a majority of shares of our outstanding common stock entitled to vote at such meeting. Any such special meeting called at the request of our shareholders must be held at our principal office within 90 days from the receipt of such request by the corporate secretary. The By-Laws specify the form and content of a shareholder's request for a special meeting.

*Indemnification of Directors, Officers and Employees.* Our By-Laws provide that we shall indemnify, to the full extent permitted by law, any person who was or is, or who is threatened to be made, a party to an action, suit or proceeding (including appeals), whether civil, criminal, administrative, investigative or arbitrative, by reason of the fact that such person, such person's testator or intestate, is or was one of our directors, officers or employees, or is or was serving at our request as a director, officer or employee of another enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding. Pursuant to our By-Laws this indemnification may, at the Board's discretion, also include advancement of expenses related to such action, suit or proceeding.

In addition, we have entered into indemnification agreements with each of our directors, pursuant to which we have agreed to indemnify and hold harmless, to the full extent permitted by law, each director against any and all liabilities and assessments (including attorneys' fees and other costs, expenses and obligations) arising out of or related to any threatened, pending or completed action, suit, proceeding, inquiry or investigation, whether civil, criminal, administrative, or other, including, but not limited to, judgments, fines, penalties and amounts paid in settlement (whether with or without court approval), and any interest, assessments, excise taxes or other charges paid or payable in connection with or in respect of any of the foregoing, incurred by the director and arising out of his status as a director or member of a committee of our Board, or by reason of anything done or not done by the director in such capacities. After receipt of an appropriate request by a director, we will also advance all expenses, costs and other obligations (including attorneys' fees) arising out of or related to such matters. We will not be liable for payment of any liability or expense incurred by a director on account of acts which, at the time taken, were known or believed by such director to be clearly in conflict with our best interests.

## **Certain Anti-Takeover Effects of North Carolina Law**

The North Carolina Shareholder Protection Act generally requires the affirmative vote of 95% of a public corporation's voting shares to approve a "business combination" with any entity that a majority of continuing directors determines beneficially owns, directly or indirectly, more than 20% of the voting shares of the corporation (or ever owned, directly or indirectly, more than 20% and is still an "affiliate" of the corporation) unless the fair price provisions and the procedural provisions of the Act are satisfied.

"Business combination" is defined by the Act as (i) any merger, consolidation or conversion of a corporation with or into any other entity, or (ii) any sale or lease of all or any substantial part of the corporation's assets to any other entity, or (iii) any payment, sale or lease to the corporation or any subsidiary

thereof in exchange for securities of the corporation of any assets having an aggregate fair market value equal to or greater than \$5,000,000 of any other entity.

The Act contains provisions that allowed a corporation to “opt out” of the applicability of the Act’s voting provisions within specified time periods that generally have expired. The Act applies to PepsiCo since we did not opt out within these time periods.

This statute could discourage a third party from making a partial tender offer or otherwise attempting to obtain a substantial position in our equity securities or seeking to obtain control of us. It also might limit the price that certain investors might be willing to pay in the future for our shares of common stock and may have the effect of delaying or preventing a change of control of us.

#### DESCRIPTION OF DEBT SECURITIES

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

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

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

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

- the dates on which premium, if any, will be paid;
- our right, if any, to defer payment of interest and the maximum length of this deferral period;
- any listing on a securities exchange;
- the initial public offering price; and
- other specific terms, including any additional events of default or covenants.

#### **Senior Debt**

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

#### **Subordinated Debt**

Subordinated debt securities will be subordinate and junior in right of payment, to the extent and in the manner set forth in the indenture, to all “senior indebtedness” of PepsiCo. The indenture defines “senior indebtedness” as obligations or indebtedness of, or guaranteed or assumed by, PepsiCo for borrowed money whether or not represented by bonds, debentures, notes or other similar instruments, and amendments, renewals, extensions, modifications and refundings of any such indebtedness or obligation. “Senior indebtedness” does not include nonrecourse obligations, the subordinated debt securities or any other obligations specifically designated as being subordinate in right of payment to senior indebtedness. See the indenture, section 13.03.

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

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

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

#### **Events of Default**

When we use the term “Event of Default” in the indenture with respect to the debt securities of any series, here are some examples of what we mean:

- (1) default in paying interest on the debt securities when it becomes due and the default continues for a period of 30 days or more;
- (2) default in paying principal, or premium, if any, on the debt securities when due;

(3) default is made in the payment of any sinking or purchase fund or analogous obligation when the same becomes due, and such default continues for 30 days or more;

(4) default in the performance, or breach, of any covenant in the indenture (other than defaults specified in clause (1), (2) or (3) above) and the default or breach continues for a period of 90 days or more after we receive written notice from the trustee or we and the trustee receive notice from the holders of at least 51% in aggregate principal amount of the outstanding debt securities of the series;

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

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

If an Event of Default (other than an Event of Default specified in clause (5) with respect to PepsiCo) under the indenture occurs with respect to the debt securities of any series and is continuing, then the trustee or the holders of at least 51% in principal amount of the outstanding debt securities of that series may by written notice require us to repay immediately the entire principal amount of the outstanding debt securities of that series (or such lesser amount as may be provided in the terms of the securities), together with all accrued and unpaid interest and premium, if any.

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

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

Holders of at least 51% in principal amount of the outstanding debt securities of a series may seek to institute a proceeding only after they have notified the Trustee of a continuing Event of Default in writing and made a written request, and offered reasonable indemnity, to the trustee to institute a proceeding and the trustee has failed to do so within 60 days after it received this notice. In addition, within this 60-day period the trustee must not have received directions inconsistent with this written request by holders of a majority in principal amount of the outstanding debt securities of that series. These limitations do not apply, however, to a suit instituted by a holder of a debt security for the enforcement of the payment of principal, interest or any premium on or after the due dates for such payment.

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

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

## Modification and Waiver

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

- evidence a succession to the Trustee;
- cure ambiguities, defects or inconsistencies;
- provide for the assumption of our obligations in the case of a merger or consolidation or transfer of all or substantially all of our assets;
- make any change that would provide any additional rights or benefits to the holders of the debt securities of a series;
- add guarantors with respect to the debt securities of any series;
- secure the debt securities of a series;
- establish the form or forms of debt securities of any series;
- maintain the qualification of the indenture under the Trust Indenture Act; or
- make any change that does not adversely affect in any material respect the interests of any holder.

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

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

## Covenants

### *Limitation of Liens Applicable to Senior Debt Securities*

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

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

- (1) any liens existing prior to the issuance of such senior debt securities;
- (2) any lien on property of or shares of stock of (or other interests in) or debt of any entity existing at the time such entity becomes a restricted subsidiary;
- (3) any liens on property, shares of stock of (or other interests in) or debt of any entity (a) existing at the time of acquisition of such property or shares (or other interests) (including acquisition through merger or consolidation), (b) to secure the payment of all or any part of the purchase price of such property or shares (or other interests) or construction or improvement of such property or (c) to secure any debt incurred prior to, at the time of, or within 365 days after the later of the acquisition, the completion of construction or the commencement of full operation of such property or within 365 days after the acquisition of such shares (or other interests) for the purpose of financing all or any part of the purchase price of such shares (or other interests) or construction thereon;
- (4) any liens in favor of us or any of our restricted subsidiaries;
- (5) any liens in favor of, or required by contracts with, governmental entities; or
- (6) any extension, renewal, or refunding of liens referred to in any of the preceding clauses (1) through (5).

Notwithstanding the foregoing, we or any of our restricted subsidiaries may incur, suffer to exist or guarantee any debt secured by a lien on any principal property or on any shares of stock of (or other interests in) any of our restricted subsidiaries if, after giving effect thereto, the aggregate amount of such debt does not exceed 15% of our consolidated net tangible assets.

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

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

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

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

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

*“Principal property”* means any single manufacturing or processing plant, office building or warehouse owned or leased by us or any of our restricted subsidiaries other than a plant, warehouse, office building or portion thereof which, in the opinion of our Board of Directors, is not of material importance to the business conducted by us and our restricted subsidiaries taken as an entirety.

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

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



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

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

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

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

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

There are no other restrictive covenants contained in the Indenture. The Indenture does not contain any provision that will restrict us from entering into one or more additional indentures providing for the issuance of debt securities or warrants, or from incurring, assuming, or becoming liable with respect to any indebtedness or other obligation, whether secured or unsecured, or from paying dividends or making other distributions on our capital stock, or from purchasing or redeeming our capital stock. The Indenture does not contain any financial ratios or specified levels of net worth or liquidity to which we must adhere. In addition, the Indenture does not contain any provision that would require us to repurchase, redeem, or otherwise modify the terms of any of the debt securities upon a change in control or other event involving us that may adversely affect our creditworthiness or the value of the debt securities.

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

We may terminate our obligations under the indenture, when:

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

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

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

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

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

- we must irrevocably have deposited or caused to be deposited with the trustee as trust funds for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to the benefits of the holders of the debt securities of a series:
  - money in an amount;
  - U.S. government obligations (or equivalent government obligations in the case of debt securities denominated in other than U.S. dollars or a specified currency) that will provide, not later than one day before the due date of any payment, money in an amount; or
  - a combination of money and U.S. government obligations (or equivalent government obligations, as applicable),

in each case sufficient, in the written opinion (with respect to U.S. or equivalent government obligations or a combination of money and U.S. or equivalent government obligations, as applicable) of a nationally recognized firm of independent registered public accountants to pay and discharge, and which shall be applied by the trustee to pay and discharge, all of the principal (including mandatory sinking fund payments), interest and any premium at due date or maturity;

- in the case of legal defeasance, we have delivered to the trustee an opinion of counsel stating that, under then applicable Federal income tax law, the holders of the debt securities of that series will not recognize income, gain or loss for federal income tax purposes as a result of the deposit, defeasance and discharge to be effected and will be subject to the same federal income tax as would be the case if the deposit, defeasance and discharge did not occur;
- in the case of covenant defeasance, we have delivered to the trustee an opinion of counsel to the effect that the holders of the debt securities of that series will not recognize income, gain or loss for U.S. federal income tax purposes as a result of the deposit and covenant defeasance to be effected and will be subject to the same federal income tax as would be the case if the deposit and covenant defeasance did not occur;
- no event of default or default with respect to the outstanding debt securities of that series has occurred and is continuing at the time of such deposit after giving effect to the deposit or, in the case of legal defeasance, no default relating to bankruptcy or insolvency has occurred and is continuing at any time on or before the 91st day after the date of such deposit, it being understood that this condition is not deemed satisfied until after the 91st day;

- the legal defeasance or covenant defeasance will not cause the trustee to have a conflicting interest within the meaning of the Trust Indenture Act, assuming all debt securities of a series were in default within the meaning of such Act;
- the legal defeasance or covenant defeasance will not result in a breach or violation of, or constitute a default under, any other agreement or instrument to which we are a party;
- the legal defeasance or covenant defeasance will not result in the trust arising from such deposit constituting an investment company within the meaning of the Investment Company Act of 1940, as amended, unless the trust is registered under such Act or exempt from registration; and
- we have delivered to the trustee an officers' certificate and an opinion of counsel stating that all conditions precedent with respect to the defeasance or covenant defeasance have been complied with.

#### Concerning our Relationship with the Trustee

We and our subsidiaries maintain ordinary banking relationships and credit facilities with The Bank of New York Mellon, which serves as trustee under certain indentures related to other securities that we have issued or guaranteed.

#### DESCRIPTION OF GUARANTEES OF DEBT SECURITIES

We may issue guarantees of debt securities of Bottling Group, LLC, The Pepsi Bottling Group, Inc. or any other direct or indirect subsidiary of The Pepsi Bottling Group, Inc. Each series of guarantees will be issued under an indenture among us, the issuer of the underlying debt securities and The Bank of New York Mellon, as trustee.

*Our obligations under the guarantees will only become effective if and when a guarantee commencement date occurs.* The prospectus supplement will specify the applicable guarantee commencement date, and will describe any conditions that must be met for the applicable guarantee commencement date to occur. Pursuant to the guarantees, and unless otherwise specified in the prospectus supplement, beginning on the specified guarantee commencement date, if and when it occurs, we will unconditionally and irrevocably guarantee, on a senior unsecured basis, the payment of all, or in some cases a specified percentage, of the principal of and interest and premium, if any, on the underlying debt securities when due and payable, whether at maturity, by acceleration, redemption or otherwise (and in the case of any extension of time of payment or renewal of any underlying debt securities under the applicable indenture or the underlying debt securities, the payment of such amount when due and payable in accordance with the terms of such extension or renewal). If the issuer of the underlying debt securities defaults in the payment of principal of and interest and premium, if any, on the underlying debt securities upon maturity, redemption, acceleration or otherwise, in each case, on or after the applicable guarantee commencement date, then the amount of payment each holder of underlying debt securities is entitled to receive from us under our guarantee will be the amount of principal of and interest and premium, if any, due and payable on such holder's underlying debt securities, or, if applicable, the product of (1) the specified percentage referred to above and (2) the amount of principal of and interest and premium, if any, due and payable on such holder's underlying debt securities.

The prospectus supplement will describe the terms of the guarantees, including the following, where applicable:

- the issuer of the underlying debt securities to which the guarantees apply;
- the series of underlying debt securities to which the guarantees apply;
- whether the guarantees are conditional or unconditional;
- the guarantee commencement date, if applicable;
- any covenants that we have agreed to in connection with the issuance of the guarantees;
- the terms under which the guarantees may be amended, modified, waived, released or otherwise terminated, if different from the provisions applicable to the underlying debt securities; and
- any additional terms of the guarantees.

#### DESCRIPTION OF WARRANTS

We may issue warrants to purchase our debt or equity securities or securities of third parties or other rights, including rights to receive payment in cash or securities based on the value, rate or price of one or more specified commodities, currencies, securities or indices, or any combination of the foregoing. Warrants may be issued independently or together with any other securities and may be attached to, or separate from, such securities. Each series of warrants will be issued under a separate warrant agreement to be entered into between us and a warrant agent. The terms of any warrants to be issued and a description of the material provisions of the applicable warrant agreement will be set forth in the applicable prospectus supplement.

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

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

#### DESCRIPTION OF UNITS

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

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

## FORMS OF SECURITIES

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

### Global Securities

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

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

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

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

that a holder is entitled to give or take under the applicable indenture, warrant agreement, guarantee or unit agreement, the depositary for the registered global security would authorize the participants holding the relevant beneficial interests to give or take that action, and the participants would authorize beneficial owners owning through them to give or take that action or would otherwise act upon the instructions of beneficial owners holding through them.

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

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

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

#### **VALIDITY OF SECURITIES**

The validity of the securities in respect of which this prospectus is being delivered will be passed on for us by Davis Polk & Wardwell, New York, New York, as to New York law, and by Womble Carlyle Sandridge & Rice, PLLC, Research Triangle Park, North Carolina, as to North Carolina law.

#### **INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The consolidated financial statements of PepsiCo, Inc. as of December 29, 2007 and December 30, 2006, and for each of the years in the three-year period ended December 29, 2007, and the effectiveness of internal control over financial reporting as of December 29, 2007, are incorporated by reference herein in reliance upon the reports of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

With respect to the unaudited interim financial information for the twelve weeks ended March 22, 2008 and March 24, 2007, for the twelve and twenty-four weeks ended June 14, 2008 and June 16, 2007 and for the twelve and thirty-six weeks ended September 6, 2008 and September 8, 2007, incorporated by reference herein, the independent registered public accounting firm has reported that they applied limited procedures in accordance with professional standards for a review of such information. However, their separate report included in our quarterly reports on Form 10-Q for the twelve weeks ended March 22, 2008, the twenty-four weeks ended June 14, 2008 and the thirty-six weeks ended September 6, 2008, and incorporated by reference herein, state that they did not audit and they do not express an opinion on that interim financial information. Accordingly, the degree of reliance on their report on such information should be restricted in light of the limited nature of the review procedures applied. The accountants are not subject to the liability provisions of Section 11 of the Securities Act of 1933, as amended (the "Securities Act") for their report on the unaudited interim financial information because that report is not a "report" or a "part" of the registration statement prepared or certified by the accountants within the meaning of Sections 7 and 11 of the Securities Act.

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

**Item 14. Other Expenses of Issuance and Distribution**

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

	Amount to be Paid
Registration fee	(1)
Printing	*
Legal fees and expenses	*
Trustee fees	*
Accounting fees and expenses	*
Miscellaneous	*
<b>TOTAL</b>	<b>*</b>

(1) Deferred in reliance upon Rule 456(b) and Rule 457(r).

\* Not presently determinable.

**Item 15. Indemnification of Directors and Officers**

PepsiCo, Inc. ("PepsiCo") does not have any provisions for indemnification of directors or officers in its Amended and Restated Articles of Incorporation. Article III, Section 3.7 of the By-Laws, as amended to February 2, 2007, provides that PepsiCo shall indemnify, to the full extent permitted by law, any person who was or is, or who is threatened to be made, a party to an action, suit or proceeding (and any appeal therein), whether civil, criminal, administrative, investigative or arbitrative, by reason of the fact that such person, such person's testator or intestate, is or was a director, officer or employee of PepsiCo, or is or was serving at the request of PepsiCo as a director, officer or employee of another enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding. At the Board's discretion, such indemnification may also include advances of a director's, officer's or employee's expenses prior to final disposition of such action, suit or proceeding.

Section 55-2-02 of the North Carolina Business Corporation Act (the "North Carolina Act") enables a corporation in its articles of incorporation to eliminate or limit, with certain exceptions, the personal liability of directors arising out of an action whether by or in the right of the corporation or otherwise for monetary damages for breach of their duties as directors. No such provision is effective to eliminate or limit a director's liability for: (1) acts or omissions that the director at the time of the breach knew or believed to be clearly in conflict with the best interests of the corporation; (2) improper distributions as described in Section 55-8-33 of the North Carolina Act; (3) any transaction from which the director derived an improper personal benefit; or (4) acts or omissions occurring prior to the date the exculpatory provision became effective. As noted above, PepsiCo's Amended and Restated Articles of Incorporation do not contain a provision that eliminates or limits such personal liability.

Sections 55-8-50 through 55-8-58 of the North Carolina Act permit a corporation to indemnify its directors, officers, employees or agents under either or both a statutory or nonstatutory scheme of indemnification. Under the statutory scheme, a corporation may, with certain exceptions, indemnify a director, officer, employee or agent of the corporation who was, is, or is threatened to be made, a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal, because of the fact that such person was or is a director, officer, agent or employee of the corporation, or is or was serving at the request of such corporation as a director, officer,



employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. This indemnity may include the obligation to pay any judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan) or reasonable expenses incurred in connection with a proceeding (including counsel fees), but no such indemnification may be granted unless such director, officer, employee or agent (1) conducted himself in good faith, (2) reasonably believed (a) that any action taken in his official capacity with the corporation was in the best interests of the corporation or (b) that in all other cases his conduct was at least not opposed to the corporation's best interests, and (3) in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful. Whether a director has met the requisite standard of conduct for the type of indemnification set forth above is determined by a majority vote of a quorum of the board of directors who are not parties to the proceeding in question, a duly designated committee of directors if a quorum of the full board cannot be established, special legal counsel selected by the board or duly designated committee of directors, or the shareholders (excluding shares owned or controlled by directors who are parties to the proceeding in question) in accordance with Section 55-8-55 of the North Carolina Act. A corporation may not indemnify a director under the statutory scheme in connection with a proceeding by or in the right of the corporation in which a director was adjudged liable to the corporation or in connection with any other proceeding charging improper personal benefit in which a director was adjudged liable (whether or not involving action in his official capacity) on the basis of having received an improper personal benefit.

Sections 55-8-52 and 55-8-56 of the North Carolina Act require a corporation, unless its articles of incorporation provide otherwise, to indemnify a director or officer who has been wholly successful, on the merits or otherwise, in the defense of any proceeding to which such director or officer was, or was threatened to be, made a party because he is or was a director or officer of the corporation against reasonable expenses incurred by him in connection with the proceeding. Unless prohibited by the articles of incorporation, a director or officer also may make application for and obtain court-ordered indemnification if the court determines that such director or officer is (1) entitled to mandatory indemnification under Section 55-8-52, in which case the court will also order the corporation to pay the director's or officer's reasonable expenses incurred to obtain court-ordered indemnification, and (2) fairly and reasonably entitled to indemnification in view of all relevant circumstances, whether or not he met the standard of conduct set forth in Section 55-8-51 or was adjudged liable as described in Section 55-8-51.

In addition to, and notwithstanding the conditions of and limitations on, the indemnification described above under the statutory scheme, Section 55-8-57 of the North Carolina Act permits a corporation to indemnify, or agree to indemnify, any of its directors, officers, employees or agents against liability and expenses (including attorneys' fees) in any proceeding (including proceedings brought by or on behalf of the corporation) arising out of their status as such or their activities in such capacities, except for any liabilities or expenses incurred on account of activities that were, at the time taken, known or believed by the person to be clearly in conflict with the best interests of the corporation. Consistent with the foregoing, PepsiCo has entered into indemnification agreements with each of its directors, pursuant to which PepsiCo has agreed to indemnify and hold harmless, to the full extent permitted by law, each director against any and all liabilities and assessments (including attorneys' fees and other costs, expenses and obligations) arising out of or related to any threatened, pending or completed action, suit, proceeding, inquiry or investigation, whether civil, criminal, administrative, or other, including, but not limited to, judgments, fines, penalties and amounts paid in settlement (whether with or without court approval), and any interest, assessments, excise taxes or other charges paid or payable in connection with or in respect of any of the foregoing, incurred by the director and arising out of his status as a director or member of a committee of the Board of PepsiCo, or by reason of anything done or not done by the director in such capacities. After receipt of an appropriate request by a director, PepsiCo will also advance all expenses, costs and other obligations (including attorneys' fees) arising out of or related to such matters. PepsiCo will not be liable for payment of any liability or expense incurred by a director on account of acts which, at the time taken, were known or believed by such director to be clearly in conflict with PepsiCo's best interests.

Additionally, Section 55-8-57 of the North Carolina Act authorizes a corporation to purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee or agent of the

corporation against certain liabilities incurred by such a person, whether or not the corporation is otherwise authorized by the North Carolina Act to indemnify that person. PepsiCo has purchased and maintains such insurance.

The form of underwriting agreement filed as Exhibit 1.1 to this registration statement provides for indemnification of directors and officers of the registrant by the underwriters against certain liabilities.

**Item 16. Exhibits and Financial Statement Schedules**

- (a) The list of exhibits is incorporated herein by reference to the Exhibit Index following the signature pages.

**Item 17. Undertakings**

- (a) The undersigned registrant hereby undertakes:

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

- (i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Securities and Exchange Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

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

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

- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment 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.

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

- (4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

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

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to

Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities:

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

- (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
- (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
- (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
- (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

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

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

(d) The undersigned registrant hereby undertakes that:

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

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

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Purchase, State of New York, on October 15, 2008.

PepsiCo, Inc.

By: /s/ Indra K. Nooyi

Name: Indra K. Nooyi

Title: Chairman of the Board and Chief Executive Officer

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Larry D. Thompson and Thomas H. Tamoney, Jr., and each of them, his or her true and lawful attorneys-in-fact and agents, with full power of substitution and reconstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement and any and all additional registration statements pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto each said attorney-in-fact and agent full power and authority to do and perform each and every act in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or either of them 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, as amended, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Indra K. Nooyi Indra K. Nooyi	Chairman of the Board and Chief Executive Officer	October 15, 2008
/s/ Richard Goodman Richard Goodman	Chief Financial Officer	October 15, 2008
/s/ Peter A. Bridgman Peter A. Bridgman	Senior Vice President and Controller (Principal Accounting Officer)	October 15, 2008
/s/ Ian M. Cook Ian M. Cook	Director	October 15, 2008
/s/ Dina Dublon Dina Dublon	Director	October 15, 2008
/s/ Victor J. Dzau Victor J. Dzau	Director	October 15, 2008
/s/ Ray L. Hunt Ray L. Hunt	Director	October 15, 2008

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<div>/s/ Alberto Ibargüen</div> <div>Alberto Ibargüen</div>	Director	October 15, 2008
<div>/s/ Arthur C. Martinez</div> <div>Arthur C. Martinez</div>	Director	October 15, 2008
<div>/s/ Sharon Percy Rockefeller</div> <div>Sharon Percy Rockefeller</div>	Director	October 15, 2008
<div>/s/ James J. Schiro</div> <div>James J. Schiro</div>	Director	October 15, 2008
<div>/s/ Lloyd G. Trotter</div> <div>Lloyd G. Trotter</div>	Director	October 15, 2008
<div>/s/ Daniel Vasella</div> <div>Daniel Vasella</div>	Director	October 15, 2008
<div>/s/ Michael D. White</div> <div>Michael D. White</div>	Director	October 15, 2008

**EXHIBIT INDEX**

<b>Exhibit No.</b>	<b><u>Document</u></b>
1.1	Form of Underwriting Agreement (common stock and debt securities)
1.2	Form of Distribution Agreement (debt securities, warrants and units)
1.3*	Form of Underwriting Agreement (guarantees of debt securities)
4.1	Amended and Restated Articles of Incorporation of PepsiCo, Inc. (incorporated herein by reference to exhibit 4.1 to PepsiCo, Inc.'s registration statement on Form S-8 (Registration No. 333-66632))
4.2	By-laws of PepsiCo, Inc. (incorporated herein by reference to exhibit 3.2 to PepsiCo, Inc.'s annual report on Form 10-K for the fiscal year ended December 30, 2006)
4.3	Indenture dated as of May 21, 2007 between PepsiCo, Inc. and The Bank of New York, as Trustee
4.4	Form of Note (included in exhibit 4.3)
4.5	Form of Guarantee of Debt Securities, included in Form of Indenture among PepsiCo, Inc., Bottling Group LLC and The Bank of New York Mellon
4.6*	Form of Warrant Agreement
4.7*	Form of Unit Agreement
5.1	Opinion of Davis Polk & Wardwell
5.2	Opinion of Womble Carlyle Sandridge & Rice, PLLC
12.1	Statement regarding computation of Ratio of Earnings to Fixed Charges (incorporated herein by reference to exhibit 12 to PepsiCo, Inc.'s annual report on Form 10-K for the fiscal year ended December 29, 2007 and quarterly reports on Form 10-Q for the twelve, twenty-four and thirty-six weeks ended March 22, 2008, June 14, 2008 and September 6, 2008)
15.1	Letter regarding unaudited interim financial information
23.1	Consent of KPMG LLP
23.2	Consent of Davis Polk & Wardwell (included in exhibit 5.1)
23.3	Consent of Womble Carlyle Sandridge & Rice, PLLC (included in exhibit 5.2)
24.1	Power of Attorney (included on the signature page of the registration statement)
25.1	Statement of Eligibility on Form T-1 of The Bank of New York Mellon (debt securities)
25.2	Statement of Eligibility on Form T-1 of The Bank of New York Mellon (guarantees of debt securities)

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

## PEPSICO, INC.

## UNDERWRITING AGREEMENT STANDARD PROVISIONS

Dated as of October 1, 2008

From time to time, PepsiCo, Inc., a corporation organized under the laws of the State of North Carolina (the “**Company**”), may enter into one or more terms agreements (each, a “**Terms Agreement**”) in substantially the form of Exhibit A hereto, with such additions and deletions as the parties thereto may determine, and, subject to the terms and conditions stated herein and therein, to issue and sell certain securities (the “**Securities**”) to the underwriter or underwriters named in the applicable Terms Agreement (the “**Underwriters**,” which term shall include any underwriter substituted pursuant to Section 8 hereof). The provisions included herein (the “**Standard Provisions**”) shall be attached to and incorporated by reference into each Terms Agreement.

Section 1. *Definitions.* The Company has filed with the Securities and Exchange Commission (the “**Commission**”) an “automatic shelf registration statement” as defined in Rule 405 under the Securities Act of 1933, as amended (the “**Securities Act**”) on Form S-3 covering the registration of certain Securities of the Company to be issued and sold from time to time, in or pursuant to one or more offerings on terms to be determined at the time of sale, in accordance with Rule 415 under the Securities Act. Such registration statement (as so amended, if applicable), including the information, if any, deemed to be a part thereof pursuant to Rule 430B under the Securities Act (the “**Rule 430 Information**”), is referred to herein as the “**Registration Statement**”; and the base prospectus included in the Registration Statement at the time of filing (the “**Base Prospectus**”) and the final prospectus supplement relating to a particular offering of Underwritten Securities (as defined below) referred to in a Terms Agreement, in the forms first used to confirm sales of such Underwritten Securities (or in the form first made available to the Underwriters by the Company to meet requests of purchasers pursuant to Rule 173 under the Securities Act), are collectively referred to herein as the “**Prospectus**.” All references herein to the “Registration Statement” and the “Prospectus” shall be deemed to include all documents incorporated therein by reference which are filed by the Company pursuant to the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”) or the Securities Act, prior to the execution of the applicable Terms Agreement. References herein to a “**preliminary prospectus**” relating to an offering of particular Underwritten Securities pursuant to a Terms Agreement shall be deemed to refer to the Base Prospectus and to the prospectus supplement (a “**preliminary prospectus supplement**”) relating to such Underwritten Securities that omitted Rule 430 Information or other information to be included upon pricing in a form of prospectus relating to such Underwritten Securities filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act and that was used prior to the initial delivery of the Prospectus relating to such Underwritten Securities to the Underwriters by the Company.

For purposes of these Standard Provisions and the Terms Agreement relating to an offering of particular Underwritten Securities, “**free writing prospectus**” has the meaning set

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forth in Rule 405 under the Securities Act, and “**Time of Sale Prospectus**” means the Base Prospectus, the final preliminary prospectus supplement filed prior to the “**Time of Sale**” set forth in such Terms Agreement, together with any free writing prospectus or other information stated in such Terms Agreement to form part of the Time of Sale Prospectus. For purposes of these Standard Provisions, all references to the “Registration Statement,” “Prospectus,” “preliminary prospectus” or “Time of Sale Prospectus” or to any amendment or supplement to any of the foregoing shall be deemed to include any copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system (“**EDGAR**”).

All references in these Standard Provisions to financial statements and schedules and other information which is “contained,” “included” or “stated” (or other references of like import) in the Registration Statement, preliminary prospectus, Time of Sale Prospectus or Prospectus shall be deemed to mean and include all such financial statements and schedules and other information which is incorporated by reference in the Registration Statement, the applicable preliminary prospectus, the applicable Time of Sale Prospectus or the applicable Prospectus, as the case may be, prior to the execution of the applicable Terms Agreement; and all references in these Standard Provisions to amendments or supplements to the Registration Statement, preliminary prospectus, Time of Sale Prospectus or Prospectus shall be deemed to include the filing of any document under the Exchange Act which is incorporated by reference in the Registration Statement, the applicable preliminary prospectus, the applicable Time of Sale Prospectus or the applicable Prospectus, as the case may be, after the execution of the applicable Terms Agreement.

Section 2. *Purchase and Sale of Securities by the Underwriters.* Whenever the Company determines to make an offering of Securities to be governed by these Standard Provisions, the Company will enter into a Terms Agreement providing for the sale of such Securities to, and the purchase and offering thereof by, the Underwriters. The Terms Agreement relating to the offering of Securities shall specify the number or amount of Securities to be issued (the “**Underwritten Securities**”), the name of each Underwriter participating in such offering (subject to substitution as provided in Section 8 hereof) and the name of any Underwriter acting as manager or co-manager in connection with such offering, the number or amount of Underwritten Securities which each such Underwriter severally agrees to purchase, whether such offering is on a fixed or variable price basis and, if on a fixed price basis, the initial offering price, the price at which the Underwritten Securities are to be purchased by the Underwriters, the form, time, date and place of delivery and payment of the Underwritten Securities and any other material terms of the Underwritten Securities. The Terms Agreement may take the form of an exchange of any standard form of written telecommunication between the Company and the Underwriter or Underwriters, acting through the Underwriters’ representative (the “**Representative**”) identified as such in the applicable Terms Agreement. Each offering of Underwritten Securities will be governed by these Standard Provisions, as supplemented by the applicable Terms Agreement.

If so specified in the applicable Terms Agreement, the Company may grant the Underwriters the option to purchase at their election up to the number of additional Securities (the “**Optional Securities**”) set forth in such Terms Agreement at the purchase price per Security set forth therein, for the sole purpose of covering over-allotments of Securities in excess of the number of “**Firm Securities**” set forth in such Terms Agreement. Both Firm Securities and

Optional Securities shall be deemed Underwritten Securities hereunder. Any such election to purchase Optional Securities may be exercised only once, and only by written notice from the Representative to the Company, given within a period of 30 calendar days after the date of such Terms Agreement and setting forth the aggregate number of Optional Securities to be purchased and the time and date on which such Optional Securities are to be delivered (which shall be a Closing Time (as defined below) hereunder), as determined by the Representative but in no event earlier than the initial Closing Date (as defined below) for the Firm Securities or, unless the Representative and the Company otherwise agree in writing, earlier than two or later than ten Business Days (as defined below) after the date of such notice. If the Company shall have granted such an option to the Underwriters, then in the event and to the extent that the Underwriters shall exercise such option as provided above, the Company will sell to each of the Underwriters, and each of the Underwriters will, severally and not jointly, purchase from the Company, at the purchase price set forth in such Terms Agreement, subject to adjustment as provided below, that portion of the number of Optional Securities as to which such option shall have been exercised (to be adjusted by the Representative so as to eliminate fractional Securities) determined by multiplying such number of Optional Securities by a fraction the numerator of which is the number of Firm Securities which such Underwriter is required to purchase as set forth opposite the name of such Underwriter in such Terms Agreement and the denominator of which is the aggregate number of Firm Securities that all of the Underwriters are required to purchase thereunder.

As used herein, “**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks are permitted or required to be closed in New York City.

Section 3. *Underwriters' Obligation to Purchase Underwritten Securities.* The several commitments of the Underwriters to purchase the Underwritten Securities pursuant to the applicable Terms Agreement shall be deemed to have been made on the basis of the representations, warranties and agreements herein contained and shall be subject to the terms and conditions herein set forth.

Section 4. *Terms Agreement.* No agreement for the purchase of the Underwritten Securities by the Underwriters will be deemed to exist until the Company and the Representative, on behalf of the Underwriters, have executed a Terms Agreement. Each Terms Agreement will incorporate all applicable terms and provisions of these Standard Provisions as fully as though such terms and provisions were expressly stated therein.

Section 5. *Delivery of Certain Documents, Certificates, and Opinions.* At each Closing Time, the Underwriters shall have received the following documents:

(a) the opinion and disclosure letter of Davis Polk & Wardwell, or other special New York counsel for the Company reasonably acceptable to the Representative; the opinion of internal counsel for the Company; and the opinion of Womble Carlyle Sandridge & Rice, PLLC, or other special North Carolina counsel for the Company reasonably acceptable to the Representative, each dated as of the Closing Date, substantially in the respective forms of Exhibits B-1, B-2, B-3 and B-4 hereto,

(b) the opinion of counsel to the Underwriters, selected by the Representative and reasonably acceptable to the Company, dated as of the Closing Date, in form and substance reasonably satisfactory to the Underwriters,

(c) a certificate of the Assistant Secretary of the Company, dated as of the Closing Date, substantially in the form of Exhibit C hereto, and

(d) a certificate of the Chief Financial Officer or Treasurer of the Company, dated as of the Closing Date, substantially in the form of Exhibit D hereto.

Section 6. *Certain Conditions Precedent to the Underwriters' Obligations.* The Underwriters' obligation to purchase any Underwritten Securities will in all cases be subject to the accuracy of the representations and warranties of the Company set forth in Section 7 hereof, to the receipt of the opinions and certificates to be delivered to the Underwriters pursuant to the terms of Section 5 hereof, to the accuracy of the statements of the Company's officers made in each certificate to be furnished as provided herein, to the performance and observance by the Company of all covenants and agreements contained herein on its part to be performed and observed, in each case at the time the Company executes a Terms Agreement and as of the applicable Closing Date, and (in each case) to the following additional conditions precedent, when and as specified:

(a) As of the Closing Time for any Underwritten Securities, and with respect to the period from the date of the applicable Terms Agreement to and including the applicable Closing Time:

(i) there shall not have occurred (A) any material adverse change (or development involving a prospective material adverse change) in the business, properties, earnings, or financial condition of the Company and its subsidiaries on a consolidated basis (a "**Material Adverse Effect**") or (B) any suspension or material limitation of trading in the Company's common stock, par value one and two-thirds cents (1-2/3 cents) per share, of the Company ("**Common Stock**"), by the Commission or the New York Stock Exchange, Inc. (the "**NYSE**"), the effect of any of which shall have made it impracticable, in the reasonable judgment of the Underwriters, to market such Underwritten Securities, such judgment to be based on relevant market conditions;

(ii) there shall not have occurred (A) any suspension or material limitation of trading in securities generally on the NYSE, (B) a declaration of a general moratorium on commercial banking activities in New York by either Federal or New York State authorities, or (C) any outbreak or material escalation of hostilities or other national or international calamity or crisis, the effect of any of which shall have made it impracticable, in the judgment of the Underwriters, to market such Underwritten Securities, such judgment to be based on relevant market conditions; and

(iii) there shall not have been issued any stop order suspending the effectiveness of the Registration Statement nor shall any proceedings for that purpose or pursuant to Section 8A of the Securities Act against the Company or related to the offering of the Underwritten Securities have been instituted or threatened.

(b) The Underwriters will receive, upon execution and delivery of any applicable Terms Agreement, a letter from KPMG LLP, or such other independent registered public accounting firm as may be selected by the Company, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information of the Company contained in the Registration Statement and the Prospectus.

(c) At each Closing Time, the Underwriters shall have received from KPMG LLP, or such other independent registered public accounting firm as may be selected by the Company, a letter, dated as of the Closing Date, to the effect that they reaffirm the statements made in the letter furnished pursuant to subsection (b) of this Section, except that the "cut off" date referred to therein shall be a date not more than five Business Days prior to the Closing Date.

(d) On each Closing Date, the Underwriters shall have received from the Company such appropriate further information, certificates, and documents as the Company and the Underwriters shall have agreed, as reflected in the applicable Terms Agreement.

(e) *[The following provision shall apply only to a Terms Agreement in which the Underwritten Securities include debt securities]* Subsequent to the execution and delivery of the applicable Terms Agreement and prior to the Closing Time, there shall not have been any material downgrading, nor any notice given of any intended or potential material downgrading or of a possible material change that does not indicate the direction of the possible material change, in the rating accorded any of the Company's securities, including the Underwritten Securities, by either Moody's Investors Service, Inc. or Standard & Poor's Ratings Services, a division of The McGraw Hill Companies, Inc.

Section 7. *Representations and Warranties of the Company.* The Company represents and warrants to each Underwriter named in the applicable Terms Agreement, as of the date thereof, and as of each Closing Time, the following statements are and shall be true:

(a) (i) The Registration Statement constitutes an "automatic shelf registration statement" (as defined in Rule 405 under the Securities Act) filed within three years of the date of the applicable Terms Agreement, (ii) the Company is a "well known seasoned issuer" (as defined in Rule 405 under the Securities Act), (iii) the Company has not received from the Commission any notice pursuant to Rule 401(g)(2) under the Securities Act objecting to the use of the automatic shelf registration statement form, (iv) the Registration Statement became effective upon filing with the Commission and no stop order suspending the effectiveness of the Registration Statement is in effect nor, to the Company's knowledge, are any proceedings for such purpose pending before or threatened by the Commission, (v) as of the effective date of the Registration Statement (the "**Effective Date**"), the Company met the applicable requirements for use of Form S-3 under the Securities Act with respect to the registration under the Securities Act of the Securities, and (vi) as of the Effective Date, the Registration Statement met the requirements set forth in Rule 415(a)(1)(x) under the Securities Act and complied in all material respects with said Rule.

(b) (i) Each document, if any, filed or to be filed pursuant to the Exchange Act or the Securities Act and incorporated or to be incorporated by reference in the Prospectus or Time of

Sale Prospectus complies or will comply, in all material respects, with the applicable provisions of the Exchange Act or the Securities Act, as applicable, and the rules and regulations of the Commission thereunder, (ii) the Registration Statement does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (iii) the Registration Statement and the Prospectus comply, in all material respects, with the Securities Act and the rules and regulations of the Commission thereunder, (iv) the Prospectus does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (v) the Time of Sale Prospectus does not as of its date (which shall be the date of the preliminary prospectus supplement included therein, if applicable), and will not as of the Time of Sale and at the Closing Date, the Time of Sale Prospectus, as then amended or supplemented by the Company, if applicable, will not, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided, however*, that the Company makes no representations and warranties as to information contained in or omitted from the Registration Statement, the Prospectus or the Time of Sale Prospectus in reliance upon and in conformity with information furnished in writing to the Company by the Underwriters expressly for use in the Registration Statement, the Prospectus or the Time of Sale Prospectus or any amendment or supplement thereto or the Statement of Eligibility and Qualification of the Trustee (the “**Form T-1**”) under the Trust Indenture Act of 1939, as amended (the “**Trust Indenture Act**”).

(c) The Company is not an “ineligible issuer” in connection with the offering pursuant to Rules 164, 405 and 433 under the Securities Act. Any free writing prospectus that the Company is required to file pursuant to Rule 433(d) under the Securities Act has been, or will be, filed with the Commission in accordance with the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder.

(d) The Company has been duly incorporated and is validly existing under the laws of the State of North Carolina, has the corporate power and authority to own its property and to conduct its business as described in the Time of Sale Prospectus and the Prospectus, and is duly qualified to transact business as a foreign corporation and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or in good standing would not have a Material Adverse Effect.

(e) The applicable Terms Agreement, incorporating these Standard Provisions, as amended by agreement of the parties to the applicable Terms Agreement, as of the date of such Terms Agreement will have been, duly authorized, executed and delivered by the Company.

(f) *[The following provision shall apply only to a Terms Agreement in which the Underwritten Securities include Common Stock]* – The Underwritten Securities have been duly authorized for issuance and sale pursuant to these Standard Provisions and the applicable Terms Agreement. Such Underwritten Securities, when issued and delivered by the Company pursuant to these Standard Provisions and such Terms Agreement against payment of the consideration therefor specified in such Terms Agreement, will be validly issued, fully paid and non-assessable and will not be subject to preemptive or other similar rights of any securityholder of the

Company. No holder of such Underwritten Securities is or will be subject to personal liability by reason of being such a holder.

*[The following provision shall apply only to a Terms Agreement in which the Underwritten Securities include debt securities]* – The Underwritten Securities have been duly authorized and, when issued, executed, and authenticated in accordance with the provisions of the applicable indenture (the “**Indenture**”), or when countersigned by the trustee in accordance with the provisions of the Indenture, as the case may be, will be entitled to the benefits of the Indenture, and will be valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by the laws of bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or similar laws relating to creditors’ rights generally, by any other federal or state laws, by rights of acceleration, if applicable, by general principles of equity.

(g) *[The following provision shall apply only to a Terms Agreement in which the Underwritten Securities include debt securities]* – The Indenture has been duly qualified under the Trust Indenture Act of 1939, as amended and has been duly authorized, executed, and delivered by the Company and (assuming due authorization, valid execution, and delivery thereof by the trustee) is a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by the laws of bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or similar laws relating to creditors’ rights generally, by any other federal or state laws, by rights of acceleration, by general principles of equity.

(h) The execution and delivery of and performance by the Company of its obligations under the applicable Terms Agreement, incorporating these Standard Provisions as amended by agreement of the parties to such Terms Agreement, Indenture and the issuance and sale of the Underwritten Securities, as the case may be, will not contravene any provision of any applicable law or of the Restated Charter or By-Laws of the Company, or of any agreement or other instrument binding upon the Company or any of its subsidiaries that is material to the Company and its subsidiaries taken as a whole, or of any judgment, order, or decree of any governmental body, agency, or court having jurisdiction over the Company or any of its subsidiaries, in each of the foregoing cases except as would not reasonably be expected to have a Material Adverse Effect, and no consent, approval, authorization, or order of or qualification with any governmental body or agency is, to the Company’s knowledge, required for the performance by the Company of its obligations under the applicable Terms Agreement, incorporating these Standard Provisions as amended by agreement of the parties to such Terms Agreement, or the issuance and sale of the Underwritten Securities, except such as may be required by Blue Sky laws or other securities laws of the various states in which the issuance and sale of the Underwritten Securities are offered and sold and except to the extent where the failure to obtain such consent, approval, authorization, order or qualification would not reasonably be expected to have a Material Adverse Effect.

(i) There has not been any material adverse change (or development involving a prospective material adverse change) in the business, properties, earnings, or financial condition of the Company and its subsidiaries on a consolidated basis from that set forth in the Company’s last periodic report filed with the Commission under the Exchange Act and the rules and

regulations promulgated thereunder. Since the respective dates as of which information is given in the Registration Statement, the Time of Sale Prospectus and the Prospectus, except as otherwise stated therein, there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(j) There are no legal or governmental proceedings pending or, to the Company's knowledge, threatened, to which the Company or any of its subsidiaries is a party or to which any of the properties of the Company or any of its subsidiaries is subject that is required to be described in the Registration Statement, the Time of Sale Prospectus or the Prospectus and is not so described, or any applicable statute, regulation, contract, or other document that is required to be described in the Registration Statement, the Time of Sale Prospectus or the Prospectus that is not so described.

(k) The independent registered public accounting firm who audited the financial statements and supporting schedules incorporated by reference in the Registration Statement are independent registered public accountants as required by the Securities Act.

(l) The financial statements included or incorporated by reference in the Registration Statement, the Time of Sale Prospectus and the Prospectus, together with the related schedules and notes, present fairly the financial position of the Company and its consolidated subsidiaries at the dates indicated and the statement of operations, shareholders' equity and cash flows of the Company and its consolidated subsidiaries for the periods specified; said financial statements have been prepared in conformity with U.S. generally accepted accounting principles ("**GAAP**") applied on a consistent basis throughout the periods involved. The supporting schedules, if any, present fairly in accordance with GAAP the information required to be stated therein.

Section 8. *Default by One or More of the Underwriters.* If one or more of the Underwriters shall fail at the Closing Time to purchase the Underwritten Securities which it or they are obligated to purchase under the applicable Terms Agreement (the "**Defaulted Securities**"), then the remaining Underwriters shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Underwriters shall not have completed such arrangements within such 24-hour period, then:

(a) if the number or principal amount of Defaulted Securities does not exceed 10% of the number of Underwritten Securities to be purchased on such date pursuant to such Terms Agreement, the non-defaulting Underwriters shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations under such Terms Agreement bear to the underwriting obligations of all non-defaulting Underwriters, or

(b) if the number or aggregate principal amount of Defaulted Securities exceeds 10% of the number or aggregate principal amount of Underwritten Securities to be purchased on such date pursuant to such Terms Agreement, such Terms Agreement shall terminate without liability on the part of any non-defaulting Underwriter. No action taken pursuant to this Section 8 shall relieve any defaulting Underwriter from liability in respect of its default.

In the event of any such default which does not result in a termination of the applicable Terms Agreement, either the Underwriters or the Company shall have the right to postpone the Closing Time for a period not exceeding seven days in order to effect any required changes in the Registration Statement or the Prospectus or in any other documents or arrangements.

Section 9. *Agreements.*

(a) The Company covenants with the Underwriters as follows:

(i) Prior to the filing by the Company of any amendment to the Registration Statement, the Time of Sale Prospectus or of any prospectus supplement that shall name the Underwriters or the filing or use of any free writing prospectus, the Company will afford the Underwriters or their counsel a reasonable opportunity to review and comment on the same, *provided, however*, that the foregoing requirement will not apply to any of the Company's filings with the Commission required to be filed pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act. Subject to the foregoing sentence, the Company will promptly cause each applicable prospectus supplement and free writing prospectus to be filed with or transmitted for filing with the Commission in accordance with Rule 424(b) or 424(c) under the Securities Act or Rule 433 under the Securities Act, respectively, or pursuant to such other rule or regulation of the Commission as then deemed appropriate by the Company. The Company will promptly advise the Underwriters of (A) the filing and effectiveness of any amendment to the Registration Statement other than by virtue of the Company's filing any report required to be filed under the Exchange Act, (B) any request by the Commission for any amendment to the Registration Statement, for any amendment or supplement to the Time of Sale Prospectus or the Prospectus, or for any information from the Company, (C) the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the institution or threatening of any proceeding for that purpose, and (D) the receipt by the Company of any notification with respect to the suspension of the qualification of the Underwritten Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose. The Company will use reasonable efforts to prevent the issuance of any such stop order or notice of suspension of qualification and, if issued, to obtain as soon as reasonably possible the withdrawal thereof.

(ii) If the Time of Sale Prospectus is being used to solicit offers to buy the Underwritten Securities at a time when the Prospectus is not yet available to prospective purchasers and any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Time of Sale Prospectus in order to make the statements therein, in the light of the circumstances, not misleading, or if any event shall occur or condition exist as a result of which the Time of Sale Prospectus conflicts with the information contained in the Registration Statement then on file, or if, in the opinion of counsel for the Underwriters, it is necessary to amend or supplement the Time of Sale Prospectus to comply with applicable law, forthwith to prepare, file with the Commission and furnish, at its own expense, to the Underwriters and to any dealer upon request, either amendments or supplements to the Time of Sale Prospectus so that the statements in the Time of Sale Prospectus as so amended or supplemented will not, in the light of the circumstances when delivered to a prospective purchaser, be misleading or so that the



Time of Sale Prospectus, as amended or supplemented, will no longer conflict with the Registration Statement, or so that the Time of Sale Prospectus, as amended or supplemented, will comply with applicable law.

(iii) If, at any time when a Prospectus (or in lieu thereof the notice referred to in Rule 173(a) under the Securities Act) relating to any Underwritten Securities is required to be delivered under the Securities Act, any event occurs or condition exists as a result of which the Prospectus would include an untrue statement of a material fact, or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if it is necessary to amend or supplement the Prospectus in order to comply with the Securities Act, the Exchange Act, the respective rules and regulations of the Commission thereunder, or any other applicable law, the Company will promptly notify the Underwriters, by telephone or by facsimile (in either case with written confirmation from the Company by mail), to cease use and distribution of the Prospectus (and all then existing supplements thereto) and to suspend all efforts to resell the Underwritten Securities in its capacity as underwriter or dealer, as the case may be, and the Underwriters will promptly comply with the terms of such notice. The Company will forthwith prepare and cause to be filed with the Commission an amendment or supplement to the Registration Statement or the Prospectus, as the case may be, satisfactory in the reasonable judgment of the Underwriters to correct such statement or omission or to effect such compliance, and the Company will supply the Underwriters with one signed copy of such amended Registration Statement and as many copies of such amended or supplemented Prospectus as the Underwriters may reasonably request, *provided, however*, that the expense of preparing, filing, and supplying copies to the Underwriters of any such amendment or supplement will be borne by the Company only for the nine-month period immediately following the purchase of such Underwritten Securities by the Underwriters and thereafter will be borne by the Underwriters.

(iv) The Company will furnish to the Underwriters, without charge, as many copies of the Time of Sale Prospectus, the Prospectus, each preliminary prospectus, any documents incorporated by reference therein, and any supplements and amendments thereto and any free writing prospectus as the Underwriters may reasonably request.

(v) The Company will, with such assistance from the Underwriters as the Company may reasonably request, endeavor to qualify the Securities for offer and sale under the Blue Sky laws or other securities laws of such jurisdictions as the Underwriters shall reasonably request and will maintain such qualifications for as long as required with respect to the offer, sale, and distribution of the Securities.

(vi) *[The following provision shall apply only to a Terms Agreement in which the Underwritten Securities include Common Stock]* – During the period specified in the applicable Terms Agreement, the Company will not, without the prior written consent of the Representative, directly or indirectly, (A) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant for the sale of, lend or otherwise dispose of or transfer any share of Common Stock or any securities convertible into or exercisable or exchangeable for or

repayable with Common Stock or (B) enter into any swap or any other agreement that transfers, in whole or in part, the economic consequences of ownership of the Common Stock, whether any such swap or transaction described in clause (A) or (B) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (1) the Underwritten Securities to be sold pursuant to the applicable Terms Agreement, (2) Common Stock issued by the Company upon the exercise of an option or warrant or the conversion of a security outstanding on the date of the applicable Terms Agreement, (3) any shares of Common Stock issued or options to purchase Common Stock granted pursuant to existing and future employee benefit plans of the Company, (4) any shares of Common Stock issued pursuant to any non-employee director stock plan or dividend reinvestment plan, or (5) up to \$500,000,000 worth of shares of Common Stock issued in connection with any merger, joint venture or other strategic transaction.

(vii) The Company will make generally available to its security holders earnings statements that satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 promulgated thereunder.

(viii) *[The following provision shall apply only to a Terms Agreement in which the Underwritten Securities include Common Stock]* – The Company will use its best efforts to effect the listing of the Common Stock, prior to the Closing Time, on the NYSE.

(b) Each Underwriter, severally and not jointly, covenants with the Company as follows:

(i) It has not and will not use, authorize use of, refer to, or participate in the planning for use of, any “free writing prospectus,” as defined in Rule 405 under the Securities Act (which term includes use of any written information furnished to the Commission by the Company and not incorporated by reference into the Registration Statement and any press release issued by the Company) (each such communication by the Company or its agents or representatives (excluding any Underwriter) an “**Issuer Free Writing Prospectus**”) other than (A) a free writing prospectus that contains no “issuer information” (as defined in Rule 433(h)(2) under the Securities Act) that was not included (including through incorporation by reference) in the preliminary prospectus or a previously filed Issuer Free Writing Prospectus, (B) any Issuer Free Writing Prospectus listed on Schedule I to the applicable Terms Agreement or (C) any free writing prospectus prepared by such Underwriter and approved by the Company in advance in writing (each such free writing prospectus referred to in clauses (A) or (C), an “**Underwriter Free Writing Prospectus**”).

(ii) It has not and will not distribute any Underwriter Free Writing Prospectus referred to in Section 9(b)(i)(A) above in a manner reasonably designed to lead to its broad unrestricted dissemination.

(iii) It has not and will not, without the prior written consent of the Company, use any free writing prospectus that contains the final terms of the Underwritten Securities unless such terms have previously been included in a free writing prospectus filed with the Commission.

(iv) It is not subject to any pending proceeding under Section 8A of the Securities Act with respect to the offering (and will promptly notify the Company if any such proceeding against it is initiated during the “**Prospectus Delivery Period**”, which means such period of time beginning on the first date of the public offering of the Underwritten Securities and ending on the later of the Closing Date or such date, as in the opinion of counsel for the Underwriters a prospectus relating to the Underwritten Securities is required by law to be delivered (or required to be delivered but for Rule 172 under the Securities Act) in connection with sales of the Underwritten Securities by any Underwriter or dealer).

(v) Notwithstanding any of the above, each of the Underwriters may use one or more term sheets relating to the Underwritten Securities containing customary information, including Bloomberg email announcement, price talk guidance, comparable bond pricing and final pricing terms, not inconsistent with the form of the final term sheet set forth in the Terms Agreement, without the prior consent of the Company, so long as such term sheet is not required to be filed as a “free writing prospectus” with the Commission pursuant to Rule 433 under the Securities Act.

Section 10. *Fees and Expenses.* The Company will pay all costs, fees, and expenses arising in connection with the sale of any Underwritten Securities through the Underwriters and in connection with the performance by the Company of its obligations hereunder and under any Terms Agreement, including the following: (i) expenses incident to the preparation and filing of the Registration Statement, any preliminary prospectus, the Time of Sale Prospectus, the Prospectus, any free writing prospectus prepared by or on behalf of, used by, or referred to by the Company, and all amendments and supplements thereto, (ii) expenses incident to the issuance and delivery of such Underwritten Securities, (iii) the fees and disbursements of counsel for the Company and the Company’s independent registered public accounting firm, (iv) if approved by the Company in advance and in writing, expenses incident to the qualification of such Underwritten Securities under Blue Sky laws and other applicable state securities laws in accordance with the provisions of Section 9(a)(v) hereof, including related filing fees and the reasonable fees and disbursements of the Underwriters’ counsel in connection therewith and in connection with the preparation of any survey of Blue Sky laws, (v) expenses incident to the printing and delivery to the Underwriters, in the quantities hereinabove stated, of copies of the Registration Statement and all amendments thereto and of the Prospectus, each preliminary prospectus, and all amendments and supplements thereto, (vi) the fees and expenses, if any, incurred with respect to any applicable filing with the Financial

Industry Regulatory Authority, (vii) the fees and expenses incurred in connection with the listing of any Underwritten Securities on the NYSE and (viii) if applicable, the fees and expenses of the trustee under the applicable Indenture. If so stated in the applicable Terms Agreement, the Underwriters agree to reimburse the Company for the stated amount of its expenses incurred in connection with the transactions contemplated by the applicable Terms Agreement.

Section 11. *Inspection; Place of Delivery; Payment.*

(a) *Inspection.* The Company agrees to have available for inspection, checking, and packaging by the Underwriters in The City of New York, the Underwritten Securities to be sold to the Underwriters hereunder, not later than 1:00 P.M. on the Business Day prior to the applicable Closing Date.

(b) *Place of Delivery of Documents, Certificates and Opinions.* The documents, certificates and opinions required to be delivered to the Underwriters pursuant to Sections 5 and 6 hereof will be delivered at the “**Closing Location**” specified in the applicable Terms Agreement, or at such other location as may be agreed upon by the Company and the Underwriters, not later than the Closing Time.

(c) *Payment.* Payment of the purchase price for, and delivery of certificates for, the Underwritten Securities shall be made at the Closing Location, or at such other place as shall be agreed upon by the Underwriters and the Company, at the “**Closing Time**” specified in the applicable Terms Agreement or the applicable written notice from the Representative to the Company in connection with an election to purchase Optional Securities, as the case may be (the date on which the Closing Time occurs being referred to as the “**Closing Date**”), or such other time not later than ten Business Days after such date as shall be agreed upon by the Representative and the Company. Payment shall be made to the Company by wire transfer of immediately available funds to a bank account designated in writing by the Company, against delivery to the Underwriters for the respective accounts of the Underwriters of the Underwritten Securities to be purchased by them. It is understood that each Underwriter has authorized the Representative, for its account, to accept delivery of, receipt for, and make payment of the purchase price for, the Underwritten Securities which it has severally agreed to purchase. The Representative, individually and not as representative of the Underwriters, may (but shall not be obligated to) make payment of the purchase price for the Underwritten Securities to be purchased by any Underwriter whose funds have not been received by the Closing Time, but such payment shall not relieve such Underwriter from its obligations hereunder.

Section 12. *Indemnification and Contribution.*

(a) The Company agrees to indemnify and hold each Underwriter and each person, if any, who controls any Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, harmless from

and against any and all losses, claims, damages, or liabilities to which such Underwriter come subject under the Securities Act, the Exchange Act, or any other federal or state law or regulation, at common law or otherwise, insofar as such losses, claims, damages, or liabilities (and actions in respect thereof) arise out of, are based upon, or are caused by any untrue statement or allegedly untrue statement of a material fact contained in the Registration Statement, any preliminary prospectus, the Time of Sale Prospectus, the Prospectus, any Issuer Free Writing Prospectus or in any amendment or supplement thereto, or arise out of, are based upon or are caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and the Company agrees to reimburse each such indemnified party for any reasonable legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability, or action; *provided, however*, that the Company will not be liable to the extent that such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of, are based upon, or are caused by any such untrue statement or omission or allegedly untrue statement or omission included in or omitted from the Registration Statement, any preliminary prospectus or the Prospectus in reliance upon and in conformity with information furnished by the Underwriters in writing expressly for use in the Registration Statement or such preliminary prospectus or the Time of Sale Prospectus or the Prospectus or any amendment or supplement thereto.

(b) Each Underwriter severally agrees to indemnify and hold harmless the Company, its directors, its officers who sign the Registration Statement, and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, to the same extent as the foregoing indemnity from the Company to the Underwriters, but only with respect to such losses, claims, damages, and liabilities (and actions in respect thereof) that arise out of, are based upon, or are caused by any untrue statement or omission of a material fact or allegedly untrue statement or omission of a material fact included in or omitted from (i) any Underwriter Free Writing Prospectus used by such Underwriter or (ii) the Registration Statement, or any preliminary prospectus or the Time of Sale Prospectus or the Prospectus in reliance upon and in conformity with information furnished by the Underwriters in writing expressly for use in the Registration Statement or such preliminary prospectus or the Time of Sale Prospectus or the Prospectus or any amendment or supplement thereto.

(c) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to either paragraph (a) or (b) of this Section 12, such person (the “**indemnified party**”) will promptly notify the person against whom such indemnity may be sought (the “**indemnifying party**”) in writing and the indemnifying party, upon request of the indemnified party, will retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party

and any others the indemnifying party may designate in such proceeding and will pay the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party will have the right to retain its own counsel, but the fees and expenses of such counsel will be borne by the indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and, in the judgment of the indemnified party, representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the indemnifying party will not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all such indemnified parties and that all such reasonable fees and expenses will be reimbursed as they are incurred. Such firm will be designated in writing by the Underwriters (in the case of parties indemnified pursuant to paragraph (a) of this Section 12) or by the Company (in the case of parties indemnified pursuant to paragraph (b) of this Section 12), as the case may be. The indemnifying party will not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent, or if there shall be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. No indemnifying party will, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding. Any provision of this paragraph (c) to the contrary notwithstanding, no failure by an indemnified party to notify the indemnifying party as required hereunder will relieve the indemnifying party from any liability it may have had to an indemnified party otherwise than under this Section 12 to the extent the indemnifying party is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement.

(d) If the indemnification provided for in paragraph (a) or (b) of this Section 12 is unavailable to an indemnified party or is insufficient in respect of any losses, claims, damages, or liabilities referred to therein, then each indemnifying party under such paragraph, in lieu of indemnifying the indemnified party thereunder, will contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages, or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Underwriters, on the other, from the offering of the Underwritten Securities pursuant to the applicable Terms Agreement, or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such

proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and the Underwriters, on the other, in connection with the statements or omissions that resulted in such losses, claims, damages, or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Underwriters, on the other, in connection with the offering of the Underwritten Securities pursuant to the applicable Terms Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the offering of such Underwritten Securities (before deducting expenses) received by the Company and the total underwriting discount received by the Underwriters, in each case as set forth on the cover of the Prospectus, bear to the aggregate initial public offering price of such Underwritten Securities as set forth on such cover. The relative fault of the Company, on the one hand, and of the Underwriters, on the other, will be determined by reference to, among other things, whether the untrue or allegedly untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied or to be supplied by the Company or by the Underwriters and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission. The Underwriters' respective obligations to contribute pursuant to this Section 12(d) are several in proportion to the number of Underwritten Securities set forth opposite their respective names in the applicable Terms Agreement, and not joint.

(e) The Company and the Underwriters agree that it would not be just or equitable if contribution pursuant to paragraph (d) above were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to therein. The amount paid or payable by an indemnified party as a result of the losses, claims, damages, and liabilities referred to in paragraph (d) above will be deemed to include, subject to the limitations set forth above, any reasonable legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Any other provisions of this Section 12 to the contrary notwithstanding, (i) the Underwriters will not be required to contribute to the Company any amount in excess of the amount by which the total price at which the Underwritten Securities underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of any such untrue or alleged untrue statement or omission or alleged omission (other than in reliance upon and in conformity with information furnished to the Company by the Underwriters in writing expressly for use in the Registration Statement, the preliminary prospectus or the Prospectus or any amendment or supplement thereto), and (ii) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(f) The remedies provided for in this Section 12 are not exclusive and will not limit any rights or remedies that may otherwise be available to any indemnified party at law or in equity.

Section 13. *Termination.* The applicable Terms Agreement will automatically terminate upon the expiration of the offering to which the Prospectus relates. The applicable Terms Agreement may not be terminated by the Underwriters prior to delivery of and payment for such Securities except upon the failure of any of the conditions precedent described in Section 6 hereof.

Section 14. *Survival.* The respective indemnities, rights of contribution, representations, warranties and agreements of the Company and the Underwriters contained herein or made by or on behalf of the Company or the Underwriters pursuant hereto or any certificate delivered pursuant hereto shall survive the delivery of and payment for the Underwritten Securities and shall remain in full force and effect, regardless of any termination of a Terms Agreement or any investigation made by or on behalf of the Company or the Underwriters.

Section 15. *Notices.* All notices, documents and other communications hereunder shall be in writing and shall be deemed received upon delivery, if delivered by hand or via facsimile transmission (with confirmation of receipt) to a party's address or facsimile number set forth below, in the case of the Company, and in the applicable Terms Agreement, in the case of the Underwriters or the Representative (or to such other address or facsimile number as a party may hereafter designate to the other parties in writing), and shall be deemed received one Business Day after having been mailed via Express Mail or deposited with Federal Express or any nationally recognized commercial courier service for "next day" delivery to such address. In the event that any Terms Agreement or any certificate or opinion to be delivered pursuant to Section 5 hereof is delivered via facsimile transmission, the parties will use reasonable efforts to ensure that "original" copies of such documents are distributed promptly thereafter.

The address and facsimile number for the Company, unless otherwise specified, is as follows:

PepsiCo, Inc.  
700 Anderson Hill Road  
Purchase, New York 10577  
Att'n: Chief Financial Officer  
General Counsel  
Facsimile no: 914-253-3123

Section 16. *Successors; Non-transferability.* The applicable Terms Agreement shall inure to the benefit of and be binding upon the Company and the Underwriters, their respective successors, and the officers, directors, and controlling persons referred to in Section 12 hereof. No other person will have



any right or obligation hereunder. No party to the applicable Terms Agreement may assign its rights thereunder without the written consent of the other parties.

Section 17. *Counterparts*. The Terms Agreement may be signed in any number of counterparts, each of which will be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 18. *Applicable Law*. These Standard Provisions and any applicable Terms Agreement will be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of law.

Section 19. *Headings*. The headings of the sections of these Standard Provisions have been inserted for convenience of reference only and will not affect the construction of any of the terms or provisions hereof.

Section 20. *No Advisory or Fiduciary Relationships*. The Company acknowledges and agrees that (a) the purchase and sale of the Underwritten Securities pursuant to the Standard Provisions and the applicable Terms Agreement, including the determination of the public offering price of the Underwritten Securities and any related discounts and commissions, is an arm's-length commercial transaction between the Company, on the one hand, and the several Underwriters, on the other hand, (b) in connection with the offering contemplated hereby and the process leading to such transaction each Underwriter is and has been acting solely as a principal and is not the agent or fiduciary of the Company, or its stockholders, creditors, employees or any other party, (c) no Underwriter has assumed or will assume an advisory or fiduciary responsibility in favor of the Company with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether such Underwriter has advised or is currently advising the Company on other matters) and no Underwriter has any obligation to the Company with respect to the offering contemplated hereby except the obligations expressly set forth in the Standard Provisions and the applicable Terms Agreement, (d) the Underwriters and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Company, and (e) the Underwriters have not provided any legal, accounting, regulatory or tax advice with respect to the offering contemplated hereby and the Company has consulted its own legal, accounting, regulatory and tax advisors to the extent it deemed appropriate.

PEPSICO, INC.  
[IDENTIFY UNDERWRITTEN SECURITIES]  
TERMS AGREEMENT

[Date]

To: PepsiCo, Inc.  
700 Anderson Hill Road  
Purchase, New York 10577

Ladies and Gentlemen:

We understand that PepsiCo, Inc., a North Carolina corporation (the “**Company**”), proposes to issue and sell [describe Underwritten Securities, and specify if Underwritten Securities include both Firm Securities and Optional Securities] (such securities also being hereinafter referred to as the “**Underwritten Securities**”) subject to the terms and conditions stated herein and in the PepsiCo, Inc. Underwriting Agreement Standard Provisions dated as of October 1, 2008 attached hereto (the “**Standard Provisions**”). Each of the applicable provisions in the Standard Provisions is incorporated herein by reference in its entirety, and shall be deemed to be a part of this Agreement to the same extent as if such provisions had been set forth in full herein. We, the underwriters named below (the “**Underwriters**”), offer to purchase, severally and not jointly, the number or amount of [Underwritten] [Firm] Securities opposite our names set forth below at a purchase price set forth below.

[Name]	Underwriters	[Number][Principal Amount] of [Underwritten] [Firm] Securities
		[\$]
Total		

The Underwritten Securities and the offering thereof shall have the following additional terms:

Terms of the Underwritten Securities and the Offering

[Number][Principal Amount] of  
Underwritten Securities  
[Number of Firm Securities]  
[Number of Optional Securities]  
Initial public offering price

Purchase price  
Lock-up period specified in Section 9(a)(vi) of the Standard Provisions (if applicable)  
Time of Sale Prospectus  
Representative of the Underwriters  
Address and facsimile number for notices to the Representative and the Underwriters  
Time of Sale  
Closing Time  
Closing Location  
Other terms and conditions  
[Amount of reimbursement to the Company from the Underwriters]

\_\_\_\_ days beginning from the date of this Terms Agreement  
Base Prospectus dated October \_\_\_\_, 2008, preliminary prospectus supplement dated \_\_\_\_, 20\_\_\_\_,

The Representative represents and warrants that it is duly authorized to execute and deliver this Terms Agreement on behalf of the several Underwriters named above.

IN WITNESS WHEREOF, the parties hereto have executed this Terms Agreement as of the date first above written.

[NAME OF REPRESENTATIVE],  
as Representative of the several  
Underwriters named above

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

Accepted and agreed.

PEPSICO, INC.

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

[identify each Issuer Free Writing Prospectus]

**FORM OF OPINION OF COMPANY'S NEW YORK COUNSEL  
TO BE DELIVERED PURSUANT TO SECTION 5(a)**

1. *[The following provision shall apply only to a Terms Agreement in which the Underwritten Securities include debt securities]* – The Indenture qualified under the Trust Indenture Act of 1939, as amended, upon the filing of the Registration Statement with the Commission on October \_\_, 2008 pursuant to Rule 462(e) under the Securities Act, and assuming due authorization, execution and delivery thereof by the Company, the Indenture is a valid and binding agreement of the Company, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, concepts of reasonableness and equitable principles of general applicability, *provided* that counsel need not express any opinion as to (w) the enforceability of any waiver of rights under any usury or stay law, (x) the applicability (and if applicable, the effect) of Section 548 of the United States Bankruptcy Code or any comparable provision of state law to the questions addressed above or on the conclusions expressed with respect thereto, (y) the validity, legally binding effect or enforceability of any provision of the Indenture or any related provision in the Underwritten Securities that requires or relates to adjustments to the conversion price at a rate or in an amount that a court would determine in the circumstances under applicable law to be commercially unreasonable or a penalty or forfeiture or (z) the validity, legally binding effect or enforceability of any provision that permits holders to collect any portion of stated principal amount upon acceleration of the Underwritten Securities to the extent determined to constitute unearned interest.

2. *[The following provision shall apply only to a Terms Agreement in which the Underwritten Securities include debt securities]* – Assuming the due authorization of the Underwritten Securities by the Company, the Underwritten Securities, when executed and authenticated in accordance with the provisions of the Indenture and delivered to and paid for by the Underwriters pursuant to the Terms Agreement, will be valid and binding obligations of the Company, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, concepts of reasonableness and equitable principles of general applicability, and will be entitled to the benefits of the Indenture pursuant to which such Underwritten Securities are to be issued, *provided* that counsel need not express any opinion as to (w) the enforceability of any waiver of rights under any usury or stay law, (x) the applicability (and if applicable, the effect) of Section 548 of the United States Bankruptcy Code or any comparable provision of state law to the questions addressed above or on the conclusions expressed with respect thereto, (y) the validity, legally binding effect or enforceability of any provision in the Underwritten Securities that requires or relates to adjustments to the conversion price at a rate or in an amount that a court would determine in the circumstances under applicable law to be commercially unreasonable or a penalty or forfeiture or

(z) the validity, legally binding effect or enforceability of any provision that permits holders to collect any portion of stated principal amount upon acceleration of the Underwritten Securities to the extent determined to constitute unearned interest.

3. No consent, approval, authorization, or order of, or qualification with, any state governmental body or agency under the laws of the State of New York or any federal law of the United States of America that in counsel's experience is normally applicable to general business corporations in relation to transactions of the type contemplated by the Terms Agreement is required for the execution, delivery and performance by the Company of its obligations under the Terms Agreement, except such as may be required under federal or state securities or Blue Sky laws as to which counsel need not express an opinion.

4. Any required filing of the Prospectus pursuant to Rule 424(b) under the Securities Act has been made in the manner and within the time period required by Rule 424(b); any required filing of the Issuer Free Writing Prospectus pursuant to Rule 433 under the Securities Act has been made in the manner and within the time period required by Rule 433(d); and, to counsel's knowledge, no stop order suspending the effectiveness of the Registration Statement has been issued under the Securities Act and no proceedings for that purpose have been instituted or are pending or threatened by the Commission.

5. *[The following provision shall apply only to a Terms Agreement in which the Underwritten Securities include debt securities]* – Counsel has considered the statements included in the Prospectus under the captions “Description of Debt Securities” and “Description of \_\_\_\_” insofar as they summarize provisions of the Indenture and the Underwritten Securities. In counsel's opinion, such statements fairly summarize these provisions in all material respects.

6. The statements included in the Prospectus under the caption [“Certain U.S. Federal Income Tax Considerations,”] insofar as they purport to describe provisions of U.S. federal income tax laws or legal conclusions with respect thereto, fairly and accurately summarize the matters referred to therein in all material respects.

In rendering the opinions above, counsel may assume that each party to the Terms Agreement, the Indenture (if applicable) and the Underwritten Securities (collectively, the “**Documents**”) has been duly incorporated and is validly existing and in good standing under the laws of the jurisdiction of its organization. In addition, counsel may assume that (i) the execution, delivery and performance by each party thereto of each Document to which it is a party, (a) are within its corporate powers, (b) do not contravene, or constitute a default under, the certificate of incorporation or bylaws or other constitutive documents of such party, (c) require no action by or in respect of, or filing with, any governmental body, agency or official and (d) do not contravene, or constitute a default under,

any provision of applicable law or regulation or any judgment, injunction, order or decree or any agreement or other instrument binding upon such party and (ii) each Document is a valid, binding and enforceable agreement of each party thereto (other than as expressly covered above in respect of the Company).

Counsel need not express an opinion as to any law, rule or regulation that is applicable to the Company, the Documents or such transactions solely because such law, rule or regulation is part of a regulatory regime applicable to any party to any of the Documents or any of its affiliates due to the specific assets or business of such party or such affiliate. Insofar as the foregoing opinion involves matters governed by the laws of the State of North Carolina, counsel may rely, without independent investigation, on the opinion of North Carolina counsel to the Company delivered to the Underwriters pursuant to the Terms Agreement.



**FORM OF DISCLOSURE LETTER OF COMPANY'S NEW YORK  
COUNSEL TO BE DELIVERED PURSUANT TO SECTION 5(a)**

The primary purpose of our professional engagement was not to establish or confirm factual matters or financial, accounting or quantitative information. Furthermore, many determinations involved in the preparation of the Registration Statement, the Time of Sale Prospectus and the Prospectus are of a wholly or partially non-legal character or relate to legal matters outside the scope of our opinion separately delivered to you today in respect of certain matters under the laws of the State of New York and the federal laws of the United States of America. As a result, we are not passing upon, and do not assume any responsibility for, the accuracy, completeness or fairness of the statements contained in the Registration Statement, the Time of Sale Prospectus and the Prospectus, and we have not ourselves checked the accuracy, completeness or fairness of, or otherwise verified, the information furnished in such documents (except to the extent expressly set forth in our opinion letter separately delivered to you today as to statements included in the Prospectus under the captions ["Description of Debt Securities," and "Description of \_\_\_\_" and ["Certain U.S. Federal Income Tax Considerations"]]). However, in the course of our acting as counsel to the Company in connection with the preparation of the Registration Statement, the Time of Sale Prospectus and the Prospectus, we have generally reviewed and discussed with your representatives and your counsel and with certain officers and employees of, and independent public accountants for, the Company the information furnished, whether or not subject to our check and verification. We have also reviewed and relied upon certain corporate records and documents, letters from counsel and accountants and oral and written statements of officers and other representatives of the Company and others as to the existence and consequence of certain factual and other matters.

On the basis of the information gained in the course of the performance of the services rendered above, but without independent check or verification except as stated above:

(i) the Registration Statement and the Prospectus appear on their face to be appropriately responsive in all material respects to the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder; and

(ii) nothing has come to our attention that causes us to believe that, insofar as relevant to the offering of the Underwritten Securities,;

(a) on the date of the Terms Agreement, the Registration Statement contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading,

(b) at the Time of Sale, the Time of Sale Prospectus contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, or

(c) the Prospectus as of the date of the Terms Agreement or as of the Closing Date contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

In providing this letter to you and the other several Underwriters, we have not been called to pass upon, and we express no view regarding, the financial statements or financial schedules or other financial or accounting data included in the Registration Statement, the Time of Sale Prospectus, the Prospectus, or the Statement of Eligibility of the Trustee on Form T-1. In addition, we express no view as to the conveyance of the Time of Sale Prospectus or the information contained therein to investors.

**FORM OF OPINION OF COMPANY'S INTERNAL COUNSEL TO BE  
DELIVERED PURSUANT TO SECTION 5(a)**

1. The execution, delivery and performance by the Company of its obligations under the Terms Agreement[, the Indenture] and the Underwritten Securities will not contravene any provision of the Restated Charter or By-Laws of the Company, or of any agreement or other instrument binding upon the Company or any of its subsidiaries that is material to the Company and its subsidiaries taken as a whole, or, to counsel's knowledge, of any judgment, order, or decree of any governmental body, agency, or court having jurisdiction over the Company or any of its subsidiaries, in each of the foregoing cases except as would not reasonably be expected to have a material adverse effect on the business, financial condition or results of operations of the Company and its subsidiaries, taken as a whole.

2. To counsel's knowledge, there is no legal or governmental proceeding pending or threatened to which the Company or any of its significant subsidiaries is a party, or by which any of the properties of the Company or its significant subsidiaries is bound, which would reasonably be expected to have a material adverse effect on the business, financial condition or results of operations of the Company and its subsidiaries, taken as a whole; and to counsel's knowledge, there is no agreement or other document that is required to be described in the Registration Statement, the Prospectus or the Time of Sale Prospectus, or that is required to be filed as an exhibit to the Registration Statement, that is not so described or filed.

In rendering such opinion, counsel may rely, as to matters of fact, to the extent counsel deems proper, on certificates of responsible officers of the Company and public officials. Such opinion will be limited to the laws of the State of New York and the federal laws of the United States of America. Insofar as such opinion involves matters governed by the laws of North Carolina, counsel may rely, without independent investigation, on the opinion of North Carolina counsel for the Company.

**FORM OF OPINION OF COMPANY'S NORTH CAROLINA COUNSEL  
TO BE DELIVERED PURSUANT TO SECTION 5(a)**

1. The Company is a corporation in existence under the laws of the State of North Carolina, with corporate power to conduct its business as described in the Time of Sale Prospectus and the Prospectus.
2. The Company has authorized by all necessary corporate action the execution and delivery of the Terms Agreement[, the Indenture] and the Underwritten Securities.
3. The Terms Agreement[, the Indenture] and the Underwritten Securities have been duly executed by the Company.
4. *[The following provision shall apply only to a Terms Agreement in which the Underwritten Securities include Common Stock]* – The Underwritten Securities, when issued and delivered to and paid for by the Underwriters pursuant to the Terms Agreement, will be validly issued, fully paid and non-assessable, and the issuance of such Underwritten Securities is not subject to any statutory preemptive rights.
5. The execution and delivery of and performance by the Company of its obligations under the Terms Agreement[, the Indenture] and the Underwritten Securities do not violate any provision of the articles of incorporation or by-laws of the Company.
6. No consent, approval, authorization, or order of or qualification with any North Carolina governmental body or agency is required to be obtained or made by the Company for the execution, delivery and performance by the Company of the Terms Agreement or the issuance of the Underwritten Securities, except as may be required by the Blue Sky or other securities laws if the Underwritten Securities are offered or sold in North Carolina and except for consents, approvals, authorizations, actions, filings and registrations which, if not obtained or made, are not reasonably likely to have a material adverse effect on the business, financial condition or results of operations of the Company and its subsidiaries, taken as a whole.

## FORM OF ASSISTANT SECRETARY'S CERTIFICATE

I, \_\_\_\_\_, the duly qualified, elected, and acting Secretary of PepsiCo, Inc., a company organized under the laws of the State of North Carolina (the "**Company**"), hereby certify as follows:

1. Attached hereto as Exhibit A is a true and complete copy of the Restated Articles of Incorporation of the Company, certified as of \_\_\_\_\_ by the Secretary of State of the State of North Carolina. No further amendments or supplements to the Restated Articles of Incorporation have been proposed to or approved by the Board of Directors or shareholders of the Company.
2. Attached hereto as Exhibit B is a true, correct, and complete copy of the By-Laws of the Company. Such By-Laws have been in effect at all times since \_\_\_\_\_.
3. Attached hereto as Exhibit C are true, correct and complete copies of certain resolutions duly adopted by the Board of Directors of the Company on \_\_\_\_\_. Such resolutions have not been amended or modified, are in full force and effect in the form adopted and are the only resolutions adopted by the Board of Directors of the Company or a duly authorized committee thereof relating to (i) the authorization of the Company's Registration Statement on Form S-3 (File No. 333-\_\_\_\_\_), (the "**Registration Statement**") filed with the Securities and Exchange Commission (the "**Commission**") for the registration of Company's securities, (ii) the execution and delivery of the Terms Agreement, dated \_\_\_\_\_ (the "**Terms Agreement**"), between the Company and \_\_\_\_\_ (the "**Underwriters**"), and (iii) all other actions relating to the foregoing. Such resolutions have not been amended, rescinded or modified since their adoption (other than as expressly set forth in such resolutions) and remain in full force and effect as of the date of this Certificate.
4. Each person who, as a director or officer of the Company or attorney-in-fact of such director or officer, signed (i) the Registration Statement, (ii) the Terms Agreement, and (iii) any document delivered prior hereto or on the date of this Certificate in connection with the execution and filing of the Registration Statement, or the execution and delivery of the Terms Agreement, or the transactions contemplated thereby, or the execution and delivery of the certificates representing the Shares, was, at the time or the respective times of such execution and delivery of such documents, and, in the case of the filing of the Registration Statement with the Commission, duly elected or appointed, qualified and acting as such director or officer or duly appointed and acting as such attorney-in-fact and the signatures of such persons appearing on such documents are their genuine signatures or, in case of the certificates evidencing the Shares, the true facsimile thereof.

5. The minute book records of the Company relating to proceedings of the Board of Directors of the Company made available to \_\_\_\_\_, counsel for the Underwriters, are true and correct and constitute all such records in the possession and control of the Company through and including \_\_\_\_\_.

The persons named below are duly qualified, elected, and acting officers of the Company, have been duly elected or appointed to the offices set forth opposite their respective names, have held such offices at all times relevant to the preparation of the Registration Statement, and hold such offices as of the date hereof. The signatures set forth below opposite the names of such persons are the genuine signatures of such persons.

Name	Office	Signature
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IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Company as of the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

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

I, \_\_\_\_\_, a Vice President of the Company, hereby certify that \_\_\_\_\_ is the duly qualified, elected, and acting \_\_\_\_\_ of the Company, has been duly elected or appointed to such offices, has held such offices at all times relevant to the preparation of the Registration Statement, holds such offices as of the date hereof, and that the signature set forth above is his genuine signature.

IN WITNESS WHEREOF, I have hereunto set my hand as of the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

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

## FORM OF OFFICERS' CERTIFICATE

[Name:]\_\_\_\_\_, [title:]\_\_\_\_\_, and [name:]\_\_\_\_\_, [title:] \_\_\_\_\_, of PepsiCo, Inc., a corporation organized under the laws of the State of North Carolina (the "**Company**"), each hereby certifies as follows:

1. I have examined the Company's Registration Statement on Form S-3 (File No. 333-\_\_\_\_\_) (the "**Registration Statement**") filed by the Company with the Securities and Exchange Commission (the "**Commission**") on October \_\_\_, 2008, including all of the documents filed as exhibits thereto. Capitalized terms used herein and not otherwise defined have the meanings ascribed to such terms by the prospectus filed as part of the Registration Statement (such prospectus hereinafter the "**Prospectus**").

2. To my knowledge, no proceedings for the merger, consolidation, liquidation, or dissolution of the Company or the sale of all or substantially all of its assets are pending or contemplated.

3. To my knowledge, the Registration Statement as supplemented by the Time of Sale Prospectus (i) contains no untrue statement of a material fact regarding the Company or any of its consolidated subsidiaries and (ii) does not omit to state any material fact necessary to make any such statement, in the light of the circumstances under which it was made, not misleading.

IN WITNESS WHEREOF, I have hereunto set my hand as of the \_\_\_ of \_\_\_\_\_, 20\_\_\_.

By: \_\_\_\_\_

Name:

Title:

D-1



PEPSICO, INC.  
Debt Securities, Warrants and Units  
U.S. DISTRIBUTION AGREEMENT

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THIS DISTRIBUTION AGREEMENT, dated as of \_\_\_\_\_, among PepsiCo, Inc., a corporation organized under the laws of the State of North Carolina (the “**Company**”), and the banks set forth in Schedule I hereto (individually, the “**Bank**” and collectively, the “**Banks**”).

W I T N E S S E T H:

WHEREAS, the Company has filed with the Securities and Exchange Commission (the “**Commission**”) a registration statement on Form S-3, File No. 333-\_\_\_\_\_ (the “**Registration Statement**”), including a prospectus (the “**Prospectus**”), relating to the Company’s securities, including the Company’s Debt Securities, Warrants and Units (as such terms are defined in the Prospectus); and

WHEREAS, each Bank has agreed to participate in the offer and sale of Debt Securities, Warrants and Units (sometimes referred to collectively as the “**Securities**”) to investors on the terms and conditions set forth herein;

NOW, THEREFORE, the parties hereto agree as follows:

**Section 1. Definitions.** Capitalized terms used in this Agreement and not otherwise defined herein have the meanings ascribed to such terms by the Prospectus; *provided, however*, that in the event of a conflict between the Prospectus and any applicable Supplement regarding the definition of any capitalized term used herein, the definition set forth in the applicable Supplement will govern; and *provided, further*, that the terms “**Registration Statement**”, “**Prospectus**”, “**Pricing Supplement**”, “**Prospectus Supplement**”, and “**Time of Sale Prospectus**” as used herein, (a) include, in each case, the documents (if any) incorporated by reference therein, and (b) refer, in each case, to such document as supplemented or otherwise amended from time to time.

For purposes of this Agreement and each Terms Agreement (as defined below), “**free writing prospectus**” has the meaning set forth in Rule 405 under the Securities Act, “**Time of Sale Prospectus**” means the prospectus, the final preliminary prospectus together with the free writing prospectuses, if any, each identified in Annex A to the applicable Terms Agreement.

**Section 2. Appointment of Banks as Agents.** From the date hereof and until the expiration or earlier termination of this Agreement, each Bank will be an agent of the Company with respect to the distribution and sale of the Securities, and will use reasonable efforts, consistent with standard industry practice, to solicit offers for the purchase of the Securities upon the terms and conditions set forth in the Prospectus and, with respect to Securities of a given series, in the applicable preliminary and final Pricing Supplement or Prospectus Supplement (each such supplement a “**Supplement**” or an “**applicable Supplement**”),

*provided, however*, that no Bank will be required to solicit offers to purchase Securities issued pursuant to a Supplement that does not name such Bank as an agent. All sales of Securities resulting from a solicitation made or an offer to purchase received by any Bank in its capacity as agent during the term of this Agreement will be subject to the provisions of this Section 2 and to all other provisions of this Agreement not specifically limited to sales of Securities made to such Bank as underwriter and/or as purchaser for its own account.

(a) *Non-Exclusive Agency*. Each Bank acknowledges and agrees that its agency hereunder is non-exclusive and that its obligations as agent hereunder will continue notwithstanding the offer or sale of Securities by the Company directly to investors (including such Bank as purchaser for its own account), to underwriters (including such Bank as underwriter, as contemplated by Section 3 below), and/or through other agents, as the Company may, in its sole discretion, elect. The obligations of each Bank in its capacity as agent hereunder, and the obligations of each other person that has been authorized by the Company to act as its agent in soliciting offers to purchase Securities, shall be several and not joint.

(b) *Solicitation of Offers as Agent; Rights of Acceptance and Rejection of Offers*. Each Bank may reject, and will not be required to communicate to the Company, any offer to purchase Securities that it reasonably deems unacceptable. The Company will have the sole right to accept any offer to purchase Securities and may reject any such offer in whole or in part. The Company will in no event approve any solicitation of offers or accept any offers to purchase Securities the aggregate public offering price of which, with respect to Securities of a given series, would exceed the maximum aggregate public offering price stated in the applicable Supplement.

(c) *Commissions*. As consideration for the sale of Securities of a given series that occurs as a result of a solicitation made or an offer to purchase received by any Bank in its capacity as agent, the Company will pay such Bank the commission identified in the applicable Supplement, which commission will be expressed as a percentage of the aggregate public offering price of such Securities. Payment of the commission will be made on the Settlement Date (as defined in Section 10(c) hereof), in U.S. dollars or such other currency as the Company and such Bank may agree in writing, by discount from the proceeds of the sale of such Securities or by such other means as may be agreed to in writing by the Company and such Bank and set forth in the applicable Terms Agreement (hereinafter defined). Any provision of this Agreement to the contrary notwithstanding, no Bank will be entitled to payment of any commission with respect to the sale of a given Security unless (i) the sale of such Security shall have occurred as a result of a solicitation made or an offer to purchase received by such Bank in its capacity as agent hereunder, on the terms and conditions set forth herein and in the applicable Terms Agreement, (ii) such Bank shall have been

named as an agent in the applicable Supplement, and (iii) such Security shall have been sold by the Company directly to a third-party investor without such Bank acquiring legal title thereto.

(d) *Termination or Suspension of Solicitations by Banks as Agents.* The Company may at any time require the Banks to terminate or temporarily suspend the solicitation of offers to purchase Securities. Upon receipt of written notice from the Company to the Banks directing the Banks (or any of them) to terminate or suspend solicitations of offers to purchase Securities, until (in the case of a temporary suspension) such time as may be indicated in such notice or in any subsequent notice from the Company to the Banks, the Banks will forthwith terminate or suspend such solicitations (as the case may be). The provisions of this paragraph notwithstanding, the termination or suspension by the Company of any Bank's solicitation of offers to purchase Securities will not (except under the circumstances contemplated in Section 5 or Section 8(b) hereof) relieve or otherwise affect any Bank's obligation to purchase any Securities such Bank shall have agreed to purchase in its capacity as underwriter, or the Company's obligation to sell any Securities it shall have agreed to sell to a third-party investor through such Bank in its capacity as agent, in either case as set forth in an applicable Terms Agreement that shall have been executed and delivered by both the Company and such Bank.

(e) *Scope of Agency.* In soliciting offers to purchase Securities, the Banks will be acting solely as agents for the Company. Each Bank will use its best efforts consistent with standard industry practice to assist the Company in obtaining performance by each purchaser whose offer to purchase Securities has been solicited by such Bank and accepted by the Company, but no Bank will have any liability to the Company in the event that any such purchase is not consummated for any reason. If the Company shall default in its obligations to deliver Securities to a purchaser whose offer it has accepted, the Company will hold each Bank harmless against any loss, claim, damage, or liability arising from or as a result of such default and will pay to such Bank the commission such Bank would have received had such sale been consummated.

**Section 3. Purchase and Sale of Securities by a Bank as Underwriter.** The Company and any Bank may agree upon one or more sales of Securities to such Bank as underwriter, for resale to investors on the terms set forth in the Prospectus and in any applicable Supplement. All sales of Securities made to a Bank in its capacity as underwriter during the term of this Agreement will be subject to the provisions of this Section 3 and to all other provisions of this Agreement not specifically limited to sales of Securities through such Bank as agent and/or to such Bank as purchaser for its own account.

(a) *The Banks' Obligation to Purchase Securities; Multiple Underwriters.* In the event that a Bank is the sole underwriter with respect to a

particular series of Securities, such Bank will be obligated to purchase all of the Securities of such series. In the event that such Bank is one of two or more underwriters with respect to a particular series of Securities, the applicable Terms Agreement will specify the aggregate public offering price of the Securities that such Bank and such other underwriter or underwriters will be obligated to purchase, such obligations to be several and not joint.

(b) *Discounts.* All Securities of any series to be sold to a Bank in its capacity as underwriter will be sold at a discount from the price at which such Securities are to be sold to the public. Such discount will be identified in the applicable Terms Agreement, expressed as a percentage of the aggregate public offering price of such Securities. Any provision of this Agreement to the contrary notwithstanding, such Bank will not be entitled to any discount with respect to the purchase of a given Security unless (i) such Bank shall have purchased such Security with a view, at the time of such purchase, to the immediate resale thereof to a third-party investor, unless the Company shall have otherwise agreed in the applicable Terms Agreement, and (ii) such Bank shall have been named as an underwriter in the applicable Supplement. It is expressly acknowledged and agreed that a Bank may, in its capacity as underwriter with respect to any given series of Securities, sell such Securities to one or more dealers that are not parties to this Agreement or the applicable Terms Agreement, and may allow to such dealers a discount from the public offering price of such Securities, provided that the aggregate of all such discounts allowed by such Bank to such dealers with respect to such Securities will not exceed the discount received by such Bank from the Company with respect to such Securities.

**Section 4. *Terms Agreement; Administrative Procedures.*** No agreement for the purchase of Securities by any Bank in its capacity as underwriter or through any Bank in its capacity as agent will be deemed to exist until the terms of such agreement shall have been put in writing, substantially in the form of the attached Schedule II, and such writing shall have been signed by both the Company and such Bank (any such signed writing a “**Terms Agreement**”). In the event of a conflict between any provision of a Terms Agreement with respect to Securities of a given series and any term of the applicable Supplement, the terms of the applicable Supplement will govern.

Each of the Company and the Banks agrees that it will perform its respective administrative obligations with respect to the offer and sale of Securities as set forth in the Administrative Procedures attached to this Agreement as Schedule III. Each Terms Agreement will incorporate all applicable terms and provisions of this Agreement and the Administrative Procedures as fully as though such terms and provisions were expressly stated therein.

**Section 5. *Certain Conditions Precedent to Banks' Obligations.*** The obligation of each Bank to solicit offers to purchase Securities in its capacity as

agent, and its obligation to purchase any Securities in its capacity as underwriter, will in all cases be subject to the accuracy of the representations and warranties of the Company set forth in Section 6 hereof or in the applicable Terms Agreement (as the case may be), to receipt of the opinions and certificates to be delivered to such Bank pursuant to the terms of Section 5 and 8 hereof or the provisions of the applicable Terms Agreement (as the case may be), to the accuracy of the statements of the Company's officers made in each certificate to be furnished as provided herein or in the applicable Terms Agreement (as the case may be), to the performance and observance by the Company of all covenants and agreements contained herein or in the applicable Terms Agreement (as the case may be) on its part to be performed and observed, in each case at the time of solicitation by such Bank of offers to purchase Securities, at the time the Company accepts any offer to purchase Securities through such Bank in its capacity as agent or by such Bank in its capacity as underwriter, as the case may be, and at the time of purchase, and (in each case) to the following additional conditions precedent, when and as specified:

(a) As of the Settlement Date for any Securities to be purchased through a Bank in its capacity as agent or by a Bank in its capacity as underwriter (for purposes of this paragraph (a), the "**Applicable Settlement Date**"), and with respect to the period from the date of the applicable Terms Agreement to and including the Applicable Settlement Date:

(i) there shall not have occurred (A) any material adverse change (or development involving a prospective material adverse change) in the business, properties, earnings, or financial condition of the Company and its subsidiaries on a consolidated basis or (B) any suspension or material limitation of trading in the Company's capital stock by the Commission or the New York Stock Exchange, Inc. (the "**NYSE**") (the events described in the foregoing clauses A and B, the "**Company-Specific Events**"), the effect of any of which Company-Specific Events shall have made it impracticable, in the reasonable judgment of such Bank, to market such securities, such judgment to be based on relevant market conditions;

(ii) there shall not have occurred (A) any suspension or material limitation of trading in securities generally on the NYSE, (B) a declaration of a general moratorium on commercial banking activities in New York by either Federal or New York State authorities, or (C) any outbreak or material escalation of hostilities or other national or international calamity or crisis (the events described in the foregoing clauses A through C the "**Market Events**"), the effect of any of which Market Events shall have made it impracticable, in the reasonable judgment of such Bank, to market such Securities, such judgment to be based on relevant market conditions, including, without limitation, the

impact of such Market Event on debt securities having substantially similar characteristics; and

(iii) there shall not have been issued any stop order suspending the effectiveness of the Registration Statement nor shall any proceedings for that purpose or pursuant to Section 8A of the Securities Act against the Company or related to the offering of the Securities have been instituted or threatened.

(b) Each relevant Bank will receive, upon execution and delivery of any applicable Terms Agreement and on each Settlement Date, a letter from KPMG LLP (“**KPMG**”), or such other independent certified public accountants as may be selected by the Company (KPMG or such other independent certified public accountants each, successively, the “**Company’s Auditors**”), dated such date containing statements and information of the type ordinarily included in accountants’ “comfort letters” to underwriters with respect to financial statements and certain financial information contained in the Registration Statement, the Prospectus and the applicable Supplement (each such letter, an “**Auditors’ Letter**”).

(c) On each Settlement Date, the relevant Bank shall have received the following documents and such appropriate further information, certificates, and documents as the Company and such Bank shall have agreed, as reflected in the applicable Terms Agreement:

(i) the opinions of counsels to the Company, selected by the Company and reasonably agreed to by such Bank (the “**Company’s Counsel**”), dated as of such Settlement Date, substantially in the forms of Exhibit A hereto,

(ii) the opinion of counsel to the Banks, selected by the Banks and reasonably agreed to by the Company (the “**Banks’ Counsel**”), dated as of such Settlement Date, substantially in the form of Exhibit B hereto,

(iii) a certificate of the Assistant Secretary of the Company, dated as of such Settlement Date, substantially in the form of Exhibit C hereto, and

(iv) a certificate of the Chief Financial Officer and Senior Vice President or Treasurer of the Company, dated as of such Settlement Date, substantially in the form of Exhibit D hereto.

**Section 6. Representations and Warranties of the Company.** The Company represents and warrants to each Bank that, as of each date on which the Company and such Bank execute and deliver a Terms Agreement and as of each



date the Company issues and sells Securities through such Bank in its capacity as agent or to such Bank in its capacity as underwriter:

(a) (i) The Registration Statement constitutes an “automatic shelf registration statement” (as defined in Rule 405 of the Securities Act) filed within three years of the date of the applicable Terms Agreement, (ii) the Company is a “well known seasoned issuer” (as defined in Rule 405 of the Securities Act), (iii) the Registration Statement has become effective and no stop order suspending the effectiveness of the Registration Statement is in effect nor, to the Company’s knowledge, are any proceedings for such purpose pending before or threatened by the Commission, (iv) as of the effective date of the Registration Statement (the “**Effective Date**”), the Company met the applicable requirements for use of Form S-3 under the Securities Act with respect to the registration under the Securities Act of the Securities, and (v) as of the Effective Date, the Registration Statement met the requirements set forth in Rule 415(a)(1)(x) under the Securities Act and complied in all material respects with said Rule.

(b) (i) Each document, if any, filed or to be filed pursuant to the Exchange Act and incorporated or to be incorporated by reference in the Prospectus or Time of Sale Prospectus complies or will comply, in all material respects, with the applicable provisions of the Exchange Act and the rules and regulations of the Commission thereunder, (ii) the Registration Statement does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (iii) the Registration Statement and the Prospectus comply, in all material respects, with the Securities Act and the rules and regulations of the Commission thereunder, and (iv) the Prospectus does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (v) the Time of Sale Prospectus does not, and at the time of each sale of the Securities in connection with the offering when the Prospectus is not yet available to prospective purchasers and at the Closing Date, the Time of Sale Prospectus, as then amended or supplemented by the Company, if applicable, will not, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided, however*, that the Company makes no representations and warranties as to information contained in or omitted from the Registration Statement, the Prospectus or the Time of Sale Prospectus in reliance upon and in conformity with information furnished in writing to the Company by the underwriters expressly for use in the Registration Statement, the Prospectus or the Time of Sale Prospectus or any amendment or supplement thereto or the Statement of Eligibility and Qualification of the Trustee (the “**Form T-1**”) under the Trust Indenture Act of 1939, as amended (the “**Trust Indenture Act**”).

(c) The Company is not an “ineligible issuer” in connection with the offering pursuant to Rules 164, 405 and 433 under the Securities Act. Any free writing prospectus that the Company is required to file pursuant to Rule 433(d) under the Securities Act has been, or will be, filed with the Commission in accordance with the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder.

(d) The Company has been duly incorporated and is validly existing under the laws of the State of North Carolina, has the corporate power and authority to own its property and to conduct its business as described in the Prospectus and the Time of Sale Prospectus, and is duly qualified to transact business as a foreign corporation in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified would not have a material adverse effect on the Company and its subsidiaries taken as a whole.

(e) The Indenture has been duly qualified under the Trust Indenture Act and has been duly authorized, executed, and delivered by the Company and (assuming due authorization, valid execution, and delivery thereof by the Trustee) is a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as such enforceability may be limited by the laws of bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or similar laws relating to creditors’ rights generally, by any other federal or state laws, by rights of acceleration, by general principles of equity, or by the discretion of any court before which any proceeding therefor may be brought.

(f) This Agreement has been duly authorized, executed, and delivered by the Company and (assuming due authorization, valid execution, and delivery by each Bank) is a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as the enforceability of any term or provision hereof (including, without limitation, the Company’s indemnity obligations under Section 11 hereof) may be limited by the laws of bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or similar laws relating to creditors’ rights generally, by rights of acceleration, by any other federal or state law, by general principles of equity, or by the discretion of any court before which any proceeding therefor may be brought.

(g) The form of Terms Agreement filed by the Company as exhibits to the Registration Statement, and the form of any Shelf Warrant Agreement or Unit Agreement to be filed by the Company as an exhibit to the Registration Statement, have been or will be duly authorized by the Company and, assuming valid execution and delivery by the Company and due authorization, valid execution, and delivery by each of the other parties thereto, each such agreement will be a valid and binding agreement of the Company, enforceable against the

Company in accordance with its respective terms, except as such enforceability may be limited by the laws of bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or similar laws relating to creditors' rights generally, by any other federal or state laws, by general principles of equity, or by the discretion of any court before which any proceeding therefor may be brought.

(h) The Securities have been duly authorized and, when issued, executed, and authenticated in accordance with the provisions of the Indenture, or when countersigned by the Warrant Agent or Unit Agent in accordance with the provisions of the applicable Warrant Agreement or Unit Agreement, as the case may be, and delivered to and duly paid for in accordance with the applicable provisions of the Prospectus and the Time of Sale Prospectus and any applicable Supplement, and Section 10(c) hereof, will be entitled to the benefits of the Indenture, or the applicable Warrant Agreement or Unit Agreement, as the case may be, and will be valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by the laws of bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or similar laws relating to creditors' rights generally, by any other federal or state laws, by rights of acceleration, if applicable, by general principles of equity.

(i) The execution and delivery of and performance by the Company of its obligations under this Agreement, the Securities, the Indenture, any Warrant Agreement, any Unit Agreement and any Terms Agreement, as the case may be, will not contravene any provision of any applicable law or of the Restated Charter or By-Laws of the Company, or of any agreement or other instrument binding upon the Company or any of its subsidiaries that is material to the Company and its subsidiaries taken as a whole, or of any judgment, order, or decree of any governmental body, agency, or court having jurisdiction over the Company or any of its subsidiaries, in each of the foregoing cases except as would not reasonably be expected to have a material adverse effect on the Company and its subsidiaries taken as a whole, and no consent, approval, authorization, or order of or qualification with any governmental body or agency is, to the Company's knowledge, required for the performance by the Company of its obligations under this Agreement, the Securities, the Indenture, or any Warrant Agreement or any Unit Agreement or Terms Agreement, except such as may be required by Blue Sky laws or other securities laws of the various states in which the Securities are offered and sold and except to the extent where the failure to obtain such consent, approval, authorization, order or qualification would not reasonably be expected to have a material adverse effect on the Company and its subsidiaries taken as a whole.

(j) There has not been any material adverse change (or development involving a prospective material adverse change) in the business, properties, earnings, or financial condition of the Company and its subsidiaries on a

consolidated basis from that set forth in the Company's last periodic report filed with the Commission under the Exchange Act and the rules and regulations promulgated thereunder.

(k) There are no legal or governmental proceedings pending or, to the Company's knowledge, threatened, to which the Company or any of its subsidiaries is a party or to which any of the properties of the Company or any of its subsidiaries is subject that is required to be described in the Registration Statement, the Prospectus or the Time of Sale Prospectus and is not so described, or any applicable statute, regulation, contract, or other document that is required to be described in the Registration Statement, the Prospectus or the Time of Sale Prospectus that is not so described.

**Section 7. Authority, Compliance with Laws.** As of each date on which the Company and any Bank execute and deliver a Terms Agreement and as of each date the Company issues and sells Securities through any Bank in its capacity as agent or to any Bank in its capacity as underwriter, the following statements are and shall be true:

(a) Each of this Agreement and any Terms Agreement has been duly authorized, executed, and delivered by such Bank and (assuming due authorization, valid execution, and delivery thereof by the Company) is a valid and binding agreement of such Bank, enforceable against such Bank in accordance with its respective terms, except as the enforceability of any such terms or provisions (including, without limitation, such Bank's agency obligations under Section 2 hereof and such Bank's indemnification obligations under Section 11 hereof) may be limited by the laws of bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or similar laws relating to creditors' rights generally, by any other federal or state laws, by general principles of equity, or by the discretion of any court before which any proceeding therefor may be brought.

(b) Neither the execution and delivery of this Agreement or any Terms Agreement by such Bank nor the performance by such Bank of its obligations hereunder or thereunder is precluded by any provision of any applicable federal or state law (including, without limitation, the Blue Sky laws of any jurisdiction, to the extent that such laws apply to such Bank), or of any term or provision of the Charter or By-Laws of such Bank, any agreement or other instrument binding upon such Bank, or any judgment, order, or decree of any governmental body, agency, or court having jurisdiction over such Bank, and all consents, approvals, authorizations, and orders of and qualifications with all governmental bodies and agencies that are, to such Bank's knowledge, required for the performance by such Bank of its obligations under this Agreement or any Terms Agreement have been obtained, except such as may be required by Blue Sky laws or other securities laws of the various states in which the Securities are offered and sold.

(c) Each Bank has delivered and will deliver a copy of the Prospectus and the Time of Sale Prospectus (as the same may be amended as of the date of such delivery, together with all applicable Supplements), to each person who has agreed to purchase Securities as to which such Bank is named as an agent or underwriter, in each case in accordance with all applicable federal and state laws. Such Bank has not made and will not make any representation, warranty, or other statement to any third party in connection with the solicitation, offer, sale, or distribution of any of the Securities that is or, at the time it is made, will be in violation of any applicable federal or state law.

**Section 8. Agreements.** The Company and each Bank agree as follows:

(a) Prior to the filing by the Company of any amendment to any Prospectus or of any Supplement that shall name such Bank as agent or underwriter, the Company will afford such Bank or such Bank's Counsel a reasonable opportunity to review and comment on the same, *provided, however*, that the foregoing requirement will not apply to any of the Company's filings with the Commission required to be filed pursuant to Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act. Subject to the foregoing sentence, the Company will promptly cause each applicable Supplement to be filed with or transmitted for filing with the Commission in accordance with Rule 424(b) or 424(c) under the Securities Act or pursuant to such other rule or regulation of the Commission as then deemed appropriate by the Company. The Company will promptly advise the Banks of (i) any request by the Commission for any amendment to the Registration Statement, for any amendment or supplement to the Prospectus, or for any information from the Company, (ii) the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the institution or threatening of any proceeding for that purpose, and (iii) the receipt by the Company of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose. The Company will use reasonable efforts to prevent the issuance of any such stop order or notice of suspension of qualification and, if issued, to obtain as soon as reasonably possible the withdrawal thereof.

(b) If, at any time when a prospectus relating to any series of Securities is required to be delivered under the Securities Act, any event occurs or condition exists as a result of which the Prospectus or the Time of Sale Prospectus would include an untrue statement of a material fact, or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if it is necessary to amend or supplement the Prospectus in order to comply with the Securities Act, the Exchange Act, the respective rules and regulations of the Commission thereunder, or any other applicable law, the Company will promptly notify each Bank, by telephone or by facsimile (in either case with written confirmation from the

Company by mail), to cease use and distribution of the Prospectus or the Time of Sale Prospectus (and all then existing supplements thereto) and to suspend all efforts to solicit offers to purchase Securities in its capacity as agent or to suspend all efforts to resell the Securities in its capacity as underwriter or dealer, as the case may be, and each Bank will promptly comply with the terms of such notice. If the Company thereafter decides to amend or supplement the Registration Statement or the Time of Sale Prospectus or the Prospectus to correct such statement or omission or to effect such compliance, it will promptly advise each Bank of such decision, either by telephone or telecopier (in either case with confirmation from the Company by mail) and, at the Company's expense, will promptly prepare and cause to be filed with the Commission an appropriate amendment or supplement to the Registration Statement or the Time of Sale Prospectus or the Prospectus, as the case may be, and will supply each Bank with one signed copy of any such amended Registration Statement and as many copies of any such amended or supplemented Prospectus as such Bank may reasonably request. If such amendment or supplement is satisfactory in the reasonable judgment of the Banks to correct such statement or omission or to effect such compliance, then upon the effective date of such amendment to the Registration Statement or the filing with the Commission of such amendment or supplement to the Prospectus or the Time of Sale Prospectus, as the case may be, the Banks may resume solicitation of offers to purchase such Securities or the resale of such Securities as the case may be, in accordance with the terms hereof. Any other provision of this Agreement to the contrary notwithstanding, if any event or condition contemplated in the first sentence of this paragraph (b) shall occur before the Settlement Date for any sale of Securities to be made through any Bank in its capacity as agent, or before such Bank has completed distribution of any Securities it may have purchased in its capacity as underwriter, the Company will forthwith prepare and cause to be filed with the Commission an amendment or supplement to the Registration Statement or the Prospectus or the Time of Sale Prospectus, as the case may be, satisfactory in the reasonable judgment of such Bank to correct such statement or omission or to effect such compliance, and the Company will supply such Bank with one signed copy of such amended Registration Statement and as many copies of such amended or supplemented Prospectus or the Time of Sale Prospectus as such Bank may reasonably request, *provided, however*, that the expense of preparing, filing, and supplying copies to such Bank of any such amendment or supplement will be borne by the Company only for the nine-month period immediately following the purchase of such Securities by such Bank and thereafter will be borne by such Bank.

(c) The Company will furnish to each Bank, without charge, as many copies of the Prospectus and the Time of Sale Prospectus, any documents incorporated by reference therein, and any supplements and amendments thereto as such Bank may reasonably request.

(d) The Company will, with such assistance from the Banks as the Company may reasonably request, endeavor to qualify the Securities for offer and sale under the Blue Sky laws or other securities laws of such jurisdictions as the Banks shall reasonably request and will maintain such qualifications for as long as required with respect to the offer, sale, and distribution of the Securities.

(e) From the date of any Terms Agreement providing for the purchase of Securities by any Bank in its capacity as an underwriter hereunder to and including the corresponding Settlement Date, the Company will not, without such Bank's prior consent (which consent may not be unreasonably withheld), offer, sell, or contract to sell to, or announce any offering of any Securities to be distributed by, any underwriter other than such Bank pursuant to any underwriting agreement or other similar agreement (including a distribution agreement) between the Company and one or more third parties. It is expressly understood and agreed that the foregoing will not prohibit or restrict any sale of Securities outside the United States or any sale of Securities by the Company directly to one or more investors, through such Bank as agent hereunder, or through any other agent of the Company.

(f) As of each date on which the Company and the Banks execute and deliver a Terms Agreement and as of each date the Company issues and sells Securities through the Banks in their capacity as agents or to the Banks in their capacity as underwriters, each Bank has disclosed and will disclose to the Company the purchase of any Security made by such Bank as principal, for its own account, and not with a view to the immediate sale or resale of such Security to a bona fide third-party investor.

(g) Such Bank has not used and will not use, has not authorized the use of and will not authorize the use of, has not referred to and will not refer to, and has not participated and will not participate in the planning for use of any "free writing prospectus," as defined in Rule 405 under the Securities Act (which term includes use of any written information furnished to the Commission by the Company and not incorporated by reference into the Registration Statement and any press release issued by the Company) (each such communication by the Company or its agents or representatives, an "**Issuer Free Writing Prospectus**") other than (i) a free writing prospectus that contains no "issuer information" (as defined in Rule 433(h)(2) under the Securities Act) that was not included (including through incorporation by reference) in the preliminary prospectus or a previously filed Issuer Free Writing Prospectus, (ii) any Issuer Free Writing Prospectus listed on Annex A to the applicable Terms Agreement or (iii) any free writing prospectus prepared by such Bank and approved by the Company in advance in writing (each such free writing prospectus referred to in clauses (i) or (iii), an "**Underwriter Free Writing Prospectus**").

(h) Such Bank has not distributed and will not distribute any Underwriter Free Writing Prospectus in a manner reasonably designed to lead to its broad unrestricted distribution.

(i) Such Bank has not used and will not use, without the prior written consent of the Company, any free writing prospectus that contains the final terms of the Securities unless such terms have previously been included in a free writing prospectus filed with the Commission.

(j) Such Bank represents and warrants that it is not subject to any pending proceeding under Section 8A of the Securities Act with respect to the offering (and will promptly notify the Company if any such proceeding against it is initiated during the prospectus delivery period).

**Section 9. Fees and Expenses.** The Company will pay all costs, fees, and expenses arising in connection with the sale of any Securities through the Banks in their capacity as agents or to the Banks in their capacity as underwriters and in connection with the performance by the Banks of their related obligations hereunder and under any Terms Agreement, including the following: (a) expenses incident to the preparation and filing of the Registration Statement, any preliminary prospectus, the Prospectus, any free writing prospectus and the Time of Sale Prospectus and all amendments and supplements thereto, (b) expenses incident to the issuance and delivery of such Securities, (c) the fees and disbursements of the Company's Counsel, the Tax Counsel, the Company's Auditors and the Trustee, (d) expenses incident to the qualification of such Securities under Blue Sky laws and other applicable state securities laws in accordance with the provisions of Section 8(d) hereof, including related filing fees and the reasonable fees and disbursements of the Banks' Counsel in connection therewith and in connection with the preparation of any survey of Blue Sky laws (a "**Blue Sky Survey**"), (e) expenses incident to the printing and delivery to the Banks, in the quantities hereinabove stated, of copies of the Registration Statement and all amendments thereto, of the Prospectus and all amendments and supplements thereto, and of the Time of Sale Prospectus and all amendments and supplements thereto, (f) expenses incident to the printing and delivery to the Banks, in such quantities as each Bank shall reasonably request, of copies of the Indenture, any Warrant Agreement, any Unit Agreement and any Blue Sky Survey, (g) any fees charged by rating agencies for the rating of such Securities, (h) the fees and expenses, if any, incurred with respect to any applicable filing with the National Association of Securities Dealers, and (i) the reasonable fees and disbursements of the Banks' Counsel incurred in connection with the offering and sale of such Securities, including reasonable fees for the issuance of any opinion to be delivered by the Banks' Counsel hereunder; *provided, however*, that each Bank will pay all costs, fees, and expenses incurred by such Bank in connection with the purchase of Securities by such Bank for its own account or with respect to the resale of Securities purchased by such Bank in its capacity as



underwriter hereunder, including all transfer taxes, advertising expenses, and fees and expenses of the Banks' Counsel incident to the resale of any such Securities.

**Section 10.** *Inspection; Place of Delivery; Payment.*

(a) *Inspection.* The Company agrees to have available for inspection, checking, and packaging by the Banks or their appointed agent, at the office of the Trustee in The City of New York, the Securities to be sold through or to the Banks as agents or underwriters hereunder, not later than 1:00 p.m. on the New York Business Day prior to the applicable Settlement Date. As used in this Agreement, "**New York Business Day**" means any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions are authorized or required by law or regulation to close in The City of New York.

(b) *Place of Delivery of Documents, Certificates and Opinions.* The documents, certificates and opinions required to be delivered to the Banks pursuant to Section 5 of this Agreement will be delivered at the offices of the Banks' Counsel, or at such other location as may be agreed upon by the Company and the Banks, not later than 12:00 p.m., New York time, in each case on the date or dates indicated in the applicable Section, or at such other time as the Banks and the Company may agree upon in writing.

(c) *Payment.* Delivery of Securities sold by or through the Banks as underwriters or agents will be made to the Banks on the date that the Company receives payment in full of the aggregate purchase price therefor, discounted as provided in the applicable Supplement with respect to Securities purchased by the Banks as underwriters or (unless otherwise set forth in the applicable Terms Agreement) discounted as provided in paragraph 2(c) hereof regarding payment of the commission set forth in the applicable Supplement with respect to Securities sold through the Banks as agents (each such date a "**Settlement Date**"), in the currency specified in such Securities and in the applicable Supplement, by wire transfer of immediately available funds to an account designated in writing by the Company or by such other means as may be agreed upon by the Company and the Banks and set forth in the applicable Terms Agreement.

**Section 11.** *Indemnification and Contribution.*

(a) The Company agrees to indemnify and hold each Bank and each person, if any, who controls such Bank within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, harmless from and against any and all losses, claims, damages, or liabilities to which any Bank comes subject under the Securities Act, the Exchange Act, or any other federal or state law or regulation, at common law or otherwise, insofar as such losses, claims, damages, or liabilities (and actions in respect thereof) arise out of, are based upon, or are caused by any untrue statement or allegedly untrue statement of a material

fact contained in the Registration Statement, any preliminary prospectus, the Prospectus, or the Time of Sale Prospectus or in any amendment or supplement thereto, or arise out of, are based upon or are caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and the Company agrees to reimburse each such indemnified party for any reasonable legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability, or action; *provided, however*, that the Company will not be liable to the extent that such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of, are based upon, or are caused by any such untrue statement or omission or allegedly untrue statement or omission included in or omitted from the Registration Statement, the Prospectus or the Time of Sale Prospectus in reliance upon and in conformity with information furnished to the Company by the Banks in writing expressly for use in the Registration Statement, any preliminary prospectus, the Prospectus or the Time of Sale Prospectus or any amendment or supplement thereto, *provided, further*, that any amount payable by the Company to any Bank pursuant to the provisions of this paragraph shall be offset by the amount of any losses, claims, damages, and liabilities sustained or incurred by the Company arising out of or in connection with a violation by the Banks of the provisions of paragraph (b) of Section 7 hereof (except to the extent that such violation occurs as a direct result of a violation by the Company of its obligations under paragraphs (b) or (c) of Section 8 hereof), as such amounts are finally determined by a court of competent jurisdiction, and *provided* that the foregoing indemnity with respect to any preliminary prospectus, the Prospectus or the Time of Sale Prospectus will not inure to the benefit of any Bank, or any underwriter or agent from whom the person asserting any losses, claims, damages or liabilities otherwise covered by this paragraph purchased Securities, or to the benefit of any person controlling such underwriter or agent, if a copy of the preliminary prospectus, the Prospectus or the Time of Sale Prospectus (as then amended and supplemented if the Company shall have furnished any amendments or supplements thereto) was not sent or given by or on behalf of such underwriter or agent to such person if required so to have been delivered, at or prior to the entry into the contract of sale of Securities with such person, and if the preliminary prospectus, the Prospectus or the Time of Sale Prospectus (as so amended or supplemented) would have cured the defect giving rise to such loss, claim, damage or liability.

(b) The Banks agree to indemnify and hold harmless the Company, its directors, its officers who sign the Registration Statement, and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, to the same extent as the foregoing indemnity from the Company to the Banks, but only with respect to such losses, claims, damages, and liabilities (and actions in respect thereof) that arise out of, are based upon, or are caused by any untrue statement or omission or

allegedly untrue statement or omission included in or omitted from the Registration Statement, the Prospectus or the Time of Sale Prospectus in reliance upon and in conformity with information furnished to the Company by the Banks in writing expressly for use in the Registration Statement, the Prospectus or the Time of Sale Prospectus, in each case as amended or supplemented.

(c) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to either paragraphs (a) or (b) of this Section 11, such person (the “**indemnified party**”) will promptly notify the person against whom such indemnity may be sought (the “**indemnifying party**”) in writing and the indemnifying party, upon request of the indemnified party, will retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and will pay the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party will have the right to retain its own counsel, but the fees and expenses of such counsel will be borne by the indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the indemnifying party will not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all such indemnified parties and that all such reasonable fees and expenses will be reimbursed as they are incurred. Such firm will be designated in writing by the Banks (in the case of parties indemnified pursuant to the second preceding paragraph) or by the Company (in the case of parties indemnified pursuant to the first preceding paragraph), as the case may be. The indemnifying party will not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent, or if there shall be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. No indemnifying party will, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding. Any provision of this paragraph (c) to the contrary notwithstanding, no failure by an indemnified party to notify the indemnifying party as required hereunder will relieve the indemnifying party from any liability it may have had to an indemnified party otherwise than under this Section 11.

(d) If the indemnification provided for in paragraph (a) or (b) of this Section 11 is unavailable to an indemnified party or is insufficient in respect of any losses, claims, damages, or liabilities referred to therein, then each indemnifying party under such paragraph, in lieu of indemnifying the indemnified party thereunder, will contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages, or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Banks, on the other, from the offering of Securities as to which the Banks were named agents or underwriters, or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and the Banks, on the other, in connection with the statements or omissions that resulted in such losses, claims, damages, or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Banks, on the other, in connection with the offering of Securities as to which the Banks were named agents or underwriters will be deemed to be in the same proportion as the total net proceeds received by the Company from the offering of such Securities bears to the total discounts and commissions received by the Banks from the Company in respect thereof. The relative fault of the Company, on the one hand, and of the Banks, on the other, will be determined by reference to, among other things, whether the untrue or allegedly untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied or to be supplied by the Company or by the Banks and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

(e) The Company and the Banks agree that it would not be just or equitable if contribution pursuant to paragraph (d) above were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to therein. The amount paid or payable by an indemnified party as a result of the losses, claims, damages, and liabilities referred to in paragraph (d) above will be deemed to include, subject to the limitations set forth above, any reasonable legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Any other provisions of this Section 11 to the contrary notwithstanding, (i) the Banks will not be required to contribute to the Company any amount in excess of the amount by which the aggregate public offering price of all Securities as to which the Banks were named agents or underwriters exceeds the amount of losses, claims, damages, and liabilities sustained or incurred by any Bank arising out of, based upon, or caused by any untrue statement or omission or allegedly untrue statement or omission included in or omitted from the Registration Statement, the Prospectus or the Time of Sale Prospectus (other than in reliance upon and in conformity with information

furnished to the Company by the Banks in writing expressly for use in the Registration Statement, the Prospectus or the Time of Sale Prospectus or any amendment or supplement thereto), (ii) any amount payable by the Company or any Bank, as the case may be (the “**Contributing Party**”), pursuant to the provisions of this paragraph or paragraph (d) of this Section 11 shall be offset by the amount of any losses, claims, damages, and liabilities sustained or incurred by the other party arising out of or in connection with a violation (x) by any Bank of the provisions of paragraph (c) of Section 7 hereof (if the Company is the Contributing Party) or (y) by the Company of its obligations under paragraphs (b) or (c) of Section 8 hereof (if such Bank is the Contributing Party), in each case as such amounts are finally determined by a court of competent jurisdiction, and (iii) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(f) The remedies provided for in this Section 11 are not exclusive and will not limit any rights or remedies that may otherwise be available to any indemnified party at law or in equity.

**Section 12. Termination.** This Agreement will automatically terminate upon the expiration of the offering to which the Prospectus relates and may be earlier terminated by the Company or the Banks upon the giving of written notice of such termination to the other party hereto in accordance with the provisions of Section 14 hereof, *provided, however*, that if the Company and the Banks shall have executed a Terms Agreement for the purchase of Securities by the Banks in their capacity as underwriters, this Agreement may not be terminated by the Banks prior to delivery of and payment for such Securities except upon the failure of any of the conditions precedent described in Section 5(a) hereof, and *provided, further*, that if the Company and the Banks shall have executed a Terms Agreement for the purchase of Securities through the Banks as agent, this Agreement may not be terminated by the Banks prior to delivery of and payment for such Securities unless and until the Banks shall have exercised best efforts consistent with standard industry practice to assist the Company in obtaining performance by each purchaser whose offer to purchase such Securities is reflected in such Terms Agreement.

**Section 13. Representations and Indemnities to Survive.** The respective agreements of the Company and each Bank set forth in Section 2(e), 4, 8(b), 9, 11, and 17 hereof, the representations and warranties of the Company set forth in Section 6 hereof, the representations and warranties of each Bank set forth in Section 7 hereof, and the statements and opinions of the Company and its officers set forth in the documents to be delivered by the Company to the Banks as provided in Section 5(c) hereof, will survive delivery of and payment for any Securities as contemplated hereunder and will survive termination of this Agreement in accordance with the provisions of Section 12 above.

**Section 14. Notices.** Except as otherwise specifically provided herein, all communications hereunder will be in writing and will be effective one business day after having been delivered by hand, mailed via Express Mail, deposited with Federal Express or any nationally recognized commercial courier service for “next day” delivery, or telecopied and confirmed in writing (by telecopied facsimile or otherwise) to the respective addresses or telecopier numbers set forth on the signature page hereto, or to such other address or telecopier number as either party may hereafter designate to the other in writing. The foregoing notwithstanding, copies of any Terms Agreement and of any certificate or opinion to be delivered by the Company to the Banks under Section 5(c) hereof will be deemed delivered if executed by all required signatories and telecopied to the Company and/or the Banks, as the case may be, with receipt confirmed in writing (by telecopied facsimile or otherwise). In the event that any Terms Agreement or any such certificate or opinion is delivered via telecopier as contemplated in the preceding sentence, the parties will use best efforts to ensure that “original” copies of such documents will be distributed promptly thereafter.

**Section 15. Successors; Non-Transferability.** This Agreement will inure to the benefit of and be binding upon the parties hereto, their respective successors, and the officers, directors, and controlling persons referred to in Section 11 hereof. No other person will have any right or obligation hereunder. Neither party to this Agreement may assign its rights hereunder without the written consent of the other party.

**Section 16. Counterparts.** This Agreement may be signed in any number of counterparts, each of which will be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

**Section 17. Applicable Law.** This Agreement will be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of law.

**Section 18. Headings.** The headings of the sections of this Agreement have been inserted for convenience of reference only and will not affect the construction of any of the terms or provisions hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Distribution Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_.

PEPSICO, INC.

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

Notice Information:  
PepsiCo, Inc.  
700 Anderson Hill Road  
Purchase, New York 10577  
Telephone No.: \_\_\_\_\_  
Facsimile No.: \_\_\_\_\_  
Attention: \_\_\_\_\_

[NAME OF BANK]

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

Notice Information:  
[NAME OF BANK]  
[ADDRESS]  
Telephone No.: \_\_\_\_\_  
Facsimile No.: \_\_\_\_\_  
Attention: \_\_\_\_\_

Participating Banks:



PEPSICO, INC.

Debt Securities, Warrants and Units

TERMS AGREEMENT

Under  
the Distribution Agreement, dated \_\_\_\_\_, 200\_\_\_\_\_,  
Among PepsiCo, Inc. and [Name of Bank(s)]  
(the “**Distribution Agreement**”)

\_\_\_\_\_, 20\_\_\_\_

PepsiCo, Inc.  
700 Anderson Hill Road  
Purchase, N.Y. 10577

Attention:

In accordance with the provisions of the above-referenced Distribution Agreement, the undersigned [the “**Bank**”][individually, the “**Bank**” and collectively, the “**Banks**”)], in [its][their] capacity as [Agent(s)] [Underwriter(s)] under the Distribution Agreement, hereby [deliver(s) on behalf of one or more third-party investors an offer][agree(s)] to purchase \$\_\_\_\_\_ in aggregate initial offering price of the Securities identified below on the terms hereinafter set forth.

All capitalized terms used in this Terms Agreement and not otherwise defined herein have the meanings ascribed to such terms by the Prospectus (as such term is defined in the Distribution Agreement); *provided, however*, that in the event of a conflict between the Prospectus and the Pricing Supplement or Prospectus Supplement applicable to the Securities to which this Terms Agreement relates, the definition set forth in the applicable Supplement will govern.

Designation or Title of Securities:

Issue Price [i.e., Price to Public]:

[Agent(s)’ Commission][Underwriter(s)’ Discount]:

Currency:

Interest Rate [or, if a Floating Rate Debt Security, Initial Interest Rate]:

Date of Issue:

Interest accrual date [if other than Date of Issue]:

Interest Payment Dates:

Principal Payment Dates [if other than at maturity]:

Scheduled Maturity Date:

Calculation Agent:

[Total amount of OID:]

[Optional redemption dates:]

[Option to elect repayment:]

[Sinking fund:]

[Acceleration provisions:]

[Exchange Rate Agent:]

[Other terms, if any:]

Settlement Date [and scheduled time and place]:

Possible additional terms for Floating Rate Debt Securities

[Base Rate:]

[Index Maturity:]

[Spread:]

[Spread Multiplier:]

[Spread Divisor:]

[Interest Period:]

[Interest Reset Dates:]

[Maximum Interest Rate:]

[Minimum Interest Rate:]

The provisions of Sections [2 (if the Bank(s) [is][are] acting as agent(s))][3 (if the Bank(s) [is][are] acting as underwriter(s)) and 4 through 14 of the Distribution Agreement are incorporated by reference herein with the same force and effect as if set forth in full herein.

[In the event that two or more banks are signing this Terms Agreement: The Company represents that the respective Distribution Agreements executed and delivered by the Company and each of the Banks prior to or together with the execution and delivery of this Terms Agreement are identical in all material respects.]

This Terms Agreement will be (i) governed by and construed in accordance with the internal laws of the State of New York without regard to principles of conflicts of law, (ii) inure to the benefit of and be binding upon the parties hereto, their respective successors, and the officers, directors, and controlling persons referred to in Section 11 of the Distribution Agreement, and no other person will have any right or obligation hereunder. No party to this Terms Agreement may assign its rights hereunder without the written consent of the other parties. This Terms Agreement may be signed in any number of counterparts, each of which will be an original, with the same effect as if the signatures thereto and hereto were upon one and the same instrument.

[NAME OF BANK(S)]

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

Accepted this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_.

PEPSICO, INC.

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

Time of Sale Prospectus:

- 1. Preliminary Prospectus issued [date]
- 2. Any free writing prospectuses filed by the Company under Rule 433(d) of the Securities Act
- 3. [free writing prospectus containing a description of terms that does not reflect final terms, if the Time of Sale Prospectus does not include a final term sheet]
- 4. [orally communicated pricing information to be included on Schedule II to the Underwriting Agreement if a final term sheet is not used]

## PEPSICO, INC.

## ADMINISTRATIVE PROCEDURES

Explained below are the administrative procedures applicable to the offering of the notes, debentures, and other evidences of unsecured indebtedness (the “**securities**”) of PepsiCo, Inc. (the “**Company**”), that have been registered by the Company with the Securities and Exchange Commission (the “**Commission**”) under the Company’s registration statement on Form S-3, File No. 333-\_\_\_\_\_ such securities hereinafter the “**Debt Securities**” and such registration statement hereinafter the “**Registration Statement**”). The Debt Securities will be offered pursuant to one or more agreements in substantially the form of Distribution Agreement filed as an exhibit to the Registration Statement (the “**Distribution Agreement**”).

The Debt Securities will be issued pursuant to the provisions of the Indenture, dated as of May 21, 2007 (as it may be supplemented or amended from time to time, the “**Indenture**”), between the Company and The Bank of New York Mellon, as trustee. The Bank of New York Mellon will be the Registrar, Authentication Agent, and Paying Agent for the Debt Securities and will perform the duties specified below. The Debt Securities may bear interest at a fixed rate (the “**Fixed Rate Debt Securities**”) or a floating rate (the “**Floating Rate Debt Securities**”). Each Debt Security will be issued either (a) in book-entry form, as a beneficial interest in a single global Debt Security (a “**Global Debt Security**”) to be delivered to The Bank of New York Mellon, as agent for The Depository Trust Company (“**DTC**”), and registered in the name of Cede & Co. or such other nominee of DTC as may be designated by DTC, or (b) in certificated form (a “**Certificated Debt Security**”) to be delivered to the holder thereof or to a person designated by such holder. Except in limited circumstances, Book-Entry Debt Securities will not be exchangeable for Certificated Debt Securities.

Book-Entry Debt Securities will be issued in accordance with the administrative procedures set forth in Part I hereof, as such procedures may from time to time be amended as a result of changes in DTC’s operating procedures. Certificated Debt Securities will be issued in accordance with the administrative procedures set forth in Part II hereof.

All capitalized terms used herein and not otherwise defined have the meanings ascribed to such terms by the Prospectus filed as part of the Registration Statement (the “**Prospectus**”). In the event of a conflict between the terms hereof and the terms of the Prospectus or any amendment or supplement thereto, the terms of the Prospectus, as so amended or supplemented, shall govern.

PART I  
ADMINISTRATIVE PROCEDURES RE: BOOK-ENTRY DEBT SECURITIES

In connection with the qualification of the Book-Entry Debt Securities for eligibility in the book-entry system maintained by DTC, The Bank of New York Mellon will perform certain custodial, document control, and administrative functions as described below and in accordance with its obligations as a participant in DTC's book-entry system, including DTC's Same-Day Funds Settlement System ("**SDFS**").

Issuance:

On any Settlement Date (as defined in the Distribution Agreement) for one or more Book-Entry Debt Securities of the same series, the Company will issue one or more Global Debt Securities, in fully registered form, without coupons, each representing up to \$500,000,000 in aggregate principal amount of such Debt Securities. Each Global Debt Security will be dated and issued as of the date of its authentication by The Bank of New York Mellon. The Interest accrual date for any Global Debt Security will be as follows: (i) with respect to an original Global Debt Security (or any portion thereof), its date of issue, and (ii) with respect to any Global Debt Security (or any portion thereof) issued upon exchange of a Global Debt Security or in lieu of a destroyed, lost, or stolen Global Debt Security, the most recent preceding Interest Payment Date under the predecessor Global Debt Security or Securities (or, if no interest has been paid or provided for as of the date of issuance of such succeeding Global Debt Security, the date of issuance of the predecessor Global Debt Security), regardless of the date of authentication of such subsequently issued Global Debt Security. No Global Debt Security will represent any Certificated Debt Security.

Identification Numbers:

Prior to each Settlement Date, the Company will obtain from the CUSIP Service Bureau of Standard & Poor's (the "**CUSIP Service Bureau**") new CUSIP numbers (including tranche numbers) for the Debt Securities to be issued on such Settlement Date and shall deliver such CUSIP numbers to The Bank of New York Mellon and DTC.

Registration:

Each Global Debt Security will be registered in the name of Cede & Co., as nominee for DTC, on the Security register maintained under the Indenture. The beneficial owner of a Book-Entry Debt Security (or one or more indirect participants in DTC, as designated by such owner) will designate one or more participants in DTC (with respect to such Debt Security, the "**Participants**") to act as agent or agents for such owner in connection with the book-entry system

maintained by DTC, and DTC will record in book-entry form, in accordance with instructions provided by such Participants, a credit balance with respect to such beneficial owner in such Debt Security in the account of such Participants. The ownership interest of such beneficial owner in such Debt Security will be recorded through the records of such Participants or through the separate records of such Participants and one or more indirect participants in DTC.

Transfers:

Transfers of a Book-Entry Debt Security will be accompanied by book entries made by DTC and, in turn, by Participants (and in certain cases, one or more indirect participants in DTC) acting on behalf of beneficial transferors and transferees of such Debt Security.

Exchanges:

The Bank of New York Mellon may, upon notice to the Company, deliver to DTC and the CUSIP Service Bureau at any time a written notice of consolidation (a copy of which shall be attached to the Global Debt Security resulting from such consolidation) specifying: (i) the CUSIP numbers of two or more outstanding Global Debt Securities that represent Book-Entry Debt Securities of the same series and for which interest has been paid to the same date, (ii) a date, occurring at least 30 days after such written notice is delivered and at least 30 days before the next Interest Payment Date for such Book-Entry Debt Securities, on which such Global Debt Securities shall be exchanged for a single replacement Global Debt Security, and (iii) a new CUSIP number to be assigned by the Company to such replacement Global Debt Security. Upon receipt of such a notice, DTC will send to its Participants (including The Bank of New York Mellon) a written reorganization notice to the effect that such exchange will occur on such date. Prior to the specified exchange date, The Bank of New York Mellon will deliver to the CUSIP Service Bureau a written notice setting forth such exchange date and the new CUSIP number and stating that, as of such exchange date, the CUSIP numbers of the Global Debt Securities to be exchanged will no longer be valid. On the specified exchange date, The Bank of New York Mellon will exchange such Global Debt Securities for a single Global Debt Security bearing the new CUSIP number and a new Interest accrual date, and the CUSIP numbers of the exchanged Global Debt Securities will, in accordance with CUSIP Service Bureau procedures, be canceled and not immediately reassigned. Notwithstanding the foregoing, if the Global Debt Securities to be exchanged exceed \$500,000,000 in aggregate principal amount, one Global Debt Security will be authenticated and issued to represent each \$500,000,000 principal amount of the exchanged Global Debt Security and an additional Global Debt Security will be authenticated and issued to represent any remaining principal amount of such Global Debt Securities (see “**Denominations**” below).

Maturities:

Each Book-Entry Debt Security will mature on a date not less than nine months after the Settlement Date for such Debt Security. The date on which all outstanding principal of and interest on any Debt Security will be due and payable is referred to herein as the “**Maturity Date**” for such Debt Security.

Notice of Redemption:

Notice of Redemption Dates: The Bank of New York Mellon will give notice to DTC prior to each Redemption Date as specified in the Debt Security.

Denominations:

Unless otherwise set forth in the form of the applicable Global Debt Security, Book-Entry Debt Securities will be issued in principal amounts of \$100,000,000 or any amount in excess thereof that is an integral multiple of \$1,000. Global Debt Securities will be denominated in principal amounts not in excess of \$500,000,000. If one or more Book-Entry Debt Securities having an aggregate principal amount in excess of \$500,000,000 would, but for the preceding sentence, be represented by a single Global Debt Security, then one Global Debt Security will be issued to represent each \$500,000,000 principal amount of such Book-Entry Debt Security or Securities and an additional Global Debt Security will be issued to represent any remaining principal amount of such Book-Entry Debt Security or Securities, subject to the minimum denomination requirement set forth above. In such a case, each of the Global Debt Securities representing such Book-Entry Debt Security or Securities shall be assigned the same CUSIP number. (References in this paragraph to U.S. dollars shall refer instead to any Specified Currency, as may be applicable.)

Interest:

*General.* Interest on each Book-Entry Debt Security will accrue from the Interest accrual date of the Global Debt Security representing such Book-Entry Debt Security. Each payment of interest on a Book-Entry Debt Security will include interest from and including the Interest accrual date or the most recent date for which interest has been paid or provided for, as the case may be, to but excluding the next succeeding Interest Payment Date or the Maturity Date, as the case may be. Interest payable on any Interest Payment Date will be paid to the Holder of Record as of the applicable Record Date (see below), provided that interest, if any, payable at the maturity or upon redemption of a Book-Entry Debt Security will be payable to the person to whom the principal of such Debt Security is payable.

Record Dates:



The Record Date with respect to any Interest Payment Date shall be the date fifteen calendar days immediately preceding such Interest Payment Date.

*Fixed Rate Book-Entry Debt Securities.* Interest Payment Dates for Fixed Rate Book-Entry Debt Securities will be as set forth in the applicable form of Fixed Rate Global Debt Security.

*Floating Rate Book-Entry Debt Securities.* Interest Payment Dates for Floating Rate Book-Entry Debt Securities will be as set forth in the applicable form of Floating Rate Global Debt Security. Unless otherwise set forth in the applicable form of Global Debt Security, interest on Floating Rate Book-Entry Debt Securities will be payable monthly, quarterly, semi-annually, or annually and (a) in the case of Floating Rate Book-Entry Debt Securities with a daily, weekly, or monthly Interest Reset Date, on the third Wednesday of each month or on the third Wednesday of each March, June, September, and December during the term of such Security, as specified pursuant to Settlement Procedure “A” below; (b) in the case of Floating Rate Debt Securities with a quarterly Interest Reset Date, on the third Wednesday of each March, June, September, and December during the term of such Security; (c) in the case of Floating Rate Debt Securities with a semi-annual Interest Reset Date, on the third Wednesday of the two months specified pursuant to Settlement Procedure “A” below; and (d) in the case of Floating Rate Debt Securities with an annual Interest Reset Date, on the third Wednesday of the month specified pursuant to Settlement Procedure “A” below; *provided, however*, that if an Interest Payment Date (other than the Maturity Date or a redemption date or a repayment date) for any Floating Rate Book-Entry Debt Security would otherwise be a day that is not a New York Business Day, such Interest Payment Date will be the next succeeding New York Business Day, except that in the case of a LIBOR-indexed Debt Security, if such New York Business Day is in the next succeeding calendar month, such Interest Payment Date will be the immediately preceding New York Business Day.

*Notice of Interest Payment and Record Dates.* On the first New York Business Day of each January, April, July, and October during the period that the Registration Statement is in effect, The Bank of New York Mellon will deliver to the Company and DTC a written list of Record Dates and Interest Payment Dates that will occur with respect to then outstanding Book-Entry Debt Securities during the six-month period beginning on such first New York Business Day.

Calculation of Interest:

*Fixed Rate Book-Entry Debt Securities.* Unless otherwise set forth in the applicable form of Fixed Rate Global Debt Security and in the applicable Pricing Supplement, the amount of interest payable on any Interest Payment Date for

Fixed Rate Book-Entry Debt Securities shall be computed on the basis of a 360-day year of twelve 30-day months and the amount of interest payable for any partial period shall be computed on the basis of the actual number of days elapsed in a 360-day year of twelve 30-day months.

*Floating Rate Book-Entry Debt Securities.* Unless otherwise set forth in the applicable form of Floating Rate Global Debt Security and in the applicable Pricing Supplement, interest on Floating Rate Book-Entry Debt Securities will be calculated on the basis of actual days elapsed and a year of 360 days.

Payments of Principal and Interest:

*Payments of Interest.* Promptly after each Record Date, The Bank of New York Mellon will deliver to the Company and DTC a written notice specifying by CUSIP number the amount of interest (to the extent then ascertainable) to be paid on each Global Debt Security (other than an amortizing Debt Security) on the following Interest Payment Date (other than an Interest Payment Date coinciding with maturity) and the total of such amounts. In the case of amortizing Debt Securities, The Bank of New York Mellon will provide separate written notice to DTC prior to each Interest Payment Date at the times and in the manner set forth in DTC’s operational arrangements. The Company will pay to The Bank of New York Mellon, as paying agent, the total amount of interest due on such Interest Payment Date (and, in the case of an amortizing Debt Security, principal and interest) (other than at maturity), and The Bank of New York Mellon will pay such amount to DTC at the times and in the manner set forth below under “**Manner of Payment.**” If any Interest Payment Date for a Fixed Rate Book-Entry Debt Security is not a New York Business Day, the payment due on such day shall be made on the next succeeding New York Business Day and no interest shall accrue on such payment for the period from and after such Interest Payment Date.

*Payments at Maturity or Upon Redemption.* On or about the first New York Business Day of each month during the period that the Registration Statement is in effect, The Bank of New York Mellon will deliver to the Company and DTC a written list of principal and interest (to the extent then ascertainable) to be paid on each then outstanding Global Debt Security (other than an amortizing Debt Security) maturing either at maturity or on a redemption date in the following month. The Company and DTC will confirm the amounts of such principal and interest payments with respect to each such Global Debt Security on or about the fifth New York Business day preceding the Maturity Date or redemption date of such Global Debt Security. In the case of amortizing Debt Securities, The Bank of New York Mellon will provide separate written notice to DTC prior to each Interest Payment Date at the times and in the manner set forth in DTC’s operational arrangements. The Company will pay to The Bank of New York Mellon, as the paying agent, the principal amount of such Global

Debt Security, together with interest due at such Maturity Date or redemption date. The Bank of New York Mellon will pay such amounts to DTC at the times and in the manner set forth below under “**Manner of Payment.**” If any Maturity Date or redemption date or repayment date of a Global Debt Security representing Book-Entry Debt Securities is not a New York Business Day, the payment due on such day shall be made on the next succeeding New York Business Day and no interest shall accrue on such payment for the period from and after such Maturity Date or redemption date or repayment date. Promptly after payment to DTC of the principal and interest due on the Maturity Date or redemption date of such Global Debt Security, The Bank of New York Mellon will cancel such Global Debt Security in accordance with the terms of the Indenture and deliver it to the Company with a certificate of cancellation.

*Manner of Payment.* The total amount of any principal and interest due on Global Debt Securities on any Interest Payment Date or at maturity or upon redemption shall be paid by the Company to The Bank of New York Mellon in funds available for immediate use by The Bank of New York Mellon as of 9:30 A.M. (New York City time) on such date. The Company will make such payment on such Global Securities by instructing The Bank of New York Mellon to withdraw funds from an account maintained by the Company at The Bank of New York Mellon. The Company will confirm such instructions in writing to The Bank of New York Mellon. Prior to 10 A.M. (New York City time) on each Maturity Date or redemption date or as soon as possible thereafter, The Bank of New York Mellon will pay by separate wire transfer (using Fedwire message entry instructions in a form previously specified by DTC) to an account at the Federal Reserve Bank of New York previously specified by DTC, in funds available for immediate use by DTC, each payment of interest or principal (together with interest thereon) due on Global Debt Securities on any Maturity Date or redemption date. On each Interest Payment Date, interest payments (and, in the case of amortizing Debt Securities, interest and principal payments) shall be made to DTC in same day funds in accordance with existing arrangements between The Bank of New York Mellon and DTC. Thereafter on each such date, DTC will pay, in accordance with its SDFS operating procedures then in effect, such amounts in funds available for immediate use to the respective Participants in whose names the Book-Entry Debt Securities represented by such Global Debt Securities are recorded in the book-entry system maintained by DTC. NEITHER THE COMPANY NOR THE BANK OF NEW YORK MELLON SHALL HAVE ANY RESPONSIBILITY OR LIABILITY FOR THE PAYMENT BY DTC TO SUCH PARTICIPANTS OF THE PRINCIPAL OF AND INTEREST ON THE BOOK-ENTRY DEBT SECURITIES.

*Withholding Taxes.* The amount of any taxes required under applicable law to be withheld from any interest payment on a Book-Entry Debt Security will be determined and withheld by the Participant, indirect participant in DTC, or

other person responsible for forwarding payments directly to the beneficial owner of such Debt Security.

Preparation of Pricing Supplement:

If any order to purchase one or more Book-Entry Debt Securities is accepted by or on behalf of the Company, the Company will prepare an applicable Pricing Supplement to the Prospectus, reflecting the terms of such Debt Security. The Company will arrange to file such Pricing Supplement with the Commission in accordance with the provisions of paragraph (b) or (c) of Rule 424 promulgated under the Securities Act and will deliver the number of copies of such Pricing Supplement to each Bank as such Bank shall have reasonably requested by the close of business on the preceding New York Business Day. The Banks will cause such Pricing Supplement to be delivered to each purchaser of such Book-Entry Debt Securities in accordance with the applicable provisions of the Securities Act. In each instance that a Pricing Supplement is prepared, the Banks will affix the Pricing Supplement to the Prospectus (as amended or supplemented) prior to use of either such Pricing Supplement or the Prospectus (as amended or supplemented). Outdated Pricing Supplements, and the copies of the Prospectus to which they are attached (other than those retained files), will be destroyed.

Settlement:

The receipt by the Company of immediately available funds in payment for a Book-Entry Debt Security and the authentication and issuance of the Global Debt Security representing such Debt Security shall constitute “settlement” with respect to such Debt Security. All orders accepted by the Company will be settled on the fifth New York Business Day next succeeding the date of acceptance pursuant to the timetable for settlement set forth below, unless the Company and the purchaser agree to settlement on another day (which day shall be no earlier than the next succeeding New York Business Day).

Settlement Procedures with regard to each Book-Entry Debt Security sold by the Company to or through any Bank shall be as follows:

A. The Banks will advise the Company by telephone that such Debt Security is a Book-Entry Debt Security and of the following settlement information:

- Order number.
- Principal amount.
- Maturity Date.
- CUSIP number.

In the case of a Fixed Rate Book-Entry Debt Security, the interest rate and whether such Debt Security is an amortizing Debt Security, or in the case of a Floating Rate Book-Entry Debt Security, the Initial Interest Rate (if known at such time), Base Rate, Index Maturity, Interest Reset Periods, Interest Periods, Spread or Spread Multiplier (if any), Maximum and Minimum Interest Rates (if any), alternate rate event spread (if any), and the applicability of the Business Day Convention.

Interest Payment Dates.

Record dates.

Redemption and/or repayment provisions, if any.

Trade date.

Settlement Date.

Issue Price.

Banks’ commission or discount, if any, determined as provided in the applicable Terms Agreement.

Whether the Debt Security is an OID Debt Security and, if it is, the total amount of OID, the yield to maturity, the initial accrual period OID, and the applicability of Modified Payment upon Acceleration.

Net proceeds to Company.

Each Bank’s Name and whether such Bank is acting as agent, underwriter, or principal for its own account.

Any other applicable terms.

B. The Company will advise The Bank of New York Mellon by telephone or electronic transmission (confirmed in writing at any time on the same date) of the information set forth in Settlement Procedure “A” above. The Company will provide to The Bank of New York Mellon a CUSIP number to be assigned to the Global Debt Security representing such Book-Entry Debt Security and will notify the Banks of such CUSIP number by telephone as soon as practicable.

C. The Bank of New York Mellon will enter a pending deposit message through DTC’s Participant Terminal System, providing the following settlement information to DTC and the Agent:

The information set forth in Settlement Procedure “A”.

The Initial Interest Payment Date for such Debt Security, the number of days by which such date succeeds the related DTC Record Date (which in the case of Floating Rate Debt Securities that reset daily or weekly shall be the date 5 calendar days immediately preceding the applicable Interest Payment Date and, in the case of all other Book-Entry Debt Securities, shall be the Record Date as defined in the Debt Security) and the amount of interest payable on such Initial Interest Payment Date.

The CUSIP number of the Global Debt Security representing such Book-Entry Debt Security.

Whether such Global Debt Security will represent any other Book-Entry Debt Security (to the extent known at such time).

Whether such Debt Security is an amortizing Debt Security (by appropriate notation in the comments field of DTC’s Participant Terminal System).

D. The Bank of New York Mellon will complete and authenticate the Global Debt Security representing such Debt Security.

E. DTC will credit such Debt Security to The Bank of New York Mellon’s participant account at DTC.

F. The Bank of New York Mellon will enter a Same Day Funds Settlement (“**SDFS**”) delivery order through DTC’s Participant Terminal System instructing DTC to (i) debit such Debt Security to The Bank of New York Mellon’s participant account and credit such Debt Security to each Bank’s participant account, and (ii) debit such Bank’s settlement account and credit The Bank of New York Mellon’s settlement account for an amount equal to the price of such Debt Security less such Bank’s commission or discount, if any. The entry of such a delivery order shall constitute a representation and warranty by The Bank of New York Mellon to DTC that (a) the Global Debt Security representing such Book-Entry Debt Security has been issued and authenticated and (b) The Bank of New York Mellon is holding such Global Debt Security as custodian for DTC.

G. Unless such Bank purchased such debt Security as principal for its own account, each Bank will enter an SDFS delivery order through DTC’s Participant Terminal System instructing DTC (i) to debit such Debt Security to such Bank’s participant account and credit such Debt Security to the participant accounts of the Participants with respect to such Debt Security, and (ii) to debit

the settlement accounts of such Participants and credit the settlement account of such Bank for an amount equal to the price of such Debt Security.

- H. Transfers of funds in accordance with SDFS delivery orders described in Settlement Procedures “F” and “G” will be settled in accordance with SDFS operating procedures in effect on the Settlement Date.
- I. The Bank of New York Mellon will credit to the account of the Company maintained at The Bank of New York Mellon, New York, New York, in funds available for immediate use, in the amount transferred to The Bank of New York Mellon in accordance with Settlement Procedure “F”.
- J. Unless such Bank purchased such Debt Security as underwriter or as principal for its own account, each Bank will confirm the purchase of such Debt Security to the purchaser either by transmitting to the Participants with respect to such Debt Security a confirmation order or orders through DTC’s institutional delivery system or by mailing a written confirmation to such purchaser.
- K. Monthly, The Bank of New York Mellon will send to the Company a statement setting forth the principal amount of Debt Securities outstanding under the Indenture as of such date and setting forth a brief description of any sales of which the Company has advised The Bank of New York Mellon but which have not yet been settled.

For sales by the Company of Book-Entry Securities to or through the Banks for settlement on the first New York Business Day after the sale date, Settlement Procedures “A” through “J” set forth above shall be completed as soon as possible but not later than the respective times (New York City time) set forth below:

Procedure A:	11:00 a.m. on Sale Date
Procedure B:	12:00 p.m. on Sale Date
Procedure C:	2:00 p.m. on Sale Date
Procedure D:	9:00 a.m. on Settlement Date
Procedure E:	10:00 a.m. on Settlement Date
Procedure F:	2:00 p.m. on Settlement Date
Procedure G:	2:00 p.m. on Settlement Date
Procedure H:	4:45 p.m. on Settlement Date
Procedure I:	5:00 p.m. on Settlement Date
Procedure J:	5:00 p.m. on Settlement Date

If a sale is to be settled more than one New York Business Day after the sale date, Settlement Procedures “A”, “B”, and “C” shall be completed as soon as practicable but not later than 11:00 A.M., 12:00 P.M., and 2:00 P.M.,

respectively, on the first New York Business Day after the sale date. If the initial interest rate for a Floating Rate Book-Entry Debt Security has not been determined at the time that Settlement Procedure “A” is completed, Settlement Procedures “B” and “C” shall be completed as soon as such rate has been determined but no later than 12:00 P.M. and 2:00 P.M., respectively, on the second New York Business Day before the Settlement Date. Settlement Procedure “H” is subject to extension in accordance with any extension of Fedwire closing deadlines and in the other events specified in the SDFS operating procedures in effect on the Settlement Date. If settlement of a Book-Entry Debt Security is rescheduled or canceled, The Bank of New York Mellon, after receiving notice from the company or the Banks, will deliver to DTC, through DTC’s Participant Terminal System, a cancellation message to such effect by no later than 2:00 P.M. on the New York Business Day immediately preceding the scheduled Settlement Date.

Failure to Settle:

If The Bank of New York Mellon fails to enter an SDFS delivery order with respect to a Book-Entry Debt Security pursuant to Settlement Procedure “F”, The Bank of New York Mellon may deliver to DTC, through DTC’s Participant Terminal System, as soon as practicable, a withdrawal message instructing DTC to debit such Debt Security to The Bank of New York Mellon’s participant account, provided that The Bank of New York Mellon’s participant account contains a principal amount of the Global Debt Security representing such Debt Security that is at least equal to the principal amount to be debited. If a withdrawal message is processed with respect to all the Book-Entry Debt Securities represented by a Global Debt Security, The Bank of New York Mellon will mark such Global Debt Security “**canceled**,” make appropriate entries in The Bank of New York Mellon’s records and send such canceled Global Debt Security to the Company. The CUSIP number assigned to such Global Debt Security shall, in accordance with CUSIP Service Bureau procedures, be canceled and not immediately reassigned. If a withdrawal message is processed with respect to one or more, but not all, of the Book-Entry Debt Securities represented by a Global Debt Security, The Bank of New York Mellon will exchange such Global Debt Security for two Global Debt Securities, one of which shall represent such Book-Entry Debt Security or Securities and shall be canceled immediately after issuance, and the other of which shall represent the remaining Book-Entry Debt Securities previously represented by the surrendered Global Debt Security and shall bear the CUSIP number of the surrendered Global Debt Security.

If the purchase price for any Book-Entry Debt Security is not timely paid to the Participants with respect to such Debt Security by the beneficial purchaser thereof (or a person, including an indirect participant in DTC, acting on behalf of such purchaser), such Participants and, in turn, each Bank may enter SDFS deliver orders through DTC’s Participant Terminal System reversing the orders



entered pursuant to Settlement Procedures “F” and “G”, respectively. Thereafter, The Bank of New York Mellon will deliver the withdrawal message and take the related actions described in the preceding paragraph. Notwithstanding the foregoing, upon any failure to settle with respect to a Book-Entry Debt Security, DTC may take any actions in accordance with its SDFS operating procedures then in effect. In the event of a failure to settle with respect to one or more, but not all, of the Book-Entry Debt Securities to have been represented by a Global Debt Security, The Bank of New York Mellon will provide, in accordance with Settlement Procedures “D” and “F”, for the authentication and issuance of a Global Debt Security representing the Book-Entry Debt Securities to be represented by such Global Debt Security and will make appropriate entries in its records.

PART II  
ADMINISTRATIVE PROCEDURES RE:  
CERTIFICATED DEBT SECURITIES

The Bank of New York Mellon will serve as registrar in connection with the Debt Securities.

Issuance:

Each Certificated Debt Security will be dated and issued as of the date of its authentication by The Bank of New York Mellon. The Interest accrual date for any Certificated Debt Security will be as follows: (i) with respect to an original Certificated Debt Security (or any portion thereof), its original issuance date and (ii) with respect to any Certificated Debt Security (or portion thereof) issued subsequently upon transfer or exchange of a Certificated Debt Security or in lieu of a destroyed, lost, or stolen Certificated Debt Security, the original issuance date of the predecessor Certificated Debt Security, regardless of the date of authentication of such subsequently issued Certificated Debt Security.

Registration:

Certificated Debt Securities will be issued only in fully registered form without coupons.

Transfers and Exchanges:

A Certificated Debt Security may be presented for transfer or exchange at the corporate trust office of The Bank of New York Mellon or as set forth in the form of Certificated Debt Security. Certificated Debt Securities will be exchangeable for other Certificated Debt Securities having identical terms but

different denominations without service charge. Certificated Debt Securities will not be exchangeable for Book-Entry Debt Securities.

Maturities:

Each Certificated Debt Security will mature on a date not less than nine months from the Settlement Date for such Debt Security.

Currency:

The currency denomination with respect to any Certificated Debt Security and the payment of interest and the repayment of principal with respect thereto shall be as set forth therein and in the applicable Pricing Supplement.

Except as otherwise specified in the form of Certificated Debt Security, the minimum denomination of any Certificated Debt Security will be U.S. \$100,000,000 or any amount in excess thereof that is an integral multiple of U.S. \$1,000. (References in this paragraph to U.S. dollars shall refer instead to any Specified Currency, as may be applicable.)

Interest:

*General:* Interest on each Certificated Debt Security shall accrue from the Interest accrual date. Each payment of interest on a Certificated Debt Security will include interest from and including the Interest accrual date or the most recent date for which interest has been paid or provided for, as the case may be, to but excluding the next succeeding Interest Payment Date or the Maturity Date, as the case may be. Interest payable on any Interest Payment Date will be paid to the Holder of Record as of the applicable Record Date, provided that interest, if any, payable at the maturity or upon redemption of such Debt Security will be payable to the person to whom the principal of such Debt Security is payable.

*Fixed Rate Certificate Debt Securities.* Interest Payment Dates for Fixed Rate Debt Securities will be as set forth in the applicable form of Certificated Debt Security.

*Floating Rate Certificated Debt Securities:*

Interest Payment Dates for Floating Rate Certificated Debt Securities will be as set forth in the form of Certificated Debt Security and in the applicable Pricing Supplement. Unless otherwise set forth in such form of Certificated Debt Security and in the applicable Pricing Supplement, interest on Floating Rate Certificated Debt Securities will be payable monthly, quarterly, semi-annually, or annually and (a) in the case of Floating Rate Certificated Debt Securities with a daily, weekly or monthly Interest Reset Date, on the third Wednesday of each month or on the third Wednesday of each March, June, September, and December

during the term of such Debt Security, as specified pursuant to Settlement Procedure “A” below; (b) in the case of Floating Rate Certificated Debt Securities with a quarterly interest Payment Reset Date, on the third Wednesday of each March, June, September, and December during the term of such Debt Security; (c) in the case of Debt Securities with a semi-annual Interest Reset Date, on the third Wednesday of the two months specified pursuant to Settlement Procedure “A” below; and (d) in the case of Floating Rate Certificated Debt Securities with an annual Interest Reset Date, on the third Wednesday of the month specified pursuant to Settlement Procedure “A” below; *provided, however*, that if an Interest Payment Date (other than the Maturity Date or a redemption date or a repayment date) for Floating Rate Certificated Debt Securities would otherwise be a day that is not a New York Business Day, such Interest Payment Date will be the next succeeding New York Business Day, except that in the case of a LIBOR-indexed Debt Security if such succeeding New York Business Day is in the next succeeding calendar month, such Interest Payment Date will be the immediately preceding New York Business Day.

Calculation of Interest:

*Fixed Rate Certificated Debt Securities.* Unless otherwise set forth in the applicable form of Certificated Debt Security and in the applicable Pricing Supplement, the amount of interest payable on any Interest Payment Date for Fixed Rate Book-Entry Debt Securities shall be computed on the basis of a 360-day year of twelve 30-day months and the amount of interest payable for any partial period shall be computed on the basis of the actual number of days elapsed in a 360-day year of twelve 30-day months.

*Floating Rate Certificated Debt Securities.* Interest rates on Floating Rate Certificated Debt Securities will be determined as set forth in the form of such Debt Securities and in the applicable Pricing Supplement. Unless otherwise set forth in the applicable form of Debt Security and in the applicable Pricing Supplement, interest on Floating Rate Certificated Debt Securities will be calculated on the basis of actual days elapsed and a year of 360 days.

Payments of Principal and Interest:

The Bank of New York Mellon will pay the principal amount of each Certificated Debt Security at maturity or upon redemption upon presentation and surrender of such Debt Security to The Bank of New York Mellon. Such payment, together with payment of interest due at maturity or upon redemption of such Debt Security, will be made in funds available for immediate use by The Bank of New York Mellon and in turn by the holder of such Debt Security. Certificated Debt Securities presented to The Bank of New York Mellon at maturity or upon redemption for payment will be canceled by The Bank of New York Mellon and delivered to the Company with a certificate of cancellation. All

interest payments on a Certificated U.S. dollar Debt Security (other than interest due at maturity or upon redemption) will be made by U.S. dollar check drawn on The Bank of New York Mellon (or another person appointed by The Bank of New York Mellon) and mailed by The Bank of New York Mellon to the person entitled thereto as provided in such Debt Security and the Indenture; *provided, however*, that the holder of \$10,000,000 or more of Certificated Debt Securities having the same Interest Payment Date will be entitled to receive payment by wire transfer of immediately available funds; *provided*, that such holder shall have given The Bank of New York Mellon notice of the account to which such transfer shall be made at least 15 calendar days prior to the applicable payment date. Following each Record Date during the period that the Registration Statement is in effect, The Bank of New York Mellon will furnish the Company with a list of interest payments (to the extent then ascertainable) to be made on the following Interest Payment Date for each then outstanding Certificated Debt Security and in total for all such Certificated Debt Securities. Interest at maturity or upon redemption will be payable to the person to whom the payment of principal is payable. The Bank of New York Mellon will provide monthly to the Company lists of principal and interest, to the extent ascertainable, to be paid on Certificated Debt Securities maturing or to be redeemed in the next month. The Bank of New York Mellon will be responsible for withholding taxes on interest paid on Certificated Debt Securities as required by applicable law.

If any Interest Payment Date or the Maturity Date or redemption date of a Fixed-Rate Certificated Debt Security is not a New York Business Day, the payment due on such day shall be made on the next succeeding New York Business Day and no interest shall accrue on such payment for the period from and after such Interest Payment Date, Maturity Date or redemption date, as the case may be. If the Maturity Date or any redemption date or repayment date for any Certificated Floating Rate Debt Security would fall on a day that is not a New York Business Day, the payment of principal and interest due on such day shall be made on the next succeeding New York Business Day and no interest shall accrue on such payment for the period from and after the Maturity Date or such redemption date or repayment date, as the case may be.

Preparation of Pricing Supplement:

If any order to purchase a Certificated Debt Security is accepted by or on behalf of the Company, the Company will prepare an applicable Pricing Supplement to the Prospectus (as amended or supplemented), reflecting the terms of such Debt Security. The Company will file such Pricing Supplement with the Commission in accordance with the provisions of paragraph (b) or (c) of Rule 424 promulgated under the Securities Act and will deliver the number of copies of such Pricing Supplement to each Bank as such Bank shall have requested by the close of business on the preceding New York Business Day. The Banks will cause such Pricing Supplement to be delivered to the purchaser of the Certificated

Debt Security in accordance with the applicable provisions of the Securities Act. In each instance that a Pricing Supplement is prepared, the Banks will affix the Pricing Supplement to the Prospectus (as amended or supplemented) prior to use of either such Pricing Supplement or the Prospectus (as amended or supplemented). Outdated Pricing Supplements, and the copies of the Prospectus to which they are attached (other than those retained for files), will be destroyed.

Settlement:

The receipt by the Company of immediately available funds in exchange for an authenticated Certificated Debt Security delivered to the Banks and the Banks' delivery of such Debt Security against receipt of immediately available funds shall constitute “**settlement**” with respect thereto. All orders accepted by the Company will be settled on or before the third New York Business Day next succeeding the date of acceptance pursuant to the timetable for settlement set forth below, unless the Company and the purchaser agree to settlement on another date.

Settlement Procedures:

Settlement Procedures with regard to each Certificated Debt Security sold by the Company to or through the Banks shall be as follows:

A. The Banks will advise the Company by telephone that such Debt Security is a Certificated Debt Security and of the following settlement information:

Order number.

Principal amount.

Maturity Date.

Name in which Certificated Debt Security is to be registered (the “**Registered Owner**”).

Address of the Registered Owner and address for payment of principal and interest.

Taxpayer identification number of the Registered Owner (if available).

In the case of a Fixed Rate Certificated Debt Security, the interest rate and whether such Debt Security is an amortizing Debt Security, or in the case of a Floating Rate Certificated Debt Security, the Initial Interest Rate (if known at such time), Base Rate, Index Maturity, Interest Reset Periods, Interest Periods, Spread or Spread Multiplier (if any), Maximum and Minimum Interest Rates (if

any), alternate rate event spread (if any), and the applicability of the Business Day Convention.

Interest Payment Dates.

Record dates.

Redemption and/or repayment provisions, if any.

Trade date.

Settlement Date.

Issue Price.

Banks' commission or discount, if any, determined as provided in the applicable Terms Agreement.

Whether the Certificated Debt Security is an OID Debt Security and, if it is, the total amount of OID, the yield to maturity, the initial accrual period OID, and the applicability of Modified Payment upon Acceleration.

Net proceeds to Company.

Each Bank's name and whether such Bank is acting as agent, underwriter, or as principal for its own account.

Any other applicable terms.

B. The Company will advise The Bank of New York Mellon by telephone or electronic transmission (confirmed in writing at any time on the same date) of the information set forth in Settlement Procedure "A" above.

C. The Company will have delivered to The Bank of New York Mellon a pre-printed 4-ply packet for such Certificated Debt Security, which packet will contain the following documents in forms that have been approved by the Company, the Banks, and the Trustee: (a) Certificate with customer confirmation, (b) Stub One (for The Bank of New York Mellon), (c) Stub Two (for the Banks), and (d) Stub Three (for the Company).

The information set forth in Settlement Procedure "A".

D. The Bank of New York Mellon will complete and authenticate such Certificated Debt Security and deliver it (with the confirmation) and Stubs One and Two to the Banks, and the Banks will acknowledge receipt of such Debt Security by stamping or otherwise marking Stub One and returning it to The Bank

of New York Mellon. Such delivery will be made only against such acknowledgment of receipt and evidence that instructions have been given by the Banks for payment to the account of the Company at The Bank of New York Mellon, New York, New York, in funds available for immediate use, of an amount equal to the price of such Debt Security less the Banks' commission or discount, if any. In the event that the instructions given by the Banks for payment to the account of the Company are revoked, the Company will as promptly as possible wire transfer to the account of each Bank an amount of immediately available funds equal to the amount of such payment made.

E. Unless such Bank purchased such Debt Security as principal for its own account, each Bank will deliver such Debt Security (with the confirmation) to the customer against payment in immediately available funds. The Banks will obtain the acknowledgment of receipt of such Debt Security by retaining Stub Two.

F. The Bank of New York Mellon will send Stub Three to the Company by first-class mail. Periodically during the period that the Registration Statement is in effect, The Bank of New York Mellon will also send to the Company a statement setting forth the principal amount of the Certificated Debt Securities then outstanding under the Indenture and setting forth a brief description of any sales of which the Company has advised The Bank of New York Mellon but which have not yet been settled.

Timetable: For sales by the Company of Certificated Debt Securities to or through the Banks, Settlement Procedures "A" through "F" set forth above shall be completed as soon as possible but not later than the respective times (New York City Time) set forth below:

Procedure A:	2:00 p.m. on day before Settlement Date
Procedure B:	2:15 p.m. on day before Settlement Date
Procedure C:	2:15 p.m. on day before Settlement Date
Procedure D:	2:15 p.m. on Settlement Date
Procedure E:	3:00 p.m. on Settlement Date
Procedure F:	5:00 p.m. on Settlement Date

Failure to Settle:

If a purchaser (other than a Bank acting as underwriter or as principal for its own account) fails to accept delivery of and make payment for any Certificated Debt Security, the Banks will notify the Company and The Bank of New York Mellon by telephone and will return such Debt Security to The Bank of New York Mellon. Upon receipt of such notice, the Company will immediately wire transfer to the account of such Bank an amount equal to the amount previously credited thereto in respect of such Debt Security. Such wire transfer will be made on the

Settlement Date, if possible, and in any event not later than the New York Business Day following such Settlement Date. If the failure shall have occurred for any reason other than a default by any Bank of its obligations hereunder or under the Distribution Agreement or the applicable Terms Agreement, then the Company will reimburse such Bank on an equitable basis, for its loss of the use of the funds during the period when they were credited to the account of the Company. Immediately upon receipt of the Certificated Debt Security in respect of which such failure occurred, The Bank of New York Mellon will mark such Debt Security "**canceled**", make appropriate entries in its records, and send such Debt Security to the Company.



## FORM OF OPINION OF COMPANY'S NEW YORK COUNSEL

1. The Indenture qualified under the Trust Indenture Act of 1939, as amended, upon the filing of the Registration Statement with the Commission on October \_\_\_\_, 2008 pursuant to Rule 462(e) under the Securities Act, and assuming due authorization, execution and delivery thereof by the Company, the Indenture is a valid and binding agreement of the Company, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, concepts of reasonableness and equitable principles of general applicability, *provided* that counsel need not express any opinion as to (w) the enforceability of any waiver of rights under any usury or stay law, (x) the applicability (and if applicable, the effect) of Section 548 of the United States Bankruptcy Code or any comparable provision of state law to the questions addressed above or on the conclusions expressed with respect thereto, (y) the validity, legally binding effect or enforceability of any provision of the Indenture or any related provision in the Underwritten Securities that requires or relates to adjustments to the conversion price at a rate or in an amount that a court would determine in the circumstances under applicable law to be commercially unreasonable or a penalty or forfeiture or (z) the validity, legally binding effect or enforceability of any provision that permits holders to collect any portion of stated principal amount upon acceleration of the Underwritten Securities to the extent determined to constitute unearned interest.

2. Assuming the due authorization, execution and delivery of each of the form of Warrant Agreement included as Exhibit 4.7 to the Registration Statement (the "**Debt Warrant Agreement**") and the form of Unit Agreement included as Exhibit 4.8 to the Registration Statement (the "**Unit Agreement**") by the Company, each of the Debt Warrant Agreement and the Unit Agreement will be valid and binding obligations of the Company, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and equitable principles of general applicability, *provided* that counsel need not express any opinion as to (w) the enforceability of any waiver of rights under any usury or stay law, (x) the applicability (and if applicable, the effect) of Section 548 of the United States Bankruptcy Code or any comparable provision of state law to the questions addressed above or on the conclusions expressed with respect thereto, (y) the validity, legally binding effect or enforceability of any provision of the Indenture or any related provision in the Underwritten Securities that requires or relates to adjustments to the conversion price at a rate or in an amount that a court would determine in the circumstances under applicable law to be commercially unreasonable or a penalty or forfeiture or (z) the validity, legally binding effect or enforceability of any provision that permits holders to collect any portion of stated

principal amount upon acceleration of the Underwritten Securities to the extent determined to constitute unearned interest.

3. Assuming the due authorization, execution and delivery of Debt Securities, Debt Warrants and Units by the Company, the Debt Securities, Debt Warrants and Units will be valid and binding obligations of the Company, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and equitable principles of general applicability, *provided* that counsel need not express any opinion as to (w) the enforceability of any waiver of rights under any usury or stay law, (x) the applicability (and if applicable, the effect) of Section 548 of the United States Bankruptcy Code or any comparable provision of state law to the questions addressed above or on the conclusions expressed with respect thereto, (y) the validity, legally binding effect or enforceability of any provision of the Indenture or any related provision in the Underwritten Securities that requires or relates to adjustments to the conversion price at a rate or in an amount that a court would determine in the circumstances under applicable law to be commercially unreasonable or a penalty or forfeiture or (z) the validity, legally binding effect or enforceability of any provision that permits holders to collect any portion of stated principal amount upon acceleration of the Underwritten Securities to the extent determined to constitute unearned interest.

4. No consent, approval, authorization, or order of, or qualification with, any state governmental body or agency under the laws of the State of New York or any federal law of the United States of America is required to be obtained or made by the Company for the execution and delivery by the Company of the Distribution Agreement, the Indenture, the Debt Warrant Agreement, the Unit Agreement, the Debt Securities, the Debt Warrants, or the Units (collectively, the “**Documents**”) is required for the execution, delivery and performance by the Company of its obligations under the Documents, except such as may be required under federal or state securities or Blue Sky laws as to which we express no opinion in this paragraph.

5. Any required filing of the Prospectus pursuant to Rule 424(b) under the Act has been made in the manner and within the time period required by Rule 424(b); any required filing of the Issuer Free Writing Prospectus pursuant to Rule 433 under the Act has been made in the manner and within the time period required by Rule 433(d); and, to our knowledge, no stop order suspending the effectiveness of the Registration Statement has been issued under the Securities Act and no proceedings for that purpose have been instituted or are pending or threatened by the Commission.

6. We have considered the statements relating to legal matters or documents included in the Prospectus under the captions [“**Description of Debt Securities**”,] [“**Description of Warrants**”] [and] [“**Description of Units**”]. In

my opinion, such statements fairly summarize in all material respects such matters or documents.

In rendering the opinions in paragraphs ([1]) through ([4]) above, we have assumed that each party to the Documents has been duly incorporated and is validly existing and in good standing under the laws of the jurisdiction of its organization. In addition, we have assumed that the execution, delivery and performance by each party thereto of each Document to which it is a party, (i) are within its corporate powers, (ii) do not contravene, or constitute a default under, the certificate of incorporation or by-laws or other constitutive documents of such party, (iii) other than as expressly covered in paragraph ([4]) above in respect of the Company, require no action by or in respect of, or filing with, any governmental body, agency or official and (iv) do not contravene, or constitute a default under, any provision of applicable law or regulation or any judgment, injunction, order or decree or any agreement or other instrument binding upon such party, and that each Document is a valid, binding and enforceable agreement of each party thereto, other than the Company.

Counsel need not express an opinion as to any law, rule or regulation that is applicable to the Company, the Documents or such transactions solely because such law, rule or regulation is part of a regulatory regime applicable to any party to any of the Documents or any of its affiliates due to the specific assets or business of such party or such affiliate. Insofar as the foregoing opinion involves matters governed by the laws of the State of North Carolina, counsel may rely, without independent investigation, on the opinion of North Carolina counsel to the Company delivered to the Underwriters pursuant to the Terms Agreement.

**FORM OF DISCLOSURE LETTER OF COMPANY'S NEW YORK COUNSEL**

The primary purpose of our professional engagement was not to establish or confirm factual matters or financial, accounting or quantitative information. Furthermore, many determinations involved in the preparation of the Registration Statement, the Time of Sale Prospectus and the Prospectus are of a wholly or partially non-legal character or relate to legal matters outside the scope of our opinion separately delivered to you today in respect of certain matters under the laws of the State of New York and the federal laws of the United States of America. As a result, we are not passing upon, and do not assume any responsibility for, the accuracy, completeness or fairness of the statements contained in the Registration Statement, the Time of Sale Prospectus and the Prospectus, and we have not ourselves checked the accuracy, completeness or fairness of, or otherwise verified, the information furnished in such documents (except to the extent expressly set forth in our opinion letter separately delivered to you today as to statements included in the Prospectus under the captions [**"Description of Debt Securities,"**] [**"Description of Notes,"**] [**"Description of Warrants,"**] [and] [**"Description of Units"**] and [**"Material United States Federal Tax Considerations"**])). However, in the course of our acting as counsel to the Company in connection with the preparation of the Registration Statement, the Time of Sale Prospectus and the Prospectus, we have generally reviewed and discussed with your representatives and your counsel and with certain officers and employees of, and independent public accountants for, the Company the information furnished, whether or not subject to our check and verification. We have also reviewed and relied upon certain corporate records and documents, letters from counsel and accountants and oral and written statements of officers and other representatives of the Company and others as to the existence and consequence of certain factual and other matters.

On the basis of the information gained in the course of the performance of the services rendered above, but without independent check or verification except as stated above:

(i) the Registration Statement and the Prospectus appear on their face to be appropriately responsive in all material respects to the requirements of the Securities Act and the applicable rules and regulations of the Commission thereunder; and

(ii) nothing has come to our attention that causes us to believe that, insofar as relevant to the offering of the Underwritten Securities,;

(a) on the date of the Terms Agreement, the Registration Statement contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading,

(b) at the Time of Sale, the Time of Sale Prospectus contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, or

(c) the Prospectus as of the date of the Terms Agreement or as of the Closing Date contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

In providing this letter to you and the other several Underwriters, we have not been called to pass upon, and we express no view regarding, the financial statements or financial schedules or other financial or accounting data included in the Registration Statement, the Time of Sale Prospectus, the Prospectus, or the Statement of Eligibility of the Trustee on Form T-1. In addition, we express no view as to the conveyance of the Time of Sale Prospectus or the information contained therein to investors.

**FORM OF OPINION OF COMPANY'S INTERNAL COUNSEL**

1. The execution and delivery of and performance by the Company of its obligations under the Distribution Agreement, the Indenture, the Debt Warrant Agreement, the Unit Agreement, the Debt Securities, the Debt Warrants and the Units will not contravene any provision of the Restated Charter or By-Laws of the Company, or of any agreement or other instrument binding upon the Company or any of its subsidiaries that is material to the Company and its subsidiaries taken as a whole, or, to counsel's knowledge, of any judgment, order, or decree of any governmental body, agency, or court having jurisdiction over the Company or any of its subsidiaries, in each of the foregoing cases except as would be reasonably be expected to have a material adverse effect on the business, financial condition or results of operations of the Company and its subsidiaries, taken as a whole.

2. To counsel's knowledge, there is no legal or governmental proceeding pending or threatened to which the Company or any of its significant subsidiaries is a party, or by which any of the properties of the Company or its significant subsidiaries is bound, which would reasonably be expected to have a material adverse effect on the business, financial condition or results of operations of the Company and its subsidiaries, taken as a whole; and to counsel's knowledge, there is no agreement or other document that is required to be described in the Registration Statement, the Prospectus, any applicable Pricing Supplement or Prospectus Supplement, or any Time of Sale Prospectus, or that is required to be filed as an exhibit to the Registration Statement, that is not so described or filed.

In rendering such opinion, counsel may rely, as to matters of fact (but not as to legal conclusions), to the extent counsel deem proper, on certificates of responsible officers of the Company and public officials. Such opinion will be limited to the laws of the State of New York and the federal laws of the United States of America. Insofar as such opinion involves matters governed by the laws of North Carolina, I may rely, without independent investigation, on the opinion of North Carolina counsel for the Company.

## FORM OF OPINION OF COMPANY'S NORTH CAROLINA COUNSEL

1. The Company is a corporation in existence under the laws of the State of North Carolina, with corporate power to conduct its business as described in the Time of Sale Prospectus and the Prospectus.
2. The Company has authorized by all necessary corporate action the execution and delivery of the Distribution Agreement and the Indenture.
3. The Company has authorized by all necessary corporate action the execution and delivery of each of the form of Warrant Agreement included as Exhibit 4.7 to the Registration Statement (the “**Debt Warrant Agreement**”) and the form of Unit Agreement included as Exhibit 4.8 to the Registration Statement (the “**Unit Agreement**”).
4. The Company has authorized by all necessary corporate action the execution and delivery of Debt Securities, Debt Warrants and Units.
5. The execution and delivery of and performance by the Company of its obligations under the Distribution Agreement, the Indenture, the Debt Warrant Agreement, the Unit Agreement, the Debt Securities, the Debt Warrants, or the Units (collectively, the “Documents”) do not violate any provision of the articles of incorporation or by-laws of the Company.
6. No consent, approval, authorization, or order of or qualification with any North Carolina governmental body or agency is required to be obtained or made by the Company for the execution, delivery and performance by the Company of the Distribution Agreement or the issuance of the Underwritten Securities, except as may be required by the Blue Sky or other securities laws if the Underwritten Securities are offered or sold in North Carolina and except for consents, approvals, authorizations, actions, filings and registrations which, if not obtained or made, are not reasonably likely to have a material adverse effect on the business, financial condition or results of operations of the Company and its subsidiaries, taken as a whole.

FORM OF BANKS' COUNSEL OPINION

1. Each of the Debt Warrant Agreement and the Unit Agreement, when duly authorized, executed and delivered by the Company (assuming the due authorization, valid execution and delivery thereof by the other parties thereto) will be a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms except as such enforceability may be limited by the laws of bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or similar laws relating to creditors' rights generally, by any other federal or state laws, by rights of acceleration, if applicable, by general principles of equity.
2. The Indenture has been duly qualified under the Trust Indenture Act of 1939, as amended, and has been duly authorized, executed and delivered by the Company and (assuming due authorization, valid execution and delivery thereof by the Trustee) is a valid and binding agreement of the Company, enforceable in accordance with its terms, except as such enforceability may be limited by the laws of bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or similar laws relating to creditors' rights generally, by any other federal or state laws, by rights of acceleration, if applicable, by general principles of equity.
3. The Securities have been duly authorized and when issued and delivered by the Company and authenticated by the Trustee or the Warrant Agent or the Unit Agent, as the case may be, in accordance with the provisions of the Indenture or the Debt Warrant Agreement or the Unit Agreement, as the case may, and duly paid for by the purchasers thereof, will be entitled to the benefits of the Indenture or the Debt Warrant Agreement or the Unit Agreement, as the case may be, and will be valid and binding obligations of the Company, enforceable in accordance with their respective terms, except as such enforceability may be limited by the laws of bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or similar laws relating to creditors' rights generally, by any other federal or state laws, by rights of acceleration, if applicable, by general principles of equity.
4. We have considered the statements relating to legal matters or documents included in the Prospectus under the captions [**"Description of Debt Securities"**], [**"Description of Warrants"**], [and] [**"Description of Units"**]. In our opinion, such statements fairly summarize in all material respects such matters or documents.
5. The Registration Statement is effective under the Securities Act; any required filing of the Prospectus pursuant to Rule 424(b) has been made in the



manner and within the time period required by Rule 424(b); and, to our knowledge, no stop order suspending the effectiveness of the Registration Statement or any Rule 462(b) Registration Statement has been issued under the Securities Act and no proceedings for that purpose have been instituted or are pending or threatened by the Commission.

6. We have not ourselves checked the accuracy, completeness or fairness of, or otherwise verified, the information furnished with respect to matters in the Registration Statement, the Time of Sale Prospectus or the Prospectus (except to the extent stated in paragraph 4 above). We have generally reviewed and discussed with your representatives and with certain officers and employees of, and counsel for, the Company, and with independent registered public accountants for the Company, the information furnished, whether or not subject to our check and verification. On the basis of such consideration, review and discussion, but without independent check or verification except as stated above, (i) in our opinion, the Registration Statement and the Prospectus appear on their face to be appropriately responsive in all material respects to the requirements of the Act and the applicable rules and regulations of the Commission thereunder, and (ii) nothing has come to our attention that causes us to believe that, insofar as relevant to the offering of the Securities, (a) the Registration Statement at the time such Registration Statement became effective contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (b) the Time of Sale Prospectus, as of the Time of Sale, contained an untrue statement of a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, or (c) the Prospectus, as of its date or as of the date hereof, contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. In expressing the foregoing opinion and belief, we have not been called to pass upon, and we express no opinion or belief as to, the financial statements or financial schedules or other financial or statistical data included in the Registration Statement, the Time of Sale Prospectus or the Prospectus or the Statement of Eligibility of the Trustee on Form T-1.

The opinions and belief expressed in paragraph (3) above (except as to due authorization of the Securities), in paragraph (4) above as to the statements in the Prospectus under the captions [**Description of Debt Securities**], [**Description of Debt Warrants**] [and] [**Description of Units**] and in paragraph (6) above do not, in any case, address any provision of the Commodity Exchange Act, as amended, or the rules, regulations, or interpretations of the Commodity Futures Trading Commission, as may be applicable to any Debt Securities whose principal and/or interest payments will be determined by reference to one or more currency exchange rates, commodity prices, equity indices, or other variable

factors, or as may be applicable to any Debt Warrants or Units relating to any such Debt Securities.

## FORM OF ASSISTANT SECRETARY'S CERTIFICATE

I, \_\_\_\_\_, the duly qualified, elected, and acting Assistant Secretary of PepsiCo, Inc., a company organized under the laws of the State of North Carolina (the "**Company**"), hereby certify as follows:

1. Attached hereto as Exhibit A is a true and complete copy of the Restated Articles of Incorporation of the Company, certified as of \_\_\_\_\_ by the Secretary of State of the State of North Carolina. No further amendments or supplements to the Restated Articles of Incorporation have been proposed to or approved by the Board of Directors or shareholders of the Company.

2. Attached hereto as Exhibit B is a true, correct, and complete copy of the By-Laws of the Company. Such By-Laws have been in effect at all times since \_\_\_\_\_.

3. Attached hereto as Exhibits C-1 and C-2 are copies of resolutions duly adopted by the Board of Directors of the Company on \_\_\_\_\_-\_\_\_\_ relating to the issuance of short-term and long-term debt securities, which resolutions are in full force and effect as of the date hereof.

4. The documents described below have been duly authorized, executed (except as otherwise indicated below), and filed by the Company with the Securities and Exchange Commission:

(a) the Registration Statement on Form S-3, File No. 333-\_\_\_\_\_, filed by the Company on [Date] (the "**Registration Statement**"), relating to the Company's securities, a copy of which is attached hereto as Exhibit D;

(b) the Indenture, dated as of May 21, 2007, between the Company and The Bank of New York, as trustee, which is incorporated by reference from Exhibit 4.3 to PepsiCo's Registration Statement on Form S-3 (File No. 333-\_\_\_\_\_);

(c) the form of Debt Warrant Agreement or Unit Agreement that may be entered into by the Company and The Bank of New York Mellon, as trustee, warrant agent or unit agent, as the case may be, a copy of which is incorporated by reference from Exhibit 4.7 or 4.8 to PepsiCo's Registration Statement on Form S-3 (File No. 333-\_\_\_\_\_); and

(d) the form of Distribution Agreement that may be entered into by the Company and one or more agents and underwriters in connection with the offer

and sale of the Debt Securities, Warrants and Units, a copy of which is attached as Exhibit 1.2 to the Registration Statement.

5. The Debt Securities may be issued from time to time, in substantially the forms attached hereto as Exhibit E (with respect to Fixed Rate Debt Securities) and Exhibit F (with respect to Floating Rate Debt Securities), on such terms as shall be determined by any two of the following officers of the Company: (i) the Chairman of the Board and Chief Executive Officer (the “**Chairman**”), (ii) Chief Financial Officer (the “**Executive Vice President**”), (iii) the Senior Vice President and Treasurer (the “**Treasurer**”), and (iv) such other officer of the Company as may be designated by the Chairman, the Executive Vice President, or the Treasurer pursuant to the Delegation of Authority attached hereto as Exhibit G (any two of the Chairman, the Executive Vice President, the Treasurer, and such other officer hereinafter referred to as the “**Authorized Persons**”), provided, that such terms will in no event violate or conflict with the terms and provisions set forth in the Indenture or the Prospectus or (to the extent that the terms of an applicable Pricing Supplement supersede the terms and provisions of the Prospectus) the applicable Pricing Supplement.

6. The Debt Warrants and Units may be issued from time to time, alone or together with one or more series of Debt Securities, in substantially the form attached hereto as Exhibit H and I, respectively, on such terms as shall be determined by any two Authorized Persons, provided that such terms will in no event violate or conflict with the terms and provisions of the Debt Warrant Agreement or the Unit Agreement, as the case may be, or the Prospectus or (to the extent that the terms of an applicable Prospectus Supplement supersede the terms and provisions of the Prospectus) the applicable Prospectus Supplement.

7. The persons named below are duly qualified, elected, and acting officers of the Company, have been duly elected or appointed to the offices set forth opposite their respective names, have held such offices at all times since \_\_\_\_\_, and hold such offices as of the date hereof. The signatures set forth below opposite the names of such persons are the genuine signatures of such persons.

[Title]

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Company as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

Assistant Secretary

I, \_\_\_\_\_, a Vice President of the Company, hereby certify that \_\_\_\_\_ is the duly qualified, elected, and acting Assistant Secretary of the Company, has been duly elected or appointed to such office, has held such office at all times since \_\_\_\_\_, holds such office as of the date hereof, and that the signature set forth below is his genuine signature.

\_\_\_\_\_  
Assistant Secretary

IN WITNESS WHEREOF, I have hereunto set my hand as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
Vice President

FORM OF OFFICERS' CERTIFICATE

\_\_\_\_\_, Chief Financial Officer, and \_\_\_\_\_, Senior Vice President or Treasurer, of PepsiCo, Inc., a corporation organized under the laws of the State of North Carolina (the "**Company**"), each hereby certifies as follows:

1. I have examined the Company's Registration Statement on Form S-3, File No. 333-\_\_\_\_\_ (the "**Registration Statement**"), as filed by the Company with the Securities and Exchange Commission (the "**Commission**") on October\_\_\_\_, 2008, including all of the documents filed as exhibits thereto. Capitalized terms used herein and not otherwise defined have the meanings ascribed to such terms by the prospectus filed as part of the Registration Statement (such prospectus hereinafter the "**Prospectus**").

2. To my knowledge, no proceedings for the merger, consolidation, liquidation, or dissolution of the Company or the sale of all or substantially all of its assets are pending or contemplated.

3. To my knowledge, the Registration Statement as supplemented by the Time of Sale Prospectus (i) contains no untrue statement of a material fact regarding the Company or any of its consolidated subsidiaries and (ii) does not omit to state any material fact necessary to make any such statement, in the light of the circumstances under which it was made, not misleading.

IN WITNESS WHEREOF, I have hereunto set my hand as of the \_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_.

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

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

**PEPSICO, INC.**  
**and**  
**THE BANK OF NEW YORK, as Trustee**  
**Indenture**  
**Dated as of May 21, 2007**  
**Providing for Issuance of Debt Securities**

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THIS INDENTURE, between PepsiCo, Inc., a North Carolina corporation (hereinafter called the “**Company**”) having its principal office at 700 Anderson Hill Road, Purchase, N.Y. 10577, and The Bank of New York, a New York banking corporation, as trustee (hereinafter called the “**Trustee**”), is made and entered into as of this 21st day of May, 2007.

**Recitals of the Company**

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

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

**Agreements of the Parties**

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

**ARTICLE 1**

**DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION**

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

- (a) the terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;
- (b) all other terms used herein which are defined in the Trust Indenture Act (as hereinafter defined), either directly or by reference therein, have the meanings assigned to them therein;
- (c) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles and, except as otherwise herein expressly provided, the term “generally accepted accounting principles” with respect to any computation required or permitted

hereunder shall mean such accounting principles as are generally accepted in the United States of America at the date of such computation; and

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

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

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

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

“**Authentication Order**” has the meaning specified in Section 3.03.

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

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

“**Chairman**” means the Company’s Chairman of the Board and Chief Executive Officer.

“**Commission**” means the Securities and Exchange Commission, as from time to time constituted, created under the Securities Exchange Act of 1934, 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 PepsiCo, Inc., unless and until a successor corporation shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “**Company**” shall mean such successor corporation.

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

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

“**Corporate Trust Office**” means the office of the Trustee at which at any particular time its corporate trust business shall be principally administered, which office at the date hereof is located at 101 Barclay Street, 8W, New York, New York 10286.

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

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

“**Debt**” has the meaning specified in Section 10.06.

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

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

“**Depository**” means with respect to the Securities of any series issuable or issued in whole or in part in global form, the Person designated as Depositary by the Company pursuant to Section 3.01, unless and until a successor Depositary 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, “**Depository**” as used with respect to the Securities of any such series shall mean the “**Depository**” with respect to the Securities of that series.

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

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

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

“**Indenture**” or “**this Indenture**” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms of any particular series of Securities established as contemplated by Section 3.01.

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

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

“**Mortgage**” is defined in Section 10.06.

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

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

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



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

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

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

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

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

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

obligor upon the Securities or any Affiliate of the Company or such other obligor shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to act as owner with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**U.S. Government Obligations**” means (i) securities that are direct obligations of the United States of America, the payment of which is unconditionally guaranteed by the full faith and credit of the United States of America and (ii) securities that are obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the payment of which is unconditionally guaranteed by the full faith and credit of the United States of America, and also includes depository receipts issued by a bank or trust company as custodian with respect to any of the securities described in the preceding clauses (i) and (ii), and any payment of interest or principal payable under any of the securities described in the preceding clauses (i) and (ii) that is held by such custodian for the account of the holder of a depository receipt, *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt, or from any amount received by the custodian in respect of

such securities, or from any specific payment of interest or principal payable under the securities evidenced by such depository receipt.

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

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

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

- (a) a statement that each individual signing such certificate or opinion has read all covenants and conditions of this Indenture relating to such proposed action, including the definitions herein relating thereto;
- (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (c) a statement that, in the opinion of each such individual, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

Section 1.03. *Form of Documents Delivered to Trustee.* In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to the other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, legal counsel, unless such officer knows that any such

certificate, opinion, or representation is erroneous. Any opinion of counsel for the Company may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company, unless such counsel knows that any such certificate, opinion, or representation is erroneous.

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

Section 1.04. *Acts of Securityholders.* (a) Any request, demand, authorization, direction, notice, consent, waiver, or other action provided by this Indenture to be given or taken by Securityholders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Securityholders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and (if expressly required by the applicable terms of this Indenture) to the Company. If any Securities are denominated in coin or currency other than that of the United States, then for the purposes of determining whether the Holders of the requisite principal amount of Securities have taken any action as herein described, the principal amount of such Securities shall be deemed to be that amount of United States dollars that could be obtained for such principal amount on the basis of the spot rate of exchange into United States dollars for the currency in which such Securities are denominated (as evidenced to the Trustee by a certificate provided by a financial institution, selected by the Company, that maintains an active trade in the currency in question, acting as conversion agent) as of the date the taking of such action by the Holders of such requisite principal amount is evidenced to the Trustee as provided in the immediately preceding sentence. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “**Act**” of the Securityholders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 6.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

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

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

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

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

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

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

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

Section 1.06. *Notice To Securityholders; Waiver.* Where this Indenture or any Security provides for notice to Securityholders of any event, such notice shall be sufficiently given (unless otherwise expressly provided herein or in such Security) if in writing and mailed, first-class postage prepaid, to each Securityholder affected by such event, at his or her address as it appears in the Security Register as of the applicable Record Date, not later than the latest date or earlier than the earliest date prescribed by this Indenture or such Security for the giving of such notice. In any case where notice to Securityholders is given by mail, neither the failure to mail such notice nor any defect in any notice so mailed to any particular Securityholder shall affect the sufficiency of such notice with respect to other Securityholders. Where this Indenture or any Security provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Securityholders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

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

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

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

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

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

Section 1.11. *Benefits Of Indenture.* Nothing in this Indenture or in any Securities, express or implied, shall give to any Person, other than the parties hereto, their successors hereunder, the Authenticating Agent, the Security Registrar, any Paying Agent, and the Holders of Securities (or such of them as



may be affected thereby), any benefit or any legal or equitable right, remedy or claim under this Indenture.

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

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

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

Section 1.15. *Legal Holidays.*

In any case where any Interest Payment Date, Redemption Date, Repayment Date or Maturity of any Security shall not be a New York Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or of the Securities) payment of interest or principal (and premium, if any) need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date, Redemption Date,

Repayment Date or at Maturity, *provided* that no interest shall accrue for the period from and after such Interest Payment Date, Redemption Date, Repayment Date or Maturity, as the case may be.

ARTICLE 2  
SECURITY FORMS

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

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

Section 2.02. *Forms of Securities.* Each Security shall be in one of the forms approved from time to time by or pursuant to any Board Resolution, or established in one or more indentures supplemental hereto. Prior to the delivery to the Trustee for authentication of any Security in any form approved by or pursuant to a Board Resolution, the Company shall deliver to the Trustee a copy of such Board Resolution, together with a true and correct copy of the form of Security which has been approved thereby, or, if a Board Resolution authorizes a specific officer or officers to approve a form of Security, together with a certificate of such officer or officers approving the form of Security attached thereto, *provided, however*, that with respect to all Securities issued pursuant to the same Board Resolution, the required copy of such Board Resolution, together with the appropriate attachment, need be delivered only once. Any form of Security approved by or pursuant to a Board Resolution must be acceptable as to form to the Trustee, such acceptance to be evidenced by the Trustee's authentication of Securities in that form or by a certificate signed by a Responsible Officer of the Trustee and delivered to the Company.

Section 2.03. *Securities in Global Form.* If Securities of a series are issuable in whole or in part in global form, the global security representing such Securities may provide that it shall represent the aggregate amount of Outstanding Securities from time to time endorsed thereon and may also provide that the aggregate amount of Outstanding Securities represented thereby may from time to time be reduced to reflect exchanges or increased to reflect the issuance of

additional Securities. Any endorsement of a Security in global form to reflect the amount (or any increase or decrease in the amount) of Outstanding Securities represented thereby shall be made in such manner and by such Person or Persons as shall be specified therein or in the Authentication Order delivered to the Trustee pursuant to Section 3.03 hereof.

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

**TRUSTEE’S CERTIFICATE OF AUTHENTICATION**

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

The Bank of New York, as Trustee,

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

**ARTICLE 3**

**THE SECURITIES**

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

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

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

(1) the title of such series;

- (2) the limit, if any, upon the aggregate principal amount or issue price of the Securities of such series;
- (3) the issue date or issue dates of the Securities of such series;
- (4) the Scheduled Maturity Date of the Securities of such series;
- (5) the place or places where the principal, premium, if any, interest, if any, and additional amounts, if any, payable with respect to the Securities of such series shall be payable;
- (6) whether the Securities of such series will be issued at par or at a premium over or a discount from their face amount;
- (7) the rate or rates (which may be fixed or variable) at which the Securities of such series shall bear interest, if any, and, if applicable, the method by which such rate or rates may be determined;
- (8) the date or dates (or the method by which such date or dates may be determined) from which interest, if any, shall accrue, and the Interest Payment Dates on which such interest shall be payable;
- (9) the rights, if any, to defer payments of interest on the Securities by extending the interest payment periods and the duration of such extension;
- (10) the period or periods within which, the Redemption Price(s) or Repayment Price(s) at which, and any other terms and conditions upon which the Securities of such series may be redeemed or repaid, in whole or in part, by the Company;
- (11) the obligation, if any, of the Company to redeem, repay, or purchase any of the Securities of such series pursuant to any sinking fund, mandatory redemption, purchase obligation, or analogous provision at the option of a Holder thereof, and the period or periods within which, the Redemption Price(s) or Repayment Price(s) or other price or prices at which, and any other terms and conditions upon which the Securities of such series shall be redeemed, repaid, or purchased, in whole or in part, pursuant to such obligation;
- (12) whether the Securities of such series are to be issued in whole or in part in global form and, if so, the identity of the Depositary for such global security and the terms and conditions, if any, upon which interests in the Securities represented by such global security may be exchanged, in whole or in part, for the individual Securities represented thereby (if other than as provided in Section 3.05);
- (13) whether such Securities are Subordinated Securities and if so, the provisions for such subordination if other than the provisions set forth in Article 13;

- (14) the denominations in which the Securities of such series will be issued (which may be any denomination as set forth in the terms of such Securities) if other than U.S.\$1,000 or an integral multiple thereof;
- (15) whether and under what circumstances additional amounts on the Securities of such series shall be payable in respect of any taxes, assessments, or other governmental charges withheld or deducted and, if so, whether the Company will have the option to redeem such Securities rather than pay such additional amounts;
- (16) the basis upon which interest shall be calculated;
- (17) if the Securities of such series are to be issuable in definitive form (whether upon original issue or upon exchange of a temporary Security for a definitive Security of such series) only upon receipt of certain certificates or other documents or upon satisfaction of other conditions, then the form and terms of such certificates, documents, and/or conditions;
- (18) the exchange or conversion of the Securities of that series, whether or not at the option of the Holders thereof, for or into new Securities of a different series or for or into any other securities which may include shares of Capital Stock of the Company or any Subsidiary of the Company or securities directly or indirectly convertible into or exchangeable for any such shares or securities of entities unaffiliated with the Company or any Subsidiary of the Company;
- (19) if other than U.S. dollars, the foreign or composite currency or currencies (each such currency a “**Specified Currency**”) in which the Securities of such series shall be denominated and in which payments of principal, premium, if any, interest, if any, or additional amounts, if any, payable with respect to such Securities shall or may be payable;
- (20) if the principal, premium, if any, interest, if any, or additional amounts, if any, payable with respect to the Securities of such series are to be payable in any currency other than that in which the Securities are stated to be payable, whether at the election of the Company or of a Holder thereof, the period or periods within which, and the terms and conditions upon which, such election may be made;
- (21) if the amount of any payment of principal, premium, if any, interest, if any, or other sum payable with respect to the Securities of such series may be determined by reference to the relative value of one or more Specified Currencies, commodities, securities, or instruments, the level of one or more financial or non- financial indices, or any other designated factors or formulas, the manner in which such amounts shall be determined;
- (22) the exchange of Securities of such series, at the option of the Holders thereof, for other Securities of the same series of the same aggregate principal

amount of a different authorized kind or different authorized denomination or denominations, or both;

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

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

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

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

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

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

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

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

If any series of Securities shall be established by action taken pursuant to any Board Resolution, the execution by the officer or officers authorized by such Board Resolution of an Authentication Order (as defined in Section 3.03 below) with respect to the first Security of such series to be issued, and the delivery of such Authentication Order to the Trustee at or before the time of issuance of the first Security of such series, shall constitute a sufficient record of such action. Except as otherwise permitted by Section 3.03, if all of the Securities of any such series are not to be issued at one time, the Company shall deliver an Authentication Order with respect to each subsequent issuance of Securities of

such series, but such Authentication Orders may be executed by any authorized officer or officers of the Company, whether or not such officer or officers would have been authorized to establish such series pursuant to the aforementioned Board Resolution.

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

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

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

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

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

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

Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company,

notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

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

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

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

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

*provided, however*, that if all Securities issuable by or pursuant to a Board Resolution or supplemental indenture are not to be originally issued at one time, it shall not be necessary to deliver the Officers' Certificate or Opinion of Counsel



otherwise required pursuant to this paragraph at or prior to the time of authentication of each such Security if such documents are delivered at or prior to the time of authentication upon original issuance of the first such Security to be issued. After the original issuance of the first such Security to be issued, any separate request by the Company that the Trustee authenticate such Securities for original issuance will be deemed to be a certification by the Company that it is in compliance with all conditions precedent provided for in this Indenture relating to the authentication and delivery of such Securities.

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

If the Company shall establish pursuant to Section 3.01 that Securities of a series may be issued in whole or in part in global form, then the Company shall execute, and the Trustee shall (in accordance with this Section 3.03 and the Authentication Order with respect to such series) authenticate and deliver, one or more Securities in global form that (i) shall represent and shall be denominated in an aggregate amount equal to the aggregate principal amount of the Outstanding Securities of such series to be represented by such one or more Securities in global form, (ii) shall be registered, in the name of the Depositary for such Security or Securities in global form, or in the name of a nominee of such Depositary, (iii) shall be delivered to such Depositary or pursuant to such Depositary's instruction, and (iv) shall bear a legend substantially as follows: "Unless and until it is exchanged in whole or in part for Securities in certificated form, this Security may not be transferred except as a whole by the Depositary to a nominee of the Depositary, or by a nominee of the Depositary to the Depositary or another nominee of the Depositary, or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary." Each Depositary designated pursuant to Section 3.01 for a Security in global form must, at the time of its designation and at all times while it serves as Depositary, be a clearing agency registered under the Securities Exchange Act of 1934 and any other applicable statute or regulation.

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

Section 3.04. *Temporary Securities.* Pending the preparation of definitive Securities of any series, the Company may execute, and, upon receipt of the documents required by Sections 2.02, 3.01 and 3.03 hereof, together with an Authentication Order, the Trustee shall authenticate and deliver, temporary Securities of such series that are printed, lithographed, typewritten, mimeographed, or otherwise produced, in any authorized denomination,

substantially of the tenor of the definitive Securities in lieu of which they are issued in registered form, without coupons, and with such appropriate insertions, omissions, substitutions, and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities. In the case of Securities of any series for which a temporary Security may be issued in global form, such temporary global security shall represent all of the Outstanding Securities of such series and tenor.

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

Section 3.05. *Registration, Transfer and Exchange.* With respect to the Securities of each series, the Trustee shall keep a register (herein sometimes referred to as the "Security Register") which shall provide for the registration of Securities of such series, and for transfers of Securities of such series, in accordance with information to be provided to the Trustee by the Company, subject to such reasonable regulations as the Trustee may prescribe. Such register shall be in written form or in any other form capable of being converted into written form within a reasonable time. At all reasonable times the information contained in such register or registers shall be available for inspection at the Corporate Trust Office of the Trustee or at such other office or agency to be maintained by the Company pursuant to Section 10.02 hereof.

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

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

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

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

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

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

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

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

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

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

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

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

Unless otherwise provided in the Security to be transferred or exchanged, no service charge shall be imposed for any registration of transfer or exchange of

Securities, but the Company may (unless otherwise provided in such Security) require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Securities, other than exchanges pursuant to Section 3.04, 3.06, 9.06 and 11.07 hereof not involving any transfer.

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

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

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

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

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

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

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

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

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

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

the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

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

Subject to the foregoing provisions of this Section 3.07 and the provisions of Section 3.05 hereof, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

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

None of the Company, the Trustee, any Authenticating Agent, any Paying Agent, the Security Registrar, or any Co-Security Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Security in global form or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests and each of them may act or refrain from acting without liability on any information relating to such records provided by the Depositary.

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

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

ARTICLE 4  
SATISFACTION AND DISCHARGE

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

(a) either

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

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

(A) have become due and payable, or

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

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

and, in any of the cases described in subparagraphs (A), (B), or (C) above, the Company has irrevocably deposited or caused to be deposited with the Trustee, as trust funds in trust for the purpose, (x) an amount in money sufficient, (y) U.S. Government Obligations or Equivalent Government Securities which through the payment of interest and principal in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money sufficient, or (z) a combination of (x) and (y) sufficient, in the opinion with



respect to (y) and (z) of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge the entire indebtedness on such Securities with respect to principal, premium, if any, and interest, if any, to the date of such deposit (in the case of Securities which have become due and payable), or to the Scheduled Maturity Date or Redemption Date, as the case may be; *provided, however*, that if such U.S. Government Obligations or Equivalent Government Securities are callable or redeemable at the option of the issuer thereof, the amount of such money, U.S. Government Obligations, and Equivalent Government Securities deposited with the Trustee must be sufficient to pay and discharge the entire indebtedness referred to above if such issuer elects to exercise such call or redemption provisions at any time prior to the Scheduled Maturity Date or Redemption Date, as the case may be. The Company, but not the Trustee, shall be responsible for monitoring any such call or redemption provision; and

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

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

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

Section 4.02. *Discharge and Defeasance.*

The provisions of this Section and Section 4.04 (insofar as relating to this Section) shall apply to the Securities of each series unless specifically otherwise provided in a Board Resolution or indenture supplemental hereto provided pursuant to Section 3.01. In addition to discharge of this Indenture pursuant to Section 4.01, in the case of any series of Securities with respect to which the exact amount described in subparagraph (a) of Section 4.04 can be determined at the time of making the deposit referred to in such subparagraph (a), the Company shall be deemed to have paid and discharged the entire indebtedness on all the Securities of such a series as provided in this Section on and after the date the conditions set forth in Section 4.04 are satisfied, and the provisions of this Indenture with respect to the Securities of such series shall no longer be in effect (except as to (i) rights of registration of transfer and exchange of Securities of such series, (ii) substitution of mutilated, destroyed, lost or stolen Securities of such series, (iii) rights of Holders of Securities of such series to receive, solely from the trust fund described in subparagraph (a) of Section 4.04, payments of principal thereof, premium, if any, and interest, if any, thereon upon the original

stated due dates or upon the Redemption Dates therefor (but not upon acceleration), and remaining rights of the Holders of Securities of such series to receive mandatory sinking fund payments, if any, (iv) the rights, obligations, duties and immunities of the Trustee hereunder, (v) this Section 4.02, Section 4.07, Section 10.02 and Section 10.03 and (vi) the rights of the Holders of Securities of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them) (hereinafter called “**Defeasance**”), and the Trustee at the cost and expense of the Company, shall execute proper instruments acknowledging the same.

Section 4.03. *Covenant Defeasance.*

The provisions of this Section and Section 4.04 (insofar as relating to this Section) shall apply to the Securities of each series unless specifically otherwise provided in a Board Resolution or indenture supplemental hereto provided pursuant to Section 3.01. In the case of any series of Securities with respect to which the exact amount described in subparagraph (a) of Section 4.04 can be determined at the time of making the deposit referred to in such subparagraph (a), (i) the Company shall be released from its obligations under any covenants specified in or pursuant to Section 3.01 as being subject to Covenant Defeasance with respect to such series (except as to (a) rights of registration of transfer and exchange of Securities of such series and rights under Section 4.07, Section 10.02 and Section 10.03, (b) substitution of mutilated, destroyed, lost or stolen Securities of such series, (c) rights of Holders of Securities of such series to receive, from the Company pursuant to Section 10.01, payments of principal thereof and interest, if any, thereon upon the original stated due dates or upon the Redemption Dates therefor (but not upon acceleration), and remaining rights of the Holders of Securities of such series to receive mandatory sinking fund payments, if any, (d) the rights, obligations, duties and immunities of the Trustee hereunder and (e) the rights of the Holders of Securities of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them), and (ii) the occurrence of any event specified in Section 5.01(d) (with respect to any of the covenants specified in or pursuant to Section 3.01 as being subject to Covenant Defeasance with respect to such series) shall be deemed not to be or result in a default or an Event of Default, in each case with respect to the Outstanding Securities of such series as provided in this Section on and after the date the conditions set forth in Section 4.04 are satisfied (hereinafter called “**Covenant Defeasance**”), and the Trustee at the cost and expense of the Company, shall execute proper instruments acknowledging the same. For this purpose, such Covenant Defeasance means that the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant (to the extent so specified in the case of Section 5.01(d)), whether directly or indirectly by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document, but the

remainder of this Indenture and the Securities of such series shall be unaffected thereby.

*Section 4.04. Conditions To Defeasance Or Covenant Defeasance.*

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

(a) with reference to Section 4.02 or Section 4.03, the Company has irrevocably deposited or caused to be irrevocably deposited with the Trustee as funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of Securities of such series (i) money in an amount, or (ii) U.S. Government Obligations or Equivalent Government Securities which through the payment of interest and principal in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money in an amount, or (iii) a combination of (i) and (ii), sufficient, in the opinion (with respect to (ii) and (iii)) of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge each installment of principal (including mandatory sinking fund payments) of, premium, if any, and interest on, the Outstanding Securities of such series on the dates such installments of interest, premium or principal are due, including upon redemption; *provided, however*, that if such U.S. Government Obligations and Equivalent Government Securities are callable or redeemable at the option of the issuer thereof, the amount of such money, U.S. Government Obligations, and/or Equivalent Government Securities deposited with the Trustee must be sufficient to pay and discharge the entire indebtedness referred to above if the issuer of any such U.S. Government Obligations or Equivalent Government Securities elects to exercise such call or redemption provisions at any time prior to the Scheduled Maturity Date or Redemption Date of such Securities, as the case may be. The Company, but not the Trustee, shall be responsible for monitoring any such call or redemption provision.

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

(c) in the case of Covenant Defeasance under Section 4.03, the Company has delivered to the Trustee an Opinion of Counsel to the effect that, and such opinion shall confirm that, the Holders of the Securities of such series

will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and Covenant Defeasance and will be subject to federal income tax on the same amount and in the same manner and at the same times, as would have been the case if such deposit and Covenant Defeasance had not occurred;

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

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

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

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

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

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

Section 4.05. *Application of Trust Money; Excess Funds.* All money and U.S. Government Obligations or Equivalent Government Securities (including the proceeds thereof) deposited with the Trustee pursuant to Section 4.01 or Section 4.04 hereof shall be held in trust and applied by it, in accordance with the provisions of this Indenture and of the series of Securities in respect of which it was deposited, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent), as the Trustee may

determine, to the Persons entitled thereto, of the principal, premium, if any, and interest, if any, for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

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

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

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

Section 4.07. *Return of Unclaimed Amounts.* Any amounts deposited with or paid to the Trustee or any Paying Agent or then held by the Company, in trust for payment of the principal of, premium, if any, or interest, if any, on the Securities and not applied but remaining unclaimed by the Holders of such Securities for two years after the date upon which the principal of, premium, if any, or interest, if any, on such Securities, as the case may be, shall have become due and payable, shall be repaid to the Company by the Trustee on Company Request or (if then held by the Company) shall be discharged from such trust; and the Holder of any of such Securities shall thereafter look only to the Company for any payment which such Holder may be entitled to collect (until such time as such unclaimed amounts shall escheat, if at all, to the State of New York) and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease. Notwithstanding the foregoing, the Trustee or Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once a week for two successive weeks (in each case on any day of the week) in a newspaper printed in the English language and customarily

published at least once a day at least five days in each calendar week and of general circulation in the Borough of Manhattan, in the City and State of New York, a notice that said amounts have not been so applied and that after a date named therein any unclaimed balance of said amounts then remaining will be promptly returned to the Company.

ARTICLE 5  
REMEDIES

Section 5.01. *Events of Default*. “**Event of Default**”, wherever used herein, means with respect to any series of Securities any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), unless such event is either inapplicable to a particular series or it is specifically deleted or modified in the manner contemplated by Section 3.01:

- (a) default in the payment of any interest on any Security of such series when it becomes due and payable, and continuance of such default for a period of 30 days; or
- (b) default in the payment of the principal amount of (or premium, if any, on) any Security of such series as and when the same shall become due, either at Maturity, upon redemption, by declaration, or otherwise; or
- (c) default in the payment of any sinking or purchase fund or analogous obligation when the same becomes due by the terms of the Securities of such series and continuance of such default for a period of 30 days; or
- (d) default in the performance or breach of any covenant or warranty of the Company in this Indenture in respect of the Securities of such series (other than a covenant or warranty in respect of the Securities of such series a default in the performance of which or the breach of which is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 51% in the principal amount of the Outstanding Securities of such series, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” hereunder; or
- (e) the entry of an order for relief against the Company under the Federal Bankruptcy Act by a court having jurisdiction in the premises or a decree or order by a court having jurisdiction in the premises adjudging the Company a bankrupt or insolvent under any other applicable Federal or State law, or the entry of a decree or order approving as properly filed a petition seeking reorganization,

arrangement, adjustment or composition of or in respect of the Company under the Federal Bankruptcy Code or any other applicable Federal or State law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 90 consecutive days; or

(f) the consent by the Company to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the Federal Bankruptcy Code or any other applicable Federal or State law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company in furtherance of any such action; or

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

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

Section 5.02. *Acceleration of Maturity; Rescission, and Annulment.* If any Event of Default described in Section 5.01 above (other than Event of Default described in Section 5.01(e) and Section 5.01(f)) shall have occurred and be continuing with respect to any series, then and in each and every such case, unless the principal of all the Securities of such series shall have already become due and payable, either the Trustee or the Holders of not less than 51% in aggregate principal amount of the Securities of such series then Outstanding hereunder, by notice in writing to the Company (and to the Trustee if given by Holders), may declare the principal amount (or, if the Securities of such series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of that series) of all the Securities of such series and any and all accrued interest thereon to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, any provision of this Indenture or the Securities of such series to the contrary notwithstanding. If an Event of Default specified in Section 5.01(e) or Section 5.01(f) occurs, the principal amount of the Securities of such series and any and all accrued interest thereon shall immediately become and be due and payable without any declaration or other act on the part of the Trustee or any Holder. No declaration of acceleration by the Trustee with respect to any series of Securities shall constitute a declaration of acceleration by the Trustee with respect to any other series of Securities, and no declaration of acceleration by the Holders of at

least 51% in aggregate principal amount of the Outstanding Securities of any series shall constitute a declaration of acceleration or other action by any of the Holders of any other series of Securities, in each case whether or not the Event of Default on which such declaration is based shall have occurred and be continuing with respect to more than one series of Securities, and whether or not any Holders of the Securities of any such affected series shall also be Holders of Securities of any other such affected series.

At any time after such a declaration of acceleration has been made with respect to the Securities of any series and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of not less than 51% in aggregate principal amount of the Outstanding Securities of such series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if all Events of Default with respect to such series of Securities, other than the nonpayment of the principal of the Securities of such series which have become due solely by such acceleration, have been cured or waived as provided in Section 5.13, if such cure or waiver does not conflict with any judgment or decree set forth in Section 5.01(e) and Section 5.01(f) and if all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel have been paid.

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

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

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

then, with respect to the Securities of such series, the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holder of any such Security (or the Holders of any such series in the case of clause (c) above), the whole amount then due and payable on any such Security (or on the Securities of any such series in the case of clause (c) above) for principal (and premium, if any) and interest, if any, with interest (to the extent that payment of such interest shall be



legally enforceable) upon the overdue principal (and premium, if any) and upon overdue installments of interest, if any, at such rate or rates as may be prescribed therefor by the terms of any such Security (or of Securities of any such series in the case of clause (c) above); and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts due the Trustee under Section 6.07.

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

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

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

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

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any receiver, assignee, trustee, liquidator, sequestrator (or other similar official) in any such judicial proceeding is hereby authorized by each Securityholder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Securityholders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee and its agent and counsel, and any other amounts due the Trustee under Section 6.07 hereof.

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

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

Section 5.06. *Application of Money Collected.* Any money collected by the Trustee with respect to a series of Securities pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal, premium, if any, or interest, if any, upon presentation of the Securities of such series and the notation thereon of the payment, if only partially paid, and upon surrender thereof, if fully paid:

First: To the payment of all amounts due the Trustee under Section 6.07 hereof.

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

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

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

(b) the Holders of not less than 51% in principal amount of the Outstanding Securities of such series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(c) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

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

(e) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities of such series; it being understood and intended that no one or more Holders of Securities of such series shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders of Securities of such series, or to obtain or to seek to obtain priority or preference over any other such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and proportionate benefit of all the Holders of all Securities of such series.

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

Section 5.09. *Restoration of Rights and Remedies.* If the Trustee or any Securityholder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, then and in every such case the Company, the Trustee and the Securityholders shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and the Securityholders shall continue as though no such proceeding had been instituted.

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

Section 5.11. *Delay or Omission Not Waiver.* No delay or omission of the Trustee or of any Holder of any Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Securityholders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Securityholders, as the case may be.

Section 5.12. *Control by Securityholders.* The Holders of a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Securities of such series, *provided that*

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

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

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

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

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

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

Section 5.14. *Undertaking for Costs.* All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any Securityholder or group of Securityholders holding in the aggregate more than 10% in principal amount of the Outstanding Securities of any series to which the suit relates, or to any suit instituted by any Securityholder for the enforcement of the payment of principal, premium, if any, or interest, if any, on any Security on or after the respective payment dates expressed in such Security (or, in the case of redemption or repayment, on or after the Redemption Date or Repayment Date).

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

## ARTICLE 6

### THE TRUSTEE

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

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

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

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

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

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

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

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

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

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

Section 6.02. *Notice of Defaults*. Within 90 days after the occurrence of any default hereunder with respect to Securities of any series, the Trustee shall transmit by mail to all Securityholders of such series, as their names and addresses appear in the Security Register, notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; *provided, however*, that, except in the case of a default in the payment of the principal, premium, if any, or interest, if any, on any Security of such series or in the payment of any sinking or purchase fund installment or analogous obligation with respect to Securities of such series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Securityholders of such series and; *provided, further*, that, in the case of any default of the character specified in Section 5.01(d) with respect to Securities of such series, no such notice to Securityholders of such series shall be given until at least 60 days after the occurrence thereof. For the purpose of this Section, the term “default”, with respect to Securities of any series, means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

Section 6.03. *Certain Rights of Trustee*. Except as otherwise provided in Section 6.01 above:

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

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

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

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

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Securityholders pursuant to this Indenture, unless such Securityholders shall have

offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

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

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

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

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

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

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

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



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

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

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

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

The provisions of this Section shall survive the satisfaction and discharge of this Indenture.

Section 6.08. *Disqualification; Conflicting Interests.* If the Trustee has or shall acquire any conflicting interest within the meaning of the Trust Indenture Act, it shall either eliminate such interest or resign as Trustee with respect to one or more series of Securities, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture. To the extent permitted by such Act, the Trustee shall not be deemed to have a conflicting interest by virtue of being a trustee under this Indenture with respect to Securities of more than one series or by virtue of being a trustee under: (i) the Indenture dated as of November 15, 2002, among Bottling Group, LLC, as issuer, the Company, as guarantor, and the Trustee relating to certain debt securities, (ii) the Indenture dated as of February 8, 1999, among Pepsi Bottling Holdings, Inc., as obligor, the Company, as guarantor, and the Trustee relating to certain debt securities, (iii) the Indenture dated as of December 14, 1994, between the Company and the Trustee relating to certain debt securities, (iv) the Indenture dated as of December 2, 1993, between the Company and the Trustee relating to certain debt securities, (v) the Indenture dated as of September 28, 1990, between the Company and the Trustee relating to certain debt securities, (vi) the Indenture

dated as of February 25, 1990, between the Company and the Trustee relating to certain debt securities, (vii) the Indenture dated as of October 15, 1986, between the Company and the Trustee relating to certain debt securities, (viii) the Indenture dated as of October 1, 1986, between the Company and the Trustee relating to the Company's Euro-Medium-Term Notes, (ix) the Trust Agreement with Puerto Rico Industrial, Medical and Environmental Pollution Control Facilities Financing Authority (the "**Authority**") dated as of November 15, 1983, under which the Authority assigned certain rights under a Loan Agreement dated November 15, 1983, between the Authority and the Company, including the right to payment from the Company of amounts sufficient to enable the Authority to pay principal and interest and redemption payments (including redemption premium, if any) on the bonds issued under said Trust Agreement, (x) the Indenture dated as of March 2, 1982, among PepsiCo Capital Corporation N.V., the Company, as guarantor, and the Trustee relating to the PepsiCo Capital Corporation N.V. Zero Coupon Guaranteed Notes due 1994, and (xi) the Indenture dated as of April 1, 1982, among PepsiCo Capital Resources, Inc., the Company, as guarantor, and the Trustee relating to the PepsiCo Capital Resources, Inc. Zero Coupon Serial Guaranteed Debentures Due 1988-2012.

Section 6.09. *Corporate Trustee Required; Eligibility.* There shall at all times be a Trustee hereunder with respect to each series of Securities that shall be a corporation organized and doing business under the laws of the United States of America or of any State or Territory thereof or of the District of Columbia, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by Federal or State authority and having its principal office and place of business in the City of New York, if there be such a corporation having its principal office and place of business in said City and willing to act as Trustee on customary and usual terms. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee with respect to any series of Securities shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 6.10. *Resignation and Removal; Appointment of Successor.* (a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee under Section 6.11.

(b) The Trustee may resign with respect to any one or more series of Securities at any time by giving at least 60 days' written notice thereof to the Company. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of

resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

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

(d) If at any time:

(i) the Trustee shall fail to comply with Section 6.08 above with respect to any series of Securities after written request therefor by the Company or by any Securityholder who has been a bona fide Holder of a Security of that series for at least 6 months, or

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

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

(iv) the Trustee shall be adjudged 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 (A) the Company may remove the Trustee, with respect to the series or, in the case of clause (iv), with respect to all series, or (B) subject to Section 5.14, any Securityholder who has been a bona fide Holder of a Security of such series for at least 6 months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee with respect to the series or, in the case of clause (iv), with respect to all series.

(e) If the Trustee shall resign, be removed or become incapable of acting with respect to any series of Securities, or if a vacancy shall occur in the office of Trustee with respect to any series of Securities for any cause, the Company shall promptly appoint a successor Trustee for that series of Securities. If, within one year after such resignation, removal or incapacity, or the occurrence of such vacancy, a successor Trustee with respect to such series of Securities shall be appointed by Act of the Holders of 66 2/3% in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee with respect to such series and supersede the successor Trustee appointed by the Company with respect to such series. If no successor Trustee with respect to such series shall have been so appointed by the Company or the Securityholders of such series and accepted

appointment in the manner hereinafter provided, any Securityholder who has been bona fide Holder of a Security of that series for at least 6 months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to such series.

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

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

In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the predecessor Trustee and each successor Trustee with respect to the Securities of any applicable series shall execute and deliver an indenture supplemental hereto which (1) shall contain such provisions as shall be deemed necessary or desirable to transfer and to conform to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the predecessor Trustee with respect to the Securities of any series as to which the appointment of such successor Trustee relates and (2) if the predecessor Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the predecessor Trustee with respect to the Securities of any series as to which the predecessor Trustee is not being succeeded shall continue to be vested in the predecessor Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be Trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal

of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; and, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in the first or second preceding paragraph, as the case may be.

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

Section 6.12. *Merger, Conversion, Consolidation or Succession to Business.* Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, *provided* that such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor Trustee by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

Section 6.13. *Preferential Collection of Claims Against Company.* If and when the Trustee shall be or shall become a creditor, of the Company (or of any other obligor upon the Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or against any such other obligor, as the case may be).

Section 6.14. *Appointment of Authenticating Agent.* At any time when any of the Securities remain Outstanding the Trustee, with the approval of the Company, may appoint an Authenticating Agent or Agents with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 3.06, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder.

Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to act as an Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 and, if other than the Company itself, subject to supervision or examination by Federal or State authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

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

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

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

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

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

The Bank of New York, as Trustee

By: As Authenticating Agent

By: Authorized Signatory

#### ARTICLE 7

##### SECURITYHOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY

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

(a) semiannually, not more than 15 days after January 1 and July 1 in each year, in such form as the Trustee may reasonably require, a list of the names and addresses of the Holders of Securities of each series as of such date, and

(b) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished, *provided* that if the Trustee shall be the Security Registrar for such series, such list shall not be required to be furnished.

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

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

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

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

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

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

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Securities in accordance with Section 7.02(b), regardless of the source from which such



information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 7.02(b).

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

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

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

(a) file with the Trustee, within 15 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934; or, if the Company is not required to file information, documents or reports pursuant to either of said Sections, then it will file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Securities Exchange Act of 1934 in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

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

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

ARTICLE 8  
CONSOLIDATION, MERGER, CONVEYANCE OR TRANSFER

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

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

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

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

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

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

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

ARTICLE 9  
SUPPLEMENTAL INDENTURES

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

(a) to evidence the succession of another corporation to the Company, or successive successions, and the assumption by any such successor of the covenants, agreements and obligations of the Company pursuant to Article 8 hereof; or

(b) to add to the covenants of the Company such further covenants, restrictions or conditions for the protection of the Holders of the Securities of any or all series as the Company and the Trustee shall consider to be for the protection of the Holders of the Securities of any or all series or to surrender any right or power herein conferred upon the Company (and if such covenants or the surrender of such right or power are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included or such surrenders are expressly being made solely for the benefit of one or more specified series); or

(c) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein or in any supplemental indenture, or to make any other provisions with respect to matters or questions arising under this Indenture that do not adversely affect the interests of the Holders of Securities of any series in any material respect; or

(d) to add to this Indenture such provisions as may be expressly permitted by the TIA, excluding, however, the provisions referred to in Section 316(a)(2) of the TIA as in effect at the date as of which this instrument is executed or any corresponding provision in any similar federal statute hereafter enacted; or

(e) to add guarantors or co-obligors with respect to any series of Securities; or

(f) to secure any series of Securities; or

(g) to establish any form of Security, as provided in Article 2 hereof, and to provide for the issuance of any series of Securities, as provided in Article 3 hereof, and to set forth the terms thereof, and/or to add to the rights of the Holders of the Securities of any series; or

(h) to evidence and provide for the acceptance of appointment by another corporation as a successor Trustee hereunder with respect to one or more series of Securities and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to Section 6.11 hereof; or

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

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

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

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

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

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

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

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

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

(f) modify any of the provisions of this Section, Section 5.13 or Section 10.07, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby; *provided, however*, that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to “the Trustee” and concomitant changes in this Section and Section 10.07, or the deletion of this proviso, in accordance with the requirements of Sections 6.11 and 9.01(h); or

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

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

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

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

It shall not be necessary for any Act of Securityholders under this Section 9.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Section 9.03. *Execution of Supplemental Indentures.* Upon request of the Company and upon filing with the Trustee of evidence of an Act of Securityholders as aforementioned, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture

affects the Trustee’s own rights, powers, trusts, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture. In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 6.01) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture.

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

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

Section 9.06. *Reference in Securities to Supplemental Indentures.* Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Trustee and the Company, to any modification of this Indenture contained in any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities.

ARTICLE 10  
COVENANTS

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

Section 10.02. *Maintenance of Office or Agency.* So long as any of the Securities remain outstanding, the Company will maintain an office or agency in each Place of Payment where Securities may be presented or surrendered for

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

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

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

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

(a) hold all sums held by it for the payment of principal, premium, if any, or interest, if any, on Securities of such series in trust for the benefit of the Holders of the Securities entitled thereto until such sums shall be paid to such Holders of such Securities or otherwise disposed of as herein provided;

(b) give the Trustee notice of any default by the Company (or any other obligor upon the Securities of such series) in the making of any such payment of principal, premium, if any, or interest, if any, on the Securities of such series; and

(c) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

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

Section 10.04. *Certificate to Trustee.* The Company will deliver to the Trustee, within 120 days after the end of each fiscal year of the Company (beginning in 2007), an Officers' Certificate, one of whose signatories shall be the Company's principal executive, accounting or financial officer, stating that in the course of the performance by the signers of their duties as officers of the Company they would normally have knowledge of any default by the Company in the performance of any of its covenants, conditions or agreements contained herein (without regard to any period of grace or requirement of notice provided hereunder), stating whether or not they have knowledge of any such default and, if so, specifying each such default of which the signers have knowledge and the nature thereof.

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

Section 10.06. *Limitation on Secured Debt.*

With respect to any series of Securities, other than Subordinated Securities:

Unless otherwise provided in such series of Securities, so long as any of such Securities shall be Outstanding, neither the Company nor any Restricted Subsidiary will incur, suffer to exist or guarantee any indebtedness for borrowed money ("**Debt**"), secured by a mortgage, pledge, or lien (a "**Mortgage**") on any Principal Property or on any shares of stock of (or other interests in) any Restricted Subsidiary unless the Company or such Restricted Subsidiary secures or causes such Restricted Subsidiary to secure the Securities of such series (other than Subordinated Securities) and any other Debt of the Company or such Restricted Subsidiary, at the option of the Company or such Restricted Subsidiary, not subordinate to the Securities, equally and ratably with (or prior to) such secured Debt, so long as such secured Debt shall be so secured, unless after giving effect thereto the aggregate amount of all such Debt so secured does not exceed 15% of Consolidated Net Tangible Assets. This restriction will not, however, apply to Debt secured by:

- (a) Mortgages existing prior to the original issuance of such Securities;



(b) Mortgages on property of, or on shares of stock of (or other interests in) or Debt of, any corporation existing at the time such corporation becomes a Restricted Subsidiary;

(c) Mortgages in favor of the Company or any Restricted Subsidiary;

(d) Mortgages in favor of, or required by contracts with, any governmental bodies;

(e) Mortgages on property, shares of stock (or other interests) or Debt existing at the time of acquisition thereof (including acquisition through merger or consolidation) or to secure the payment of all or any part of the purchase price thereof or construction or improvement thereon or to secure any Debt incurred prior to, at the time of, or within 365 days after the later of the acquisition, the completion of construction, or the commencement of full operation of such property or within 365 days after the acquisition of such shares or Debt for the purpose of financing all or any part of the purchase price thereof or construction thereon; and

(f) any extension, renewal or refunding referred to in the foregoing clauses (a) to (e), inclusive.

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

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

## ARTICLE 11

### REDEMPTION OF SECURITIES

Section 11.01. *Applicability of Article.* The Company may reserve the right to redeem and pay before the Scheduled Maturity Date all or any part of the Securities of any series, either by optional redemption, sinking or purchase fund or analogous obligation or otherwise, by provision therefor in the form of Security for such series established and approved pursuant to Section 2.02 and 2.03 or as

otherwise provided in Section 3.01, and on such terms as are specified in such form or in the indenture supplemental hereto with respect to Securities of such series as provided in Section 3.01. Redemption of Securities of any series shall be made in accordance with the terms of such Securities and, to the extent that this Article does not conflict with such terms, the succeeding Sections of this Article.

Section 11.02. *Election to Redeem; Notice to Trustee.* In case of any redemption at the election of the Company, the Company shall, at least 60 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee) notify the Trustee of such Redemption Date and of the principal amount of Securities of such series to be redeemed. In the case of any redemption of Securities (a) prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, or (b) pursuant to an election of the Company which is subject to a condition specified in the terms of such Securities or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction or condition.

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

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

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

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

All notices of redemption shall state:

(1) the Redemption Date;

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

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

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

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

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

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company.

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

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

Date, such Securities provide that interest due on such date is to be paid to the Person to whom principal is payable.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid, bear interest from the Redemption Date at the rate borne by the Security, or as otherwise provided in such Security.

Section 11.07. *Securities Redeemed in Part.* Any Security that is to be redeemed only in part shall be surrendered at the office or agency maintained by the Company in the Place of Payment pursuant to Section 10.02 hereof with respect to that series (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security without service charge and at the expense of the Company, a new Security or Securities of the same series, tenor, terms and Scheduled Maturity Date, of any authorized denomination as requested by such Holders in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

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

If the sinking fund payment or payments (mandatory or optional) with respect to any series of Securities made in cash plus any unused balance of any preceding sinking fund payments with respect to Securities of such series made in cash shall exceed \$50,000 (or a lesser sum if the Company shall so request), unless otherwise provided by the terms of such series of Securities, that cash shall be applied by the Trustee on the sinking fund Redemption Date with respect to Securities of such series next following the date of such payment to the redemption of Securities of such series at the applicable sinking fund Redemption Price with respect to Securities of such series, together with accrued interest, if any, to the date fixed for redemption, with the effect provided in Section 11.06. The Trustee shall select, in the manner provided in Section 11.03, for redemption on such sinking fund Redemption Date a sufficient principal amount of Securities of such series to utilize that cash and shall thereupon cause notice of redemption of the Securities of such series for the sinking fund to be given in the manner provided in Section 11.04 (and with the effect provided in Section 11.06) for the redemption of Securities in part at the option of the Company. Any sinking fund moneys not so applied or allocated by the Trustee to the redemption of Securities of such series shall be added to the next cash sinking fund payment with respect to Securities of such series received by the Trustee and, together with such payment, shall be applied in accordance with the provisions of this Section 11.08. Any and all sinking fund moneys with respect to Securities of any series held by the Trustee at the Maturity of Securities of such series, and not held for the payment or redemption of particular Securities of such series, shall be applied by the Trustee, together with other moneys, if necessary, to be deposited sufficient for the purpose, to the payment of the principal of the Securities of such series at Maturity.

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

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

shall have been cured or waived as provided herein, such moneys shall thereafter be applied on the next sinking fund payment date on which such moneys may be applied pursuant to the provisions of this Section 11.08.

ARTICLE 12  
REPAYMENT AT OPTION OF HOLDERS

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

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

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

Section 12.04. *When Securities Presented for Repayment Become Due and Payable.* If Securities of any series providing for repayment at the option of the Holders thereof shall have been surrendered as provided in this Article and as provided by the terms of such Securities, such Securities or the portions thereof, as the case may be, to be repaid shall become due and payable and shall be paid by the Company on the Repayment Date therein specified, and on and after such Repayment Date (unless the Company shall default in the payment of such Securities on such Repayment Date) interest on such Securities or the portions thereof, as the case may be, shall cease to accrue.

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

#### ARTICLE 13

##### SUBORDINATION OF SUBORDINATED SECURITIES

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

Section 13.02. *Payment On Dissolution, Liquidation Or Reorganization; Default On Senior Indebtedness.*

Upon any payment or distribution of assets or securities of the Company of any kind or character, whether in cash, property or securities, upon any dissolution or winding up or total or partial liquidation or reorganization of the Company, whether voluntary or involuntary or in bankruptcy, insolvency, receivership or other similar proceedings, or upon any assignment for the benefit of creditors or any other marshalling of the assets and liabilities of the Company or otherwise, all principal of (and premium, if any) and interest then due upon all Senior Indebtedness shall first be paid in full, or payment thereof provided for in money or money's worth, before the Holders of the Subordinated Securities or the Trustee on their behalf shall be entitled to receive any assets or securities (other than shares of stock of the Company as reorganized or readjusted or securities of the Company or any other corporation provided for by a plan of reorganization or

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

Subject to the payment in full, in money or money's worth, of all Senior Indebtedness, the Holders of the Subordinated Securities (together with the holders of any indebtedness of the Company which is subordinate in right of payment to the payment in full of all Senior Indebtedness and which is not subordinate in right of payment to the Subordinated Securities) shall be subrogated to the rights of the holders of Senior Indebtedness to receive payments or distribution of assets or securities of the Company applicable to Senior Indebtedness until the principal of (and premium, if any) and interest on the Senior Indebtedness shall be paid in full. No such payments or distributions applicable to Senior Indebtedness shall, as between the Company, its creditors other than the holders of Senior Indebtedness, and the Holders of the Subordinated Securities, be deemed to be a payment by the Company to or on account of the Subordinated Securities, it being understood that the provisions of this Article are and are intended solely for the purpose of defining the relative rights of the Holders of the Subordinated Securities, on the one hand, and the holders of Senior Indebtedness, on the other hand. Nothing contained in this



Article or elsewhere in this Indenture or in the Subordinated Securities is intended to or shall impair, as between the Company and the Holders of Subordinated Securities, the obligation of the Company, which is unconditional and absolute, to pay to the Holders of the Subordinated Securities the principal of (and premium, if any) and interest on the Subordinated Securities as and when the same shall become due and payable in accordance with their terms, or to affect (except to the extent specifically provided above in this paragraph) the relative rights of the Holders of the Subordinated Securities and creditors of the Company other than the holders of Senior Indebtedness. Nothing contained herein shall prevent the Trustee or the Holder of any Subordinated Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article, of the holders of Senior Indebtedness in respect of assets or securities of the Company of any kind or character, whether cash, property or securities, received upon the exercise of any such remedy.

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

If:

- (i) there shall have occurred a default in the payment on account of the principal of (or premium, if any) or interest on or other monetary amounts due and payable on any Senior Indebtedness, or
- (ii) any other default shall have occurred concerning any Senior Indebtedness which permits the holder or holders thereof to accelerate the maturity of such Senior Indebtedness following notice, the lapse of time, or both, or
- (iii) during any time Senior Indebtedness is outstanding, the principal of, and accrued interest on, any series of Subordinated Securities shall have been declared due and payable upon an Event of Default pursuant to Section 5.02 hereof (and such declaration shall not have been rescinded or annulled pursuant to this Indenture);

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

The Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Indebtedness (or a representative of such holder or a trustee under any indenture under which any instruments evidencing any such Senior Indebtedness may have been issued) to establish that such notice has been given by a holder of such Senior Indebtedness or such representative or trustee on behalf of such holder. In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Indebtedness to participate in any payment or distribution pursuant to this Article 13, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the right of such Person under this Article 13, and, if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment or distribution.

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

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

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

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

Section 13.06. *Article 13 Not To Prevent Events Of Default.* The failure to make a payment on account of principal of, premium, if any, or interest on the Subordinated Securities by reason of any provision of this Article 13 shall not be construed as preventing the occurrence of an Event of Default under Section 6.01 or an event which with the giving of notice or lapse of time, or both, would become an Event of Default or in any way prevent the Holders of Subordinated Securities from exercising any right hereunder other than the right to receive payment on the Subordinated Securities.

Section 13.07. *No Fiduciary Duty Of Trustee To Holders Of Senior Indebtedness.* The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness, and shall not be liable to any such holders (other than for its willful misconduct, bad faith or negligence) if it shall in good faith mistakenly pay over or distribute to the Holders of Subordinated Securities or the Company or any other Person, cash, property or securities to which any holders of Senior Indebtedness shall be entitled by virtue of this Article 13 or otherwise. Nothing in this Section 13.06 shall affect the obligation of any other such Person to hold such payment for the benefit of, and to pay such payment over to, the holders of Senior Indebtedness or their representative.

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.

PepsiCo, Inc.,

By: /s/ J. Darrell Thomas

Name: J. Darrell Thomas

Title: VP and Assistant Treasurer

Attest:

By: /s/ Thomas H. Tamoney, Jr.

Name: Thomas H. Tamoney, Jr.

Title: VP, Deputy General Counsel

The Bank of New York, Trustee

By: /s/ Francine Kincaid

Name: Francine Kincaid

Title: Vice President

Attest:

By: /s/ James D. Heaney

Name: James D. Heaney

Title: Vice President

State of New York

ss.:

County of New York

On the 21st day of May 2007 before me personally came Francine Kincaid to me known, who, being by me duly sworn, did depose and say that she resides at 101 Barclay St, NY, NY; that she is a Vice President of The Bank of New York, one of the parties described in and which executed the above instrument; that she knows the corporate seal of said corporation; that the seal affixed to that instrument is such corporate seal; that it was affixed by authority of the board of directors of said corporation; and that she signed her name thereto by like authority.

Name

/s/ Carlos R. Luciano  
Notary Public, State of New York  
No. 41-4705897  
Qualified in Queens County  
Commission Expires 4/30/2010

[Notarial Seal]

State of New York

ss.:

County of Westchester

On the 21st day of May 2007 before me personally came Darrell Thomas, to me known, who, being by me duly sworn, did depose and say that he resides at 700 Anderson Hill Rd., Purchase, NY; that he is the Vice President Assistant Treasurer of PepsiCo, Inc., one of the parties described in and which executed the above instrument; that he knows the corporate seal of said corporation; that the seal affixed to that instrument is such corporate seal; that it was affixed by authority of the board of directors of said corporation; and that he signed his name thereto by like authority.

Name

/s/ Marianne B. Dalton  
Notary Public, State of New York  
No. OIDA6024494  
Qualified in Westchester County  
My Commission Expires May 10, 2011

[Notarial Seal]

BOTTLING GROUP, LLC  
(as Obligor)

and

PEPSICO, INC.  
(as Guarantor)

and

THE BANK OF NEW YORK MELLON  
(as Trustee)

Form of Indenture

Dated as of October , 2008

SENIOR NOTES

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THIS INDENTURE, among Bottling Group, LLC, a Delaware limited liability company (the “Obligor”), having its principal office at One Pepsi Way, Somers, New York 10589, PepsiCo, Inc., a North Carolina corporation, as guarantor (the “Guarantor”), having its principal office at 700 Anderson Hill Road, Purchase, NY 10577, and The Bank of New York Mellon, a national banking association organized and existing under the laws of the United States of America, as trustee (the “Trustee”), is made and entered into as of this [•] day of October, 2008.

RECITALS OF THE OBLIGOR AND THE GUARANTOR

WHEREAS, the Obligor has duly authorized the issuance from time to time of its Senior Notes in one or more series (the “Notes”) up to such principal amount or amounts as may from time to time be authorized in accordance with the terms of this Indenture and to provide, among other things, for the authentication, delivery and administration thereof, the Obligor has duly authorized the execution and delivery of this Indenture;

WHEREAS, this Indenture provides for the issuance of a Guarantee of the Notes to be endorsed on the Notes as provided herein;

WHEREAS, the Guarantor wishes to guarantee the Notes as provided herein;

WHEREAS, the Guarantee shall become effective on the Guarantee Commencement Date (as hereinafter defined), except that under certain circumstances described below the Guarantee may not become effective or may only be a partial guarantee of the principal of and interest and premium, if any on the Notes; and

WHEREAS, all things necessary to make this Indenture a valid agreement of the Obligor and the Guarantor, in accordance with its terms, have been done.

NOW, THEREFORE:

In consideration of the premises and the purchases of the Notes by the Holders (as hereinafter defined) thereof, the Obligor, the Guarantor and the Trustee mutually covenant and agree for the equal and proportionate benefit of the respective Holders from time to time of the Notes or any series thereof as follows:

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

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

(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 (as hereinafter defined), 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 U.S. GAAP; and

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

“Act,” when used with respect to any Holder, has the meaning specified in Section 1.04.

“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.

“Attributable Debt” for a lease means the aggregate of present values (discounted at a rate per annum equal to the weighted average interest rate borne by all Outstanding Notes and compounded semi-annually) of the obligations of the Obligor or any Restricted Subsidiary of the Obligor for net rental payments during the remaining term of such lease (including any period for which such lease has been extended or may, at the option of the lessor, be extended). The term “net rental payments” under any lease of any period shall mean the sum of the rental and other payments required to be paid in such period by the lessee thereunder, not including, however, any amounts required to be paid by such lessee on account of maintenance and repairs, reconstruction, insurance, taxes, assessments, water rates or similar charges required to be paid by such lessee thereunder or any amounts required to be paid by such lessee thereunder contingent upon the amount of sales, maintenance and repairs, reconstruction, insurance, taxes, assessments, water rates or similar charges. Attributable Debt may be reduced by the present value of the rental obligations, calculated on the same basis, that any sublessee has for all or part of the leased property.

“Authenticating Agent” means any Person authorized by the Trustee to authenticate Notes under Section 5.14.

“Authentication Order” has the meaning specified in Section 2.02(1).

“Bankruptcy Code” means title 11, U.S. Code, as amended, or any similar state or federal law for the relief of debtors.

“Benefitted Party” has the meaning specified in Section 11.01.

“Board of Directors” means, with respect to the Guarantor, (a) the board of directors of the Guarantor or (b) any duly authorized committee of that board.

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

“Business Day” means any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City or Luxembourg are authorized or required by law, regulation or executive order to be closed.

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

“Company Request” or “Company Order” means (a) with respect to the Obligor, a written request or order, respectively, signed in the name of the Obligor by any Officer thereof and delivered to the Trustee and (b) with respect to the Guarantor, a written request or order, respectively, signed in the name of the Guarantor by any Officer thereof and delivered to the Trustee.

“Comparable Treasury Issue” means the United States Treasury security selected by an Independent Investment Banker as having a maturity comparable to the remaining term of the Notes to be redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of such Notes.

“Comparable Treasury Price” means, with respect to any Redemption Date for the Notes of any series, (a) the average of four Reference Treasury Dealer Quotations for such Redemption Date, after excluding the highest and lowest such Reference Treasury Dealer Quotations, or (b) if the Trustee obtains fewer than four such Reference Treasury Dealer Quotations, the average of all such quotations.

“Consolidated Net Tangible Assets” means, with respect to any Person, the total amount of assets of such Person and its Subsidiaries minus (a) all applicable depreciation, amortization, and other valuation reserves, (b) the amount of assets resulting from write-ups of capital assets of such Person and its Subsidiaries (except write-ups in connection with accounting for acquisitions in accordance with U.S. GAAP), (c) all current liabilities of such Person and its Subsidiaries (excluding any intercompany liabilities) and (d) all goodwill, trade names, trademarks, patents, unamortized debt discount and expense and other like intangibles, all as set forth on the latest quarterly or annual consolidated balance sheet of such Person and its Subsidiaries prepared in accordance with U.S. GAAP.

“Corporate Trust Office” means the office of the Trustee in the City of New York at which at any particular time its corporate trust business shall be principally administered, which office at the date hereof is located at 4 New York Plaza, New York, New York 10004,

except that with respect to the presentation of Notes for payment or registration of transfer or exchange and with respect to the location of the Security Register, such term shall mean the office or the agency of the Trustee in said city at which at any particular time its corporate agency business shall be conducted, which office at the date hereof is located at 4 New York Plaza, 15th Floor, New York, New York 10004.

“Covenant Defeasance” has the meaning specified in Section 3.02.

“Custodian” means the Person appointed by the Obligor to act as custodian for the Depositary, which Person shall be the Trustee unless and until a successor Person is appointed by the Obligor.

“Debt” means, (a) with respect to the Obligor, any indebtedness of the Obligor for borrowed money, capitalized lease obligations and purchase money obligations, or any guarantee of such debt, in any such case which would appear on the consolidated balance sheet of the Obligor as a liability, and, (b) with respect to the Guarantor, any indebtedness of the Guarantor for borrowed money.

“Defaulted Interest” has the meaning specified in Section 2.06.

“Definitive Note” means a certificated Note registered in the name of the Holder thereof and issued in accordance with this Indenture.

“Depositary” means with respect to the Notes of any series issuable or issued in whole or in part in global form, the Person designated as Depositary for such series by the Obligor pursuant to Section 2.01 or 2.04, unless and until a successor Depositary for such series shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Depositary” with respect to the Notes of a series shall mean or include each Person who is then a Depositary hereunder with respect to such series.

“Discharged” has the meaning specified in Section 3.02.

“DTC” has the meaning specified in Section 2.04(2).

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

“Event of Default” has the meaning specified in Section 4.01.

“Exchange Act” means the U.S. Securities Exchange Act of 1934 (or any successor Act), as amended, and the rules and regulations of the Commission promulgated thereunder.

“Exempted Debt” means the sum, without duplication, of the following items outstanding as of the date Exempted Debt is being determined: (a) Debt incurred after the date of this Indenture and secured by Liens created or assumed or permitted to exist on any Principal Property (as such term is defined with respect to the Obligor) or on any shares of stock of any Restricted Subsidiary of the Obligor, other than Debt secured by Liens described in clauses (i)

through (vii) of Section 9.06(1) and (b) Attributable Debt of the Obligor and its Restricted Subsidiaries in respect of all sale and lease-back transactions with regard to any Principal Property (as such term is defined with respect to the Obligor) entered into pursuant to Section 9.07(2).

“Funded Debt” means all Debt having a maturity of more than one year from the date of its creation or having a maturity of less than one year but by its terms being renewable or extendible, at the option of the obligor in respect thereof, beyond one year from its creation.

“Global Note” means each note in global form issued in accordance with this Indenture and bearing the Global Note Legend.

“Global Note Legend” means the legend set forth in Section 2.01, which is required to be placed on all Global Notes issued pursuant to this Indenture.

“Guarantee” means the guarantee of the Obligor’s obligations under this Indenture and the Notes by the Guarantor pursuant to Article XI.

“Guarantee Commencement Date” means, if the Guarantee becomes effective pursuant to Article XI hereof, one Business Day prior to the 2009 Notes Payment Date.

“Guarantor” means PepsiCo, Inc., a North Carolina corporation, unless and until a successor Entity or assign shall have assumed the obligations of the Guarantor under this Indenture and the Guarantee and thereafter “Guarantor” shall mean such successor Entity or assign.

“Holder” and “Holder of Notes” means a Person in whose name a Note is registered in the Security Register.

“Indenture” or “this Indenture” means this Indenture, as amended or supplemented from time to time, including the Exhibits hereto.

“Independent Investment Banker” means one of the Reference Treasury Dealers appointed by the Trustee after consultation with the Obligor.

“Interest Payment Date,” when used with respect to any Note, means the date specified in such Note on which an installment of interest on such Note is scheduled to be paid.

“Issue Date” of any Note (or portion thereof) means the earlier of (a) the date of such Note or (b) the date of any Note (or portion thereof) for which such Note was issued (directly or indirectly) on registration of transfer, exchange or substitution.

“Legal Defeasance” has the meaning specified in Section 3.02.

“Lien” has the meaning specified in Section 9.06(1).

“Managing Director-Delegatee” means the Managing Director-Delegatee of the Obligor or the Guarantor.

“Managing Directors” means (a) the Managing Directors of the Obligor or the Guarantor or (b) any duly authorized committee of the Managing Directors of the Obligor or the Guarantor.

“Managing Directors Resolution” means, with respect to the Obligor or the Guarantor, a copy of a resolution of the Managing Directors certified by a Managing Director or a Managing Director-Delegatee of the Obligor or the Guarantor to have been duly adopted by the Managing Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

“Maturity,” when used with respect to any Note, means the date on which all or a portion of the principal amount outstanding under such Note becomes due and payable, whether on the Maturity Date or by declaration of acceleration, call for redemption, or otherwise.

“Maturity Date,” when used with respect to any Note or any installment of principal thereof means the date specified in such Note as the fixed date on which the principal of such Note or such installment of principal becomes due and payable.

“Notes” has the meaning specified in the Recitals of the Obligor on the first page of this Indenture, including any replacement Notes issued therefor in accordance with this Indenture.

“Obligor” means Bottling Group, LLC, a Delaware limited liability company, unless and until a successor Entity or assign shall have assumed the obligations of the Obligor under this Indenture and the Notes and thereafter “Obligor” shall mean such successor Entity or assign.

“Officer” means, (a) with respect to the Obligor, a Managing Director, a Managing Director-Delegatee, the principal financial officer or any other officer or officers of the Obligor designated pursuant to an applicable Managing Directors Resolution or (b) with respect to the Guarantor, the Chairman of the Board, the Chief Executive Officer, the Chief Financial Officer, the Executive Vice President, any Vice President, the Treasurer, the Assistant Treasurer or any other officer or officers of the Guarantor designated pursuant to an applicable Board Resolution.

“Officers’ Certificate” means, with respect to any Person, a certificate signed on behalf of such Person by any two Officers of such Person that meets the applicable requirements of this Indenture.

“Opinion of Counsel” means, with respect to the Obligor, the Guarantor or the Trustee, a written opinion of counsel to the Obligor, the Guarantor or the Trustee, as the case may be, which counsel may be an employee of the Obligor, the Guarantor or the Trustee, as the case may be.

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



(a) such Notes or such Notes of such series, as the case may be, theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

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

(c) such Notes or such Notes of such series, as the case may be, in exchange for or in lieu of which other Notes or other Notes of such series, as the case may be, have been authenticated and delivered pursuant to this Indenture, or which shall have been paid, in each case, pursuant to the terms of Section 2.05 (except with respect to any such Note or any such Note of such series, as the case may be, as to which proof satisfactory to the Trustee is presented that such Note or such Note of such series, as the case may be, is held by a person in whose hands such Notes or such Notes of such series, as the case may be, is a legal, valid, and binding obligation of the Obligor); and

(d) solely to the extent provided in Article III, Notes or Notes of such series, as the case may be, which are subject to Legal Defeasance or Covenant Defeasance as provided in Section 3.02. In determining whether the Holders of the requisite principal amount of such Notes or Notes of such series, as the case may be, Outstanding have given a direction concerning the time, method and place of conducting any proceeding for any remedy available to the Trustee, or concerning the exercise of any trust or power conferred upon the Trustee under this Indenture, or concerning a consent on behalf of the Holders of the Notes or the Holders of the Notes of such series, as the case may be, to the waiver of any past default and its consequences, Notes or the Notes of such series, as the case may be, owned by the Obligor, any other obligor upon the Notes or Notes of such series, as the case may be, or any Affiliate of the Obligor or such other obligor shall be disregarded and deemed not to be Outstanding. In determining whether the Trustee shall be protected in relying upon any request, demand, authorization, direction, notice, consent, or waiver hereunder, only Notes or Notes of such series, as the case may be, which a Responsible Officer assigned to the corporate trust department of the Trustee knows to be owned by the Obligor or any other obligor upon the Notes or the Notes of such series, as the case may be, or any Affiliate of the Obligor or such other obligor shall be so disregarded. Notes or Notes of such series, as the case may be, so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to act as owner with respect to such Notes or Notes of such series, as the case may be, and that the pledgee is not the Obligor or any other obligor upon the Notes or the Notes of such series, as the case may be, or any Affiliate of the Obligor or such other obligor.

**"Partial Guarantee Percentage"** means a fraction, (a) the numerator of which is (i) the aggregate principal amount of the Notes Outstanding on the 2009 Notes Payment Date

minus (ii) the principal of the 2009 Notes that the Guarantor has determined in good faith that the Guarantor is likely to have to pay on the 2009 Notes on the 2009 Notes Payment Date under the 2009 Notes Guarantee and that is specified in the Partial Payment Notice and (b) the denominator of which is the aggregate principal amount of the Notes Outstanding on the 2009 Notes Payment Date.

“**Partial Payment Notice**” has the meaning specified in Section 11.01.

“**Paying Agent**” means any Person appointed by the Obligor to distribute amounts payable by the Obligor on the Notes. The Obligor may act as its own Paying Agent. As of the date of this Indenture, the Obligor has appointed The Bank of New York Mellon as Paying Agent with respect to all Notes issuable hereunder.

“**PBG**” means The Pepsi Bottling Group, Inc., a Delaware corporation.

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

“**Place of Payment**” means the place specified pursuant to Section 9.02.

“**Predecessor Notes**” of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 2.05 in lieu of a lost, destroyed, mutilated, or stolen Note shall be deemed to evidence the same debt as the lost, destroyed, mutilated, or stolen Note.

“**Principal Property**” means, (a) with respect to the Obligor, any single manufacturing or processing plant, office building, or warehouse owned or leased by the Obligor or a Subsidiary of the Obligor, in each case, located in the 50 states of the United States of America, the District of Columbia or Puerto Rico, other than a plant, warehouse, office building, or portion thereof which, in the opinion of the Managing Directors evidenced by a Managing Directors Resolution, is not of material importance to the business conducted by the Obligor and its Subsidiaries taken as an entirety and, (b) with respect to the Guarantor, any single manufacturing or processing plant, office building, or warehouse owned or leased by the Guarantor or a Restricted Subsidiary of the Guarantor, in each case, located in the 50 states of the United States of America, the District of Columbia or Puerto Rico, other than a plant, warehouse, office building, or portion thereof which, in the opinion of the Guarantor’s Board of Directors evidenced by a Board Resolution, is not of material importance to the business conducted by the Guarantor and its Restricted Subsidiaries as an entirety.

“**Record Date**” means any date as of which the Holder of a Note of any series will be determined for any purpose described herein, such determination to be made as of the close of business on such date by reference to the Security Register, and in relation to a determination of a payment of an installment of interest on the Notes of any series, shall have the meaning specified in such series of Notes.

“Redemption Date” when used with respect to any Notes to be redeemed, means the date fixed for such redemption in any notice of redemption issued pursuant to this Indenture.

“Redemption Price” when used with respect to any Notes to be redeemed, means the price specified in Section 10.07.

“Reference Treasury Dealer” means four primary U.S. Government securities dealers in New York City (each, a “Primary Treasury Dealer”), either named in the prospectus supplement relating to a series of Notes or appointed by the Trustee in consultation with the Obligor; provided, however, that if any of the foregoing shall cease to be a Primary Treasury Dealer, the Obligor shall substitute therefor another Primary Treasury Dealer.

“Reference Treasury Dealer Quotations” means, with respect to each Reference Treasury Dealer and any Redemption Date, the average, as determined by the Trustee, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Trustee by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day preceding such Redemption Date.

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

“Responsible Officer,” when used with respect to the Trustee, means any officer of the Trustee having direct responsibility for the administration of this Indenture and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his or her knowledge of and familiarity with the particular subject.

“Restricted Subsidiary” means, (a) with respect to the Obligor or PBG, any current or future Subsidiary of the Obligor or PBG, as the case may be, (i) substantially all of the property of which is located, or substantially all of the business of which is carried on, within the 50 states of the United States of America, the District of Columbia or Puerto Rico and which is not a foreign corporation, and (ii) which owns or leases any Principal Property or, (b) with respect to the Guarantor, at any time, any Subsidiary of the Guarantor which is at the time not an Unrestricted Subsidiary.

“Scheduled Guarantee Commencement Date” means one Business Day prior to the 2009 Notes Payment Date.

“Securities Act” means the U.S. Securities Act of 1933 (or any successor Act), as amended, and the rules and regulations of the Commission promulgated thereunder.

“Security Register” has the meaning specified in Section 2.04.

“Special Record Date” for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 2.06.

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

“Treasury Rate” means, with respect to any Redemption Date for the Notes: (i) the yield, under the heading which represents the average for the immediately preceding week, appearing in the most recently published statistical release designated “H.15(519)” or any successor publication which is published weekly by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States Treasury securities adjusted to constant maturity under the caption “Treasury Constant Maturities,” for the maturity corresponding to the Comparable Treasury Issue (if no maturity is within three months before or after the remaining term of the Notes to be redeemed, yields for the two published maturities most closely corresponding to the Comparable Treasury Issue shall be calculated, and the Treasury Rate shall be interpolated or extrapolated from such yields on a straight line basis, rounding to the nearest month); or (ii) if such statistical release (or any successor statistical release) is not published during the week preceding the calculation date or does not contain such yields, the rate per annum equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such Redemption Date.

“Trust Indenture Act” or “TIA” means the Trust Indenture Act of 1939, as amended, as in force as of the date hereof; provided that, with respect to every supplemental indenture executed pursuant to this Indenture, “Trust Indenture Act” or “TIA” shall mean the Trust Indenture Act of 1939, as then in effect.

“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 Notes of any series shall mean the Trustee with respect to the Notes of that series.

“2009 Notes” means the Obligor’s outstanding \$1,300,000,000 55/8% Senior Notes due 2009 guaranteed by the Guarantor.

“2009 Notes Guarantee” means the Guarantor’s unconditional and irrevocable guarantee of the 2009 Notes.

“2009 Notes Payment Date” means February 17, 2009 or, if earlier, the date scheduled for payment of (a) the redemption price (in the event of a redemption in whole) or (b) the principal of and interest and premium, if any (in the event of acceleration), in each case, on the 2009 Notes.

“2009 Notes Payment Deposit Date” means two Business Days prior to the 2009 Notes Payment Date.

“2009 Notes Trustee” means JPMorgan Chase Bank, in its capacity as the trustee under the indenture relating to the 2009 Notes, or its successor thereunder.

“Unrestricted Subsidiary” means, with respect to the Guarantor, any Subsidiary of the Guarantor (not at the time designated a Restricted Subsidiary of the Guarantor) (a) the major

part of whose business consists of finance, banking, credit, leasing, insurance, financial services, or other similar operations, or any combination thereof, (b) substantially all the assets of which consist of the capital stock of one or more Subsidiaries engaged in the operations referenced in the preceding clause (a), (c) substantially all of the property of which is located, or substantially all of the business of which is carried on, outside the 50 states of the United States of America, the District of Columbia and Puerto Rico or (d) designated as such by the Guarantor's Board of Directors. Any Subsidiary of the Guarantor designated as a Restricted Subsidiary may be designated as an Unrestricted Subsidiary.

**"U.S. GAAP"** means accounting principles as are generally accepted in the United States of America at the date of any computation required or permitted under this Indenture.

**"U.S. Government Obligations"** means (a) securities that are direct obligations of the United States of America, the payment of which is unconditionally guaranteed by the full faith and credit of the United States of America and (b) securities that are obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the payment of which is unconditionally guaranteed by the full faith and credit of the United States of America, and also includes depository receipts issued by a bank or trust company as custodian with respect to any of the securities described in the preceding clauses (a) and (b), and any payment of interest or principal payable under any of the securities described in the preceding clauses (a) and (b) that is held by such custodian for the account of the holder of a depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt, or from any amount received by the custodian in respect of such securities, or from any specific payment of interest or principal payable under the securities evidenced by such depository receipt.

**"Vice President"** means, with respect to any Person, any vice president of that Person, whether or not designated by a number or a word or words added before or after the title "vice president."

**"Voting Stock"** means, as applied to any Person, capital stock (or other interests, including partnership or membership interests) of any class or classes (however designated), the outstanding shares (or other interests) of which have, by the terms thereof, ordinary voting power to elect a majority of the members of the board of directors (or other governing body) of such Person, other than stock (or other interests) having such power only by reason of the happening of a contingency.

SECTION 1.02. **Officers' Certificates and Opinions.** Every Officers' Certificate, Opinion of Counsel and other certificate or opinion to be delivered to the Trustee under this Indenture with respect to any action to be taken by the Trustee shall include the following:

(1) a statement that each individual signing such certificate or opinion has read all covenants and conditions of this Indenture relating to such proposed action, including the definitions of all applicable capitalized terms;

(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 or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and

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

SECTION 1.03. Form of Documents Delivered to Trustee.

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

(2) Any certificate or opinion of an officer of the Obligor may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, legal counsel, unless such officer knows that any such certificate, opinion, or representation is erroneous. Any opinion of counsel for the Obligor 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 Obligor, unless such counsel knows that any such certificate, opinion, or representation is erroneous.

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

SECTION 1.04. Acts of Holders.

(1) 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 evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and (if expressly required by the applicable terms of this Indenture) to the Obligor. 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. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of

this Indenture and (subject to Section 5.01) conclusive in favor of the Trustee and the Obligor, if made in the manner provided in this Section 1.04.

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

(3) The ownership of Notes shall for all purposes be determined by reference to the Security Register, as such register shall exist as of the applicable Record Date.

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

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

SECTION 1.05. Notices, Etc., to Trustee, Obligor and Guarantor. Any request, order, authorization, direction, consent, waiver or other action to be taken by the Trustee, the Obligor, the Guarantor or the Holders hereunder (including any Authentication Order), and any notice to be given to the Trustee, the Obligor or the Guarantor with respect to any action taken or to be taken by the Trustee, the Obligor, the Guarantor or the Holders hereunder, shall be sufficient if made in writing and

- (1) if to be furnished or delivered to or filed with the Trustee by the Obligor, the Guarantor or any Holder, delivered to the Trustee at its Corporate Trust Office, Attention: Worldwide Securities Services, or
- (2) if to be furnished or delivered to the Obligor by the Trustee or any Holder, and except as otherwise provided in Section 4.01(1)(iii), mailed to the Obligor, first-class postage prepaid, at the following address: c/o The Pepsi Bottling Group, Inc., One Pepsi Way, Somers, New York 10589, Attention: Treasurer, or at any other address hereafter furnished in writing by the Obligor to the Trustee, or
- (3) if to be furnished or delivered to the Guarantor by the Trustee or any Holder and except as otherwise provided in Section 4.01(2)(i), mailed to the Guarantor, first-class postage prepaid at its principal office (as specified in the first paragraph of this instrument), Attention: Treasurer, or at any other address hereafter furnished in writing by the Guarantor to the Trustee.

SECTION 1.06. Notice to Holders; Waiver. Where this Indenture or any Note provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise expressly provided herein or in such Note) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at his or her address as it appears in the Security Register as of the applicable Record Date, if any, not later than the latest date or earlier than the earliest date prescribed by this Indenture or such Note for the giving of such notice. 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. Where this Indenture or any Note provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. In case, by reason of the suspension of regular mail service as a result of a strike, work stoppage or otherwise, it shall be impractical to mail notice of any event to any Holder when such notice is required to be given pursuant to any provision of this Indenture or the applicable Note, then any method of notification as shall be satisfactory to the Trustee and the Obligor shall be deemed to be sufficient for the giving of such notice.

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

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

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



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

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

SECTION 1.12. Governing Law. This Indenture shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to rules governing the conflict of laws.

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

SECTION 1.14. Legal Holidays. In any case where any Interest Payment Date or Redemption Date or Maturity Date shall not be a Business Day, then (notwithstanding any other provisions of this Indenture or of the Notes) payment of interest or principal (and premium, if any) need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the Interest Payment Date, the Redemption Date or Maturity Date, provided that no interest shall accrue for the period from and after such Interest Payment Date, Redemption Date or Maturity Date, as the case may be.

## ARTICLE II

### THE NOTES

#### SECTION 2.01. Form and Dating.

##### (1) General.

(i) The Notes of each series shall be substantially in such form (not inconsistent with this Indenture) as shall be established by or pursuant to a Managing Directors Resolution or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture and may have imprinted or otherwise reproduced thereon such legend or legends, not inconsistent with the provisions of this Indenture, as may be required to comply with any law, stock exchange rule or DTC rule or usage or with any rules or regulations pursuant thereto, all as may, consistently herewith, be determined by the Officers executing such Notes, as evidenced by their execution of the Notes. Any portion of the text of any Note may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Note. Each Note shall be dated the date of its authentication. The Obligor shall furnish any such legends to the Trustee in writing. Except as otherwise provided in Section 11.01(2) and in the immediately following proviso, each Note shall have an executed Guarantee from the Guarantor

substantially in the form of Exhibit A hereto endorsed thereon; provided, however, that any Note issued under this Indenture on and after the date which the Guarantor provides a notice to the Trustee pursuant to Section 11.01(3) that the Guarantee shall not become effective and the Guarantee Commencement Date shall not occur shall not have an executed Guarantee from the Guarantor endorsed thereon; and provided, further, that any such Note, when issued, authenticated and delivered in accordance with this Indenture, shall be treated as a single class of securities with other Outstanding Notes of the same series which have the Guarantee endorsed thereon.

(ii) The Definitive Notes, if any, shall be printed, lithographed or engraved or produced by any combination of those methods on steel engraved borders or may be produced in any other manner permitted by the rules of any securities exchange, all as determined by the Officers executing such Notes, as evidenced by their execution of such Notes.

(iii) The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture and the Obligor, the Guarantor and the Trustee, by their execution and delivery of this Indenture expressly agree to such terms and provisions and to be bound thereby. Nothing in the preceding sentence shall, however, limit the effect of the second paragraph of Section 2.02(1). However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling. All Notes of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to such resolution of the Managing Directors or in any such indenture supplemental hereto.

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

(v) The aggregate principal amount of Notes which may be authenticated and delivered under this Indenture is unlimited. The Notes may be issued in one or more series. There shall be established in or pursuant to a resolution of the Managing Directors of the Obligor and the Guarantor and set forth in an Officers' Certificate of the Obligor and the Guarantor, or established in one or more indentures supplemental hereto, prior to the issuance of Notes of any series:

(a) the title of the Notes of the series (which shall distinguish the Notes of the series from all other Notes);

(b) any limit upon the aggregate principal amount of the Notes of the series that may be authenticated and delivered under this Indenture (except for Notes authenticated and delivered upon registration of transfer of, or in exchange

for, or in lieu of, other Notes of the series pursuant to Section 2.03, 2.04, 2.05, 8.07 or 10.06);

(c) the date or dates on which the principal of the Notes of the series is payable;

(d) the rate or rates at which the Notes of the series shall bear interest, if any, or the method by which such rate shall be determined, the date or dates from which such interest shall accrue, the Interest Payment Dates on which such interest shall be payable and the Record Dates, if any, for the determination of Holders to whom interest is payable;

(e) the place or places where the principal of and any premium and interest on the Notes of the series shall be payable;

(f) if other than the principal amount thereof, the portion of the principal amount of Notes of the series which shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 4.02;

(g) the issue date;

(h) the issue price (expressed as a percentage of the aggregate principal amount of the Notes) at which the Notes will be issued;

(i) if the Notes of the series are issuable in whole or in part in the form of Definitive Notes or as one or more Global Notes, and if so, the identity of the Depositary for such Global Notes if other than DTC;

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

(k) any Events of Default with respect to the Notes of a particular series if not set forth herein; and

(l) any covenants of the Obligor or the Guarantor with respect to the Notes of a particular series if not set forth herein. Notwithstanding Section 2.01(1)(v)(b) and unless otherwise expressly provided with respect to a series of Notes, the aggregate principal amount of a series of Notes may be increased and additional Notes of such series may be issued up to the maximum aggregate principal amount authorized with respect to such series as increased; provided that, any such additional Notes shall have identical terms as the outstanding Notes of such series, other than with respect to the date of issuance, issue price, first Interest Payment Date, interest accrual date and amount of interest payable on the first Interest Payment Date applicable thereto; provided, further, that any such additional Notes shall be treated as a single class with the outstanding Notes of such series for all purposes under this Indenture.

(2) Global Notes.

(i) If the Obligor shall establish pursuant to Section 2.01(1) above that the Notes of a series or a portion thereof are to be issued in the form of one or more Global Notes, then the Obligor shall execute and the Trustee shall authenticate and make available for delivery one or more Global Notes that (a) shall represent and shall be denominated in an amount equal to the aggregate principal amount of all of the Notes of such series issued in such form and not yet cancelled, (b) shall be registered, in the name of the Depositary designated for such Global Note pursuant to Section 2.04, or in the name of a nominee of such Depositary, (c) shall be deposited with the Trustee, as Custodian for the Depositary, and (d) shall bear a legend substantially as follows ("Global Note Legend"):

THIS IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE REFERRED TO HEREINAFTER.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE OBLIGOR OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

(ii) Each Depositary designated pursuant to Section 2.01 or 2.04 for a Global Note must, at the time of its designation and at all times while it serves as Depositary, be a clearing agency registered under the Exchange Act and any other applicable statute or regulation, provided that the Depositary is required to be so registered in order to act as depositary.

(iii) Any Global Note may be represented by more than one certificate. The aggregate principal amount of each Global Note may from time to time be increased or decreased by adjustments made on the records of the Registrar, as provided in this Indenture.

(3) Trustee's Certificate of Authentication.

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

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

The Bank of New York Mellon  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

SECTION 2.02. Execution and Authentication.

(1) At any time and from time to time after the execution and delivery of this Indenture, the Obligor may deliver Notes of any series executed on behalf of the Obligor by any two Officers to the Trustee for authentication, and the Trustee, upon receipt of a written order of the Obligor and the Guarantor signed by an Officer of the Obligor and the Guarantor (the "Authentication Order") shall thereupon in accordance with the procedures acceptable to the Trustee set forth in the Authentication Order, and subject to the provisions hereof, authenticate and deliver such Notes to or upon the written order of the Obligor, without any further action by the Obligor or the Guarantor except as set forth in this Section 2.02. The signature of any of the Officers on the Notes may be manual or facsimile. Typographical and other minor errors or defects in any such signature shall not affect the validity or enforceability of any Note that has been duly authenticated and delivered by the Trustee. In authenticating such Notes and accepting the additional responsibilities under this Indenture in relation to such Notes, the Trustee shall receive, and (subject to Section 5.01) shall be fully protected in relying upon:

- (a) a copy of the Managing Directors Resolution of each of the Obligor and the Guarantor relating to such series;
- (b) an executed supplemental indenture, if any, and the documentation required to be delivered pursuant to Section 8.06;
- (c) an Officers' Certificate of each of the Obligor and the Guarantor setting forth the form or forms and terms of the Notes of such series pursuant to Section 2.01(1)(v), and prepared in accordance with Section 1.02;
- (d) an Opinion of Counsel of the Obligor and the Guarantor, prepared in accordance with Section 1.02, to the effect that
  - (i) the form or forms and terms of such Notes have been established by or pursuant to a Managing Directors Resolution of each of the Obligor and the

Guarantor or by a supplemental indenture as permitted by Section 2.01 in conformity with the provisions of this Indenture; and

(ii) such Notes, when executed and issued by the Obligor, guaranteed by the Guarantor and authenticated and delivered by the Trustee in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute legal, valid and binding obligations of the Obligor and Guarantor enforceable against each of them in accordance with their terms except as any rights thereunder may be limited by bankruptcy, insolvency and other similar laws affecting the enforceability of creditors rights' generally and by general equity principles. The Trustee shall have the right to decline to authenticate and deliver any Notes under this Section 2.02 if the Trustee, being advised by counsel, determines that such action may not lawfully be taken by the Obligor or the Guarantor or if the Trustee in good faith by its board of directors or board of trustees, executive committee, or a trust committee of directors or trustees or Responsible Officers shall determine that such action would expose the Trustee to personal liability. If the Obligor and the Guarantor shall establish pursuant to Section 2.01(1) that the Notes of a series or a portion thereof are to be issued in the form of one or more Global Notes, then the Obligor and the Guarantor shall execute and the Trustee shall authenticate and make available for delivery one or more Global Notes as provided in Section 2.01(2)(i).

(2) Notes bearing the manual or facsimile signatures of individuals who were at any time on or after the date hereof the proper officers of the Obligor and the Guarantor shall bind each of them, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Notes or did not hold such offices at the date of such Notes.

(3) The Notes shall be in fully registered form, without coupons, in minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof.

SECTION 2.03. Temporary Notes. Until certificates representing Notes of a series are ready for delivery, the Obligor may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate and deliver temporary Notes of such series. Temporary Notes shall be substantially in the form of certificated Notes but may have variations that the Obligor considers appropriate for temporary Notes and as shall be reasonably acceptable to the Trustee. Without unreasonable delay, the Obligor shall prepare and the Trustee shall authenticate Definitive Notes of a series in exchange for temporary Notes of such series. Holders of temporary Notes shall be entitled to all of the benefits of this Indenture.

SECTION 2.04. Registration, Transfer and Exchange.

(1) Securities Register. The Trustee shall keep a register of the Notes (the "Security Register") which shall provide for the registration of such Notes, and for transfers of such Notes in accordance with information, if any, to be provided to the Trustee by the Obligor, subject to such reasonable regulations as the Trustee may prescribe. Such register shall be in written form or in any other form capable of being

converted into written form within a reasonable time. At all reasonable times the information contained in such register or registers shall be available for inspection at the Corporate Trust Office of the Trustee or at such other office or agency to be maintained by the Obligor pursuant to Section 9.02.

Upon due presentation for registration of transfer of any Note at the Corporate Trust Office of the Trustee or at any other office or agency maintained by the Obligor pursuant to Section 9.02, the Obligor shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of authorized denominations, of a like aggregate principal amount, series and Maturity Date.

(2) Transfer of Global Notes. Any other provision of this Section 2.04 notwithstanding, unless and until it is exchanged in whole or in part for Definitive Notes, a Global Note representing all or a portion of the Notes of a series may not be transferred except as a whole by the Depository 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 or a nominee of such successor Depository.

The Obligor initially appoints The Depository Trust Company ("DTC") to act as Depository with respect to the Global Notes of each series.

(3) Legends.

Each Global Note shall bear the legend specified in clause (i) of Section 2.01(2) on the face thereof.

(4) Definitive Notes.

(i) Notwithstanding any other provisions of this Indenture or the Notes, a Global Note may be exchanged for Notes of the same series registered in the names of any Person designated by the Depository in the event that (a) the Depository has notified the Obligor that it is unwilling or unable to continue as Depository for such Global Note or such Depository has ceased to be a "clearing agency" registered under the Exchange Act, at a time when the Depository is required to be so registered in order to act as depository, and the Obligor has not appointed a successor Depository within 90 days of receiving such notice or of becoming aware of such cessation, (b) an Event of Default has occurred and is continuing with respect to the applicable Notes, or (c) the Obligor, in its sole discretion, determines that the applicable Notes issued in the form of Global Notes shall no longer be represented by such Global Notes as evidenced by a Company Order delivered to the Trustee. Any Global Note exchanged pursuant to clause (a) or (c) above shall be so exchanged in whole and not in part and any Global Note exchanged pursuant to clause (b) above may be exchanged in whole or from time to time in part as directed by the Depository. Any Note issued in exchange for a Global Note of the same series or any portion thereof shall be a Global Note, provided that any such Note so issued that is registered in the name of a Person other than the Depository or a nominee thereof shall not be a Global Note.

(ii) If at any time the Depositary for the Notes of any series notifies the Obligor that it is unwilling or unable to continue as Depositary for such Notes or if the Depositary has ceased to be a “clearing agency” registered under the Exchange Act at a time when the Depositary is required to be so registered in order to act as depositary, the Obligor may within 90 days of receiving such notice or of becoming aware of such cessation appoint a successor Depositary with respect to such Notes.

(iii) If, in accordance with this Section 2.04(4), Notes of any series in global form will no longer be represented by Global Notes, the Obligor will execute, and the Trustee, upon receipt of an Authentication Order, will authenticate and make available for delivery, Definitive Notes of such series in an aggregate principal amount equal to the principal amount of the Global Notes of such series, in exchange for such Global Notes.

(iv) If a Definitive Note is issued in exchange for any portion of a Global Note after the close of business at the office or agency where such exchange occurs on any Record Date for the payment of interest and before the opening of business at such office or agency on the next succeeding Interest Payment Date, interest shall not be payable on such Interest Payment Date in respect of such Definitive Notes, but shall be payable on such Interest Payment Date only to the Person to whom interest in respect of such portion of such Global Note is payable in accordance with the provisions of this Indenture.

(v) Definitive Notes issued in exchange for a Global Note pursuant to this Section 2.04(4) shall be registered in such names and in such authorized denominations as the Depositary, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. Upon execution and authentication, the Trustee shall deliver such Definitive Notes to the Persons in whose names such Notes are so registered. To permit registrations of transfers and exchanges, the Obligor shall execute and the Trustee (or an Authenticating Agent appointed pursuant to this Indenture) shall authenticate and make available for delivery Definitive Notes at the Registrar’s request, and upon direction of the Obligor. No service charge shall be made for any registration of transfer or exchange, but the Obligor or the Trustee may require payment of a sum sufficient to cover any transfer tax or other governmental charge payable in connection with any registration of transfer or exchange.

(vi) When Definitive Notes are presented to the Trustee with a request to register the transfer of such Definitive Notes or to exchange such Definitive Notes for an equal principal amount of Definitive Notes of other authorized denominations of the same series, the Trustee shall register the transfer or make the exchange as requested if its requirements for such transaction are met; provided, however, that the Definitive Notes surrendered for transfer or exchange shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Obligor and the Trustee, duly executed by the Holder thereof or his attorney duly authorized in writing.

(vii) At such time as all interests in Global Notes of any series have either been exchanged for Definitive Notes of such series or cancelled, such Global Notes shall be cancelled by the Trustee in accordance with the standing procedures and instructions existing between the Depositary and the Custodian. At any time prior to such



cancellation, if any interest in a Global Note of any series is exchanged for Definitive Notes of such series or cancelled, the principal amount of such Global Note shall, in accordance with the standing procedures and instructions existing between the Depositary and the Custodian, be reduced and an endorsement shall be made on such Global Note, by the Trustee or the Custodian, at the direction of the Trustee, to reflect such reduction.

(5) Notwithstanding anything in this Indenture to the contrary, (i) all Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Obligor, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Notes surrendered upon such registration of transfer or exchange, (ii) all transfers and exchanges of the Notes may be made only in accordance with the procedures set forth in this Indenture, and (iii) the transfer and exchange of a beneficial interest in a Global Note may only be effected through the Depositary in accordance with the procedures promulgated by the Depositary.

(6) The Obligor shall not be required to (i) issue, register the transfer of, or exchange any Note during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Notes under Section 10.03 and ending at the close of business on the date of such mailing or (ii) register the transfer of or exchange any Note so selected for redemption in whole or in part, except, in the case of any Note to be redeemed in part, the portion thereof not to be redeemed.

SECTION 2.05. Mutilated, Destroyed, Lost and Stolen Notes.

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

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

(3) Upon the issuance of any new Note under this Section 2.05, the Obligor may require the payment by the Holder thereof of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

(4) Every new Note issued pursuant to this Section 2.05 in lieu of any mutilated, destroyed, lost or stolen Note shall constitute an original contractual obligation of the Obligor, whether or not the mutilated, destroyed, lost or stolen Note 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 Notes duly issued hereunder.

(5) The provisions of this Section 2.05 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 Notes.

**SECTION 2.06. Payment of Interest; Interest Rights Preserved.**

(1) Interest on any Note which is payable and is punctually paid or duly provided for on any Interest Payment Date shall, if so provided in such Note, be paid to the Person in whose name that Note (or one or more Predecessor Notes) is registered at the close of business on the applicable Record Date, notwithstanding any transfer or exchange of such Note subsequent to such Record Date and prior to such Interest Payment Date (unless, if so provided in such Note, such Interest Payment Date is also the Maturity Date, in which case such interest shall be payable to the Person to whom principal is payable).

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

(i) The Obligor may elect to make payment of any Defaulted Interest to the Persons in whose names any such Notes (or their respective Predecessor Notes) 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 Obligor shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each such Note and the date of the proposed payment, and at the same time the Obligor shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Obligor of such Special Record Date and, in the name and at the expense of the Obligor, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to the Holder of each such Note at his address as it appears in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names

such Notes (or their respective Predecessor Notes) are registered on such Special Record Date and shall no longer be payable pursuant to the following clause (ii).

(ii) The Obligor may make payment of any Defaulted Interest in any other lawful manner if, after notice given by the Obligor to the Trustee of the proposed payment pursuant to this clause (ii), such manner of payment shall be deemed practicable by the Trustee.

(3) If any installment of interest on any Note called for redemption pursuant to Article X is due and payable on or prior to the Redemption Date and is not paid or duly provided for on or prior to the Redemption Date in accordance with the foregoing provisions of this Section 2.06, such interest shall be payable as part of the Redemption Price of such Notes.

(4) Interest on Notes may be paid at the office or agency maintained by the Obligor in New York City pursuant to Section 9.02 or, at the Obligor's option, through DTC, Clearstream Banking, S.A., Luxembourg, or Euroclear System to the Person entitled thereto or by such other means as may be specified in the form of such Note.

(5) Subject to the foregoing provisions of this Section 2.06 and the provisions of Section 2.04, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

**SECTION 2.07. Persons Deemed Owners.**

(1) Prior to due presentment of a Note for registration of transfer, the Obligor, the Guarantor, the Trustee, and any agent of the Obligor, the Guarantor or the Trustee may treat the Person in whose name any Note is registered on the Security Register as the owner of such Note for the purpose of receiving payment of principal, premium, if any, and (subject to Section 2.06) interest, and for all other purposes whatsoever, whether or not such Note is overdue and neither the Obligor, the Guarantor, the Trustee, nor any agent of the Obligor, the Guarantor or the Trustee shall be affected by notice to the contrary.

(2) None of the Obligor, the Guarantor, the Trustee, any Authenticating Agent, any Paying Agent, the Registrar or any Co-Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Note or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests and each of them may act or refrain from acting without liability on any information relating to such records provided by the Depositary.

**SECTION 2.08. Cancellation.** All Notes surrendered for payment, redemption, registration of transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and, if not already cancelled, shall be promptly cancelled by it. The Obligor may at any time deliver to the Trustee for cancellation any Notes previously authenticated and delivered hereunder which the Obligor may have acquired in any manner

whatsoever, and all Notes so delivered shall be promptly cancelled by the Trustee. Acquisition of such Notes by the Obligor shall not operate as a redemption or satisfaction of the indebtedness represented by such Notes unless and until the same are delivered to the Trustee for cancellation. No Note shall be authenticated in lieu of or in exchange for any Notes cancelled as provided in this Section 2.08, except as expressly permitted by this Indenture. The Trustee shall dispose of all cancelled Notes in accordance with its customary procedures and, upon written request, deliver a certificate of such disposition to the Obligor.

SECTION 2.09. Computation of Interest. Interest on the Notes shall be calculated on the basis of a 360-day year of twelve 30-day months.

SECTION 2.10. CUSIP Numbers. The Obligor in issuing the Notes may use “CUSIP” and “ISIN” numbers (if then generally in use), and, if so, the Trustee shall use the CUSIP or ISIN numbers, as the case may be, in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness or accuracy of the CUSIP or ISIN number, as the case may be, either as printed on the Notes or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Notes. The Obligor will promptly notify the Trustee in writing of any change in the CUSIP or ISIN number.

### ARTICLE III

#### DISCHARGE OF INDENTURE

SECTION 3.01. Discharge of Indenture. This Indenture will be discharged with respect to the Notes of a series and will cease to be of further effect as to all such Notes (except as to any surviving rights of transfer or exchange of such Notes expressly provided for herein), and the Trustee, on demand of and at the expense of the Obligor, shall execute proper instruments acknowledging the discharge of this Indenture with respect to the Notes of such series, when

- (1) either
  - (i) all Notes of such series theretofore authenticated and delivered (except (a) mutilated, lost, stolen or destroyed Notes which have been replaced or paid, as provided in Section 2.05, and (b) Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Obligor and thereafter repaid to the Obligor or discharged from such trust, as provided in Section 3.05) have been delivered to the Trustee cancelled or for cancellation; or
  - (ii) all such Notes of such series not theretofore delivered to the Trustee cancelled or for cancellation
    - (a) have become due and payable, or
    - (b) will, in accordance with their Maturity Date, become due and payable within one year, or

(c) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Obligor, and, in any of the cases described in (a) or (b) above or in this clause (c), the Obligor has deposited or caused to be deposited with the Trustee, as trust funds in trust for the benefit of the Holders of such Notes for that purpose, U.S. dollars or non-callable U.S. Government Obligations or a combination thereof in such amounts sufficient to pay and discharge the entire indebtedness on the Notes of such series not theretofore delivered to the Trustee cancelled or for cancellation, for principal of and interest and premium, if any, on the Notes of such series to the date of such deposit (in the case of Notes of such series that have become due and payable), or to the Maturity Date or the Redemption Date, as the case may be;

(2) the Obligor has paid or caused to be paid all other sums payable by it with respect to the Notes of such series under this Indenture;

(3) in the event of a deposit and defeasance under Section 3.01(1)(ii), no Event of Default or event which with notice or lapse of time would become an Event of Default has occurred and is continuing with respect to the Notes of such series on the date of such deposit; and

(4) the Obligor has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that all conditions precedent to the discharge of this Indenture with respect to the Notes of such series have been complied with, and in the event of a deposit and defeasance under Section 3.01(1)(ii), in the case of the Opinion of Counsel, stating:

(i) either that no requirement to register under the Investment Company Act of 1940, as amended, will arise as a result of the Obligor's exercise of its option under this Section 3.01 or that any such registration requirement has been complied with; and

(ii) such deposit and defeasance will not result in a material breach or violation of, or constitute a default under, any material agreement or instrument to which the Obligor is a party. Notwithstanding the discharge of this Indenture with respect to the Notes of such series, the obligations of the Obligor under Section 3.01(1) and the obligations of the Obligor to the Trustee under Section 5.07 and to any Authenticating Agent under Section 5.14 shall survive, and the obligations of the Trustee under Sections 3.03 and 3.05 shall survive.

SECTION 3.02. Defeasance and Discharge of Covenants upon Deposit of Moneys, U.S. Government Obligations. At the Obligor's option, either (a) the Obligor shall be deemed to have been Discharged (as defined below) from its obligations with respect to the Notes of any series on the 123rd day after the applicable conditions set forth below have been satisfied ("Legal Defeasance") and/or (b) the Obligor and the Guarantor shall cease to be under any obligation to comply with any term, provision or condition set forth in Sections 7.01, 7.02, 9.06 and 9.07 with respect to the Notes of such series at any time after the applicable conditions set forth below have been satisfied ("Covenant Defeasance");

(1) The Obligor or the Guarantor 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 Notes of such series, an amount of money, in cash in U.S. dollars sufficient, or in non-callable U.S. Government Obligations, the principal of and interest on which, when due, will be sufficient, or a combination thereof, 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 the entire indebtedness on the Notes of such series with respect to principal, premium, if any, and accrued and unpaid interest to the date of such deposit (in the case of Notes of any series that have become due and payable), or to the Maturity Date or Redemption Date, as the case may be;

(2) No Event of Default, or event which with notice or lapse of time would become an Event of Default with respect to the Notes of such series, shall have occurred and be continuing on the date of such deposit;

(3) The Obligor shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that all conditions precedent to the defeasance and discharge contemplated by this Section 3.02 have been complied with, and, in the case of the Opinion of Counsel stating that:

(i) the deposit and defeasance contemplated by this Section 3.02 will not cause the Holders of the Notes of such series to recognize income, gain or loss for Federal income tax purposes as a result of the Obligor's exercise of its option under this Section 3.02 and such Holders will be subject to Federal income tax on the same amount and in the same manner and at the same times as would have been the case if such option had not been exercised, which Opinion of Counsel (in the case of a Legal Defeasance) must be based upon a ruling of the Internal Revenue Service to the same effect or a change in applicable Federal income tax law or related treasury regulations after the date of this Indenture; and

(ii) either no requirement to register under the Investment Company Act of 1940, as amended, will arise as a result of the Obligor's exercise of its option under this Section 3.02 or any such registration requirement has been complied with; and

(4) with respect to a Legal Defeasance, 123 days shall have passed during which no Event of Default under clauses (iv) and (v) of Section 4.01(1) or under clauses (ii) or (iii) of Section 4.01(2) has occurred.

If in connection with the exercise by the Obligor of any option under this Section 3.02, any series of Notes is to be redeemed, either notice of such redemption shall have been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee shall have been made.

Notwithstanding the exercise by the Obligor of its option under Section 3.02(b) with respect to Section 7.01, the obligation of any successor Entity to assume the obligations to the Trustee under Section 5.07 shall not be discharged.

“Discharged” means, as to any series of Notes, that the Obligor shall be deemed to have paid and discharged the entire indebtedness represented by, and obligations under, the Notes of such series and to have satisfied all the obligations under this Indenture relating to such series of Notes (and the Trustee, at the expense of the Obligor, shall execute proper instruments acknowledging the same), except (A) the rights of Holders of Notes of such series to receive, from the trust fund described in clause (1) above, payment of the principal of, premium, if any, and the interest, if any, on such series of Notes when such payments are due; (B) the Obligor’s obligations with respect to such Notes under Sections 2.04, 2.05, 3.02(1), 3.03, and 9.02 and its obligations under Section 5.07; and (C) the rights, powers, trusts, duties and immunities of the Trustee hereunder.

SECTION 3.03. Application of Trust Money. All money and U.S. Government Obligations deposited with the Trustee pursuant to Section 3.01 or Section 3.02 and all proceeds of such U.S. Government Obligations and the interest thereon shall be held in trust and applied by it, in accordance with the provisions of this Indenture, to the payment, either directly or through any Paying Agent (including the Obligor acting as its own Paying Agent), as the Trustee may determine, to the Persons entitled thereto, of the principal, premium, if any, and interest, for whose payment such money and U.S. Government Obligations have been deposited with the Trustee; but such money and U.S. Government Obligations need not be segregated from other funds except to the extent required by law.

SECTION 3.04. Paying Agent to Repay Moneys Held. Upon the discharge of this Indenture or a Legal Defeasance, in each case, with respect to the Notes of a series, all moneys then held by any Paying Agent under the provisions of this Indenture with respect to such Notes (other than the Trustee) shall, upon demand of the Obligor, be repaid to it or paid to the Trustee, and thereupon such Paying Agent shall be released from all further liability with respect to such moneys.

SECTION 3.05. Return of Unclaimed Amounts. Any amounts deposited with or paid to the Trustee or any Paying Agent for payment of the principal of, premium, if any, or interest on any series of Notes or then held by the Obligor, in trust for the payment of the principal of, premium, if any, or interest on any series of Notes and not applied but remaining unclaimed by the Holders of such series of Notes for two years after the date upon which the principal of, premium, if any, or interest on such series of Notes, as the case may be, shall have become due and payable, shall be repaid to the Obligor by the Trustee on demand or (if then held by the Obligor) shall be discharged from such Trust; and the Holder of any Notes of such series shall thereafter, as an unsecured general creditor, look only to the Obligor for any payment which such Holder may be entitled to collect (until such time as such unclaimed amounts shall escheat, if at all, to any applicable jurisdiction) and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Obligor as trustee thereof, shall thereupon cease. Notwithstanding the foregoing, the Trustee or Paying Agent, before being required to make any such repayment, may at the expense of the Obligor cause to be published once a week for two successive weeks (in each case on any day of the week) in a newspaper printed in the English language and customarily published at least once a day at least five days in each calendar week and of general circulation in the Borough of Manhattan, in the City and State of New York, a notice that said amounts have not been so applied and that after a date named

therein any unclaimed balance of said amounts then remaining will be promptly returned to the Obligor.

SECTION 3.06. Reinstatement. If the Trustee or any Paying Agent is unable to apply any money in accordance with Section 3.03 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, then the Obligor's obligations under this Indenture and the Holders of Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 3.01 until such time as the Trustee or such Paying Agent is permitted to apply all such money in accordance with Section 3.03.

#### ARTICLE IV

##### REMEDIES

SECTION 4.01. Events of Default. "Event of Default," wherever used herein, means with respect to Notes of any series, any of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(1) on and after the date hereof:

(i) default in the payment of any principal or premium, if any, on the Notes of such series when due (whether at maturity, upon redemption or otherwise);

(ii) default in the payment of any interest on any Note of such series, when it becomes due and payable, and continuance of such default for a period of 30 days;

(iii) default in the performance or breach of any covenant or warranty of the Obligor under this Indenture in respect of the Notes of such series, and continuance of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to the Obligor by the Trustee or to the Obligor and the Trustee by the Holders of at least a majority in aggregate principal amount of the Outstanding Notes 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;

(iv) the entry of an order for relief against the Obligor, PBG or any Restricted Subsidiary of PBG under the Bankruptcy Code by a court having jurisdiction in the premises or a decree or order by a court having jurisdiction in the premises adjudging the Obligor, PBG or any Restricted Subsidiary of PBG as bankrupt or insolvent under any other applicable Federal or state law, or the entry of a decree or order approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Obligor, PBG or any Restricted Subsidiary of PBG under the Bankruptcy Code or any other applicable Federal or state law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Obligor, PBG or any Restricted Subsidiary of PBG or of any substantial part of their respective properties,



or ordering the winding up or liquidation of their respective affairs, and the continuance of any such decree or order unstayed and in effect for a period of 90 consecutive days;

(v) the consent by the Obligor, PBG or any Restricted Subsidiary of PBG to the institution of bankruptcy or insolvency proceedings against any of them, or the filing by the Obligor, PBG or any Restricted Subsidiary of PBG of a petition or answer or consent seeking reorganization or relief under the Bankruptcy Code or any other applicable Federal or state law, or the consent by the Obligor, PBG or any Restricted Subsidiary of PBG to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Obligor, PBG or any Restricted Subsidiary of PBG or of any substantial part of their respective properties, or the making by the Obligor, PBG or any Restricted Subsidiary of PBG of an assignment for the benefit of creditors, or the admission by the Obligor, PBG or any Restricted Subsidiary of PBG in writing of the Obligor's, PBG's or any Restricted Subsidiary of PBG's inability to pay debts generally as they become due, or the taking of corporate action by the Obligor, PBG or any Restricted Subsidiary of PBG in furtherance of any such action; and

(vi) the maturity of any Debt of the Obligor, PBG or any Restricted Subsidiary of PBG having a then outstanding principal amount in excess of \$75 million shall have been accelerated by any holder or holders thereof or any trustee or agent acting on behalf of such holder or holders, in accordance with the provisions of any contract evidencing, providing for the creation of or concerning such Debt or failure to pay at the stated maturity (and the expiration of any grace period) any Debt of the Obligor, PBG or any Restricted Subsidiary of PBG having a then outstanding principal amount in excess of \$75 million; and

(2) on and after the Guarantee Commencement Date (in the event that the Guarantee Commencement Date shall occur):

(a) default in the performance or breach of any covenant or warranty of the Guarantor under this Indenture, and continuance of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to the Guarantor by the Trustee or to the Guarantor and the Trustee by the Holders of at least a majority in aggregate principal amount of the Outstanding Notes, 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;

(b) the entry of an order for relief against the Guarantor under the Bankruptcy Code by a court having jurisdiction in the premises or a decree or order by a court having jurisdiction in the premises adjudging the Guarantor as bankrupt or insolvent under any other applicable Federal or state law, or the entry of a decree or order approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Guarantor under the Bankruptcy Code or any other applicable Federal or state law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Guarantor or of any substantial part of its property, or

ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 90 consecutive days;

(c) the consent by the Guarantor to the institution of bankruptcy or insolvency proceedings against the Guarantor, or the filing by the Guarantor of a petition or answer or consent seeking reorganization or relief under the Bankruptcy Code or any other applicable Federal or state law, or the consent by the Guarantor to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Guarantor or of any substantial part of its property, or the making by the Guarantor of an assignment for the benefit of creditors, or the admission by the Guarantor in writing of the Guarantor's inability to pay debts generally as they become due, or the taking of corporate action by the Guarantor in furtherance of any such action; and

(d) the Guarantee ceases to be in full force and effect, or the Guarantor denies or disaffirms its obligations under the Guarantee, in each case, in accordance with Article XI.

No Event of Default with respect to a single series of Notes issued hereunder (and under or pursuant to any Supplemental Indenture or Managing Directors Resolution) necessarily constitutes an Event of Default with respect to any other series of Notes.

**SECTION 4.02. Acceleration of Maturity; Rescission and Annulment.**

(1) If any Event of Default (other than an Event of Default specified in clause (iv) or (v) of Section 4.01(1)) with respect to the Notes of any series occurs and is continuing, then either the Trustee or the Holders of a majority in aggregate principal amount of the Outstanding Notes of such series may declare the principal of all Outstanding Notes of such series, and the interest, if any, accrued thereon, to be immediately due and payable by notice in writing to the Obligor (and to the Trustee if given by Holders). If an Event of Default described in clause (iv) or (v) of Section 4.01(1) occurs, then the principal amount of all the Notes then outstanding and interest accrued thereon, if any, will become and be immediately due and payable without any declaration or other act on the part of the Trustee or the Holders of the Notes, to the full extent permitted by applicable law.

(2) At any time after such a declaration of acceleration has been made with respect to the Notes of any series and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article IV provided, the Holders of a majority in aggregate principal amount of the Outstanding Notes of such series by written notice to the Obligor and the Trustee, may rescind and annul such declaration or waive past defaults and its consequences, except with respect to a default in respect of a covenant or provision of this Indenture which cannot be modified or amended without the consent of the Holder of each Outstanding Note affected thereby, if:

(i) the Obligor or the Guarantor has paid or deposited with the Trustee a sum sufficient to pay:

- (a) all overdue installments of interest, if any, on such series of Notes,
  - (b) the principal of (and premium, if any, on) any such series of Notes which have become due otherwise than by such declaration of acceleration, and interest thereon at the rate prescribed therefor by the Notes of such series, to the extent that payment of such interest is lawful,
  - (c) interest on overdue installments of interest at the rate prescribed therefor by the Notes of such series to the extent that payment of such interest is lawful, and
  - (d) the reasonable compensation, expenses, disbursements and advances of the Trustee and its agents and counsel, and all other amounts due the Trustee under Section 5.07; and
- (ii) all Events of Default, other than the nonpayment of the principal of the Notes of such series which have become due solely by such acceleration, have been cured or waived as provided in Section 4.13.
- (3) No such rescission shall affect any subsequent default or impair any right consequent thereon.

SECTION 4.03. Collection of Indebtedness and Suits for Enforcement.

(1) The Obligor covenants that if:

- (i) default is made in the payment of any installment of interest on any Note of any series when such interest becomes due and payable, or
- (ii) default is made in the payment of (or premium, if any, on) the principal of any Note of any series at the Maturity thereof, and
- (iii) any such default continues for any period of grace provided in relation to such default pursuant to Section 4.01,

then, with respect to such series of Notes, the Obligor will, upon demand of the Trustee, pay to it, for the benefit of the Holders of the Notes of such series, the whole amount then due and payable on all Notes of such series for principal (and premium, if any) and interest, together with interest (to the extent that payment of such interest shall be legally enforceable) upon the overdue principal (and premium, if any) and upon overdue installments of interest at the rate of interest prescribed therefor by the Notes of such series; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts due the Trustee under Section 5.07.

(2) If the Obligor fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, and may prosecute such

proceeding to judgment or final decree, and may enforce the same against the Obligor or any other obligor upon such Notes and collect the money adjudged or decreed to be payable in the manner provided by law out of the property of the Obligor or any other obligor upon such Notes, wherever situated.

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

SECTION 4.04. Trustee May File Proofs of Claim.

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

(i) to file and prove a claim for the whole amount of principal, premium, if any, and interest owing and unpaid in respect of the Notes, and to file such other papers or documents as may be necessary and advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements, and advances of the Trustee, its agents and counsel, and all other amounts due the Trustee under Section 5.07) and of the Holders allowed in such judicial proceedings, 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, liquidator, sequestrator (or other similar official) in any such judicial proceeding is hereby authorized by each 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 the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee and its agent and counsel, and any other amounts due the Trustee under Section 5.07.

(2) 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 Notes 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 4.05. Trustee May Enforce Claims Without Possession of Notes. All rights of action and claims under this Indenture or the Notes of any series may be prosecuted

and enforced by the Trustee without the possession of any of the Notes of such series or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee and its agents and counsel, be for the ratable benefit of the Holders of the Notes of such series.

SECTION 4.06. Application of Money Collected.

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

First: To the payment of all amounts due the Trustee under Section 5.07.

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

(2) Any money collected by the Trustee from the Guarantor with respect to the Guarantee pursuant to this Article IV shall only be applied to the payment of the amount then due and unpaid upon the Notes of any series for principal, premium, if any, and interest, in respect of which or for the payment of which such money has been collected, ratably, without preference or priority of any kind, upon presentation of the Notes of such series and the notation thereon of the payment, if only partially paid, and upon surrender thereof, if fully paid, at the date or dates fixed by the Trustee.

SECTION 4.07. Limitation on Suits. No Holder of any Note of any series may institute any action under this Indenture, unless and until:

- (1) such Holder has given the Trustee written notice of a continuing Event of Default with respect to the Notes of such series;
- (2) the Holders of a majority in aggregate principal amount of the Outstanding Notes of such series have requested the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
- (3) such Holder or Holders has or have offered the Trustee such reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request as the Trustee may require;
- (4) the Trustee has failed to institute any such proceeding for 60 days after its receipt of such notice, request and offer of indemnity; and
- (5) no inconsistent direction has been given to the Trustee during such 60-day period by the Holders of a majority in aggregate principal amount of the Outstanding

Notes of such series; it being understood and intended that no one or more Holders of Notes of any series shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders of Notes of such series, or to obtain or to seek to obtain priority or preference over any other such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and proportionate benefit of all the Holders of all Notes of such series.

SECTION 4.08. Unconditional Right of Holders to Receive Payment of Principal, Premium and Interest. Notwithstanding any other provision in this Indenture, the Holder of any Note shall have the right, which is absolute and unconditional, to receive payment of the principal, premium, if any, and (subject to Section 2.06) interest on such Note on or after the Maturity Date (or, in the case of redemption, on or after the Redemption Date) and to institute suit for the enforcement of any such payment on or after such respective date, and such right shall not be impaired or affected without the consent of such Holder.

SECTION 4.09. 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, then and in every such case the Obligor, 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 4.10. Rights and Remedies Cumulative. Except as provided in Section 2.05(5), 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 or remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 4.11. Delay or Omission Not Waiver. No delay or omission of the Trustee or of any Holder of any Note to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article IV 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 4.12. Control by Holders. The Holders of not less than a majority in aggregate principal amount of the Outstanding Notes 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 of exercising any trust or power conferred on the Trustee with respect to the Notes of such series provided that:

(1) the Trustee shall have the right to decline to follow any such direction if the Trustee, being advised by counsel, determines that the action so directed may not

lawfully be taken or would conflict with this Indenture or if the Trustee in good faith shall, by a Responsible Officer, determine that the proceedings so directed would involve it in personal liability or be unjustly prejudicial to the Holders not taking part in such direction, and

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

SECTION 4.13. Waiver of Past Defaults. Subject to Section 4.02, the Holders of not less than a majority in aggregate principal amount of the Outstanding Notes of any series may, on behalf of the Holders of all Notes of such series, waive any past default hereunder with respect to the Notes of such series, except a default not theretofore cured:

(1) in the payment of principal, premium, if any, or interest on any Notes of such series, or

(2) in respect of a covenant or provision in this Indenture which, under Article VIII, cannot be modified without the consent of the Holder of each Outstanding Note of such series.

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

SECTION 4.14. Undertaking for Costs. All parties to this Indenture agree, and each Holder of any Note by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 4.14 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 Notes of any series to which the suit relates, or to any suit instituted by any Holder pursuant to Section 4.08.

SECTION 4.15. Waiver of Stay or Extension Laws. Each of the Obligor and the Guarantor covenants (to the extent that each may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law (other than any bankruptcy law) wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and each of the Obligor and the Guarantor (to the extent that each 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 V  
THE TRUSTEE

SECTION 5.01. Certain Duties and Responsibilities of Trustee.

(1) Except during the continuance of an Event of Default with respect to a series of Notes:

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

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

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

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

(i) this Subsection shall not be construed to limit the effect of Section 5.01(1);

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

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



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

(4) 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 5.01.

SECTION 5.02. Notice of Defaults. Within 90 days after the occurrence of any default hereunder with respect to any series of Notes, the Trustee shall transmit by mail to all Holders of Notes of such series, as their names and addresses appear in the Security Register, notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; provided, however, that, except in the case of a default in the payment of the principal of or interest or premium, if any, on any Note 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 determine in good faith that the withholding of such notice is in the interests of the Holders of the Outstanding Notes of such series and; provided, further, that, in the case of any default of the character specified in clause (iii) of Section 4.01(1) or in clause (i) of Section 4.01(2), no such notice to Holders of Notes of such series shall be given until at least 60 days after the occurrence thereof. For the purpose of this Section 5.02, the term “default” means any event which is, or after notice or lapse of time or both would become, an Event of Default.

SECTION 5.03. Certain Rights of Trustee. Except as otherwise provided in Section 5.01:

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

(2) any request or direction of the Obligor described herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Managing Directors may be sufficiently evidenced by a Managing Directors Resolution;

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

(4) 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;

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

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

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

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

(9) the permissive rights of the Trustee enumerated herein shall not be construed as duties.

SECTION 5.04. Not Responsible for Recitals or Issuance of Notes. The recitals contained herein and in the Notes, except the certificates of authentication, shall be taken as the statements of the Obligor, 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 Notes. The Trustee shall not be accountable for the use or application by the Obligor of the Notes or the proceeds thereof. The Trustee shall not be charged with notice or knowledge of any Event of Default under clause (vi) of Section 4.01(1) or clause (iv) of Section 4.01(2) or of the identity of a Restricted Subsidiary of the Obligor, PBG or the Guarantor unless either (i) a Responsible Officer of the Trustee assigned to and working in its Corporate Trust Office shall have actual knowledge thereof or (ii) notice thereof shall have been given to the Trustee in accordance with Section 1.05 from the Obligor, the Guarantor or any Holder.

SECTION 5.05. May Hold Notes. The Trustee or any Paying Agent, Registrar, or other agent of the Obligor or the Guarantor, in its individual or any other capacity, may become the owner or pledgee of Notes and, subject to Sections 5.08 and 5.12, may otherwise deal with the Obligor or the Guarantor with the same rights it would have if it were not Trustee, Paying Agent, Registrar, or such other agent.

SECTION 5.06. Money Held in Trust. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The

Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Obligor.

SECTION 5.07. Compensation and Reimbursement. The Obligor covenants and agrees:

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

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

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

The Trustee shall have a lien prior to the Notes upon all property and funds held by it hereunder for any amount owing it or any retiring Trustee pursuant to this Section 5.07, except with respect to funds held in trust for the benefit of the Holders of particular Notes.

Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs expenses or renders services in connection with an Event of Default specified in clause (iv) or (v) of Section 4.01(1) and clause (ii) or (iii) of Section 4.01(2), such expenses (including the reasonable charges and expenses of its counsel) and compensation for such services are intended to constitute expenses of administration under any applicable Federal or State bankruptcy, insolvency, reorganization, or other similar law.

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

SECTION 5.08. Disqualification; Conflicting Interests. If the Trustee has or shall acquire any conflicting interest within the meaning of the Trust Indenture Act, it shall either eliminate such interest or resign as Trustee, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture. To the extent permitted by such Act, the Trustee shall not be deemed to have a conflicting interest by virtue of being a trustee under this Indenture with respect to Notes of more than one series or by virtue of being a Trustee under:

(i) the Indenture, dated as of February 8, 1999, among Pepsi Bottling Holdings, Inc., the Guarantor, as guarantor, and the Trustee, as supplemented by the

Supplemental Indenture, dated as of February 9, 1999, among Pepsi Bottling Holdings, Inc., the Guarantor, as guarantor, and the Obligor relating to the 2009 Notes,

(ii) the Indenture, dated as of March 8, 1999, among PBG, the Obligor, as guarantor, and the Trustee relating to the Senior Notes due 2029 of PBG and the Series B Senior Notes due 2029 of PBG,

(iii) the Indenture, dated as of November 15, 2002, among the Obligor, PepsiCo, Inc., as guarantor, and the Trustee relating to the Senior Notes due 2012 and the Series B Senior Notes due 2012 of the Obligor,

(iv) the Indenture, dated as of June 10, 2003, between the Obligor and the Trustee relating to the Senior Notes due 2015 of the Obligor and the Series B Senior Notes due 2015 of the Obligor,

(v) the Indenture, dated as of October 1, 2003, between the Obligor and the Trustee relating to Senior Notes in one or more series of the Obligor, and

(vi) the Indenture, dated as of March 30, 2006, between the Obligor and the Trustee relating to Senior Notes in one or more series of the Obligor.

SECTION 5.09. Corporate Trustee Required; Eligibility. There shall at all times be a Trustee hereunder that shall be a corporation organized and doing business under the laws of the United States of America or of any State or Territory thereof or of the District of Columbia, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by Federal or State authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 5.09, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 5.09, it shall resign immediately in the manner and with the effect hereinafter specified in this Article V.

SECTION 5.10. Resignation and Removal; Appointment of Successor.

(1) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article V shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 5.11.

(2) The Trustee may resign at any time with respect to the Notes of one or more series by giving written notice thereof to the Obligor. If the instrument of acceptance by a successor Trustee required by Section 5.11 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 Notes of such series.

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

(4) If at any time:

(i) the Trustee shall fail to comply with Section 5.08 after written request therefor by the Obligor or by any Holder who has been a bona fide Holder of a Note for at least six months, or

(ii) the Trustee shall cease to be eligible under Section 5.09 and shall fail to resign after written request therefor by the Obligor or by any such Holder, or

(iii) 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, (A) the Obligor by a Managing Directors Resolution may remove the Trustee with respect to all Notes, or (B) subject to Section 4.14, any Holder who has been a bona fide Holder of a Note 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 with respect to all Notes and the appointment of a successor Trustee or Trustees.

(5) 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 Notes of one or more series, the Obligor, by a Managing Directors Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Notes of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Notes of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Notes of any particular series) and shall comply with the applicable requirements of Section 5.11. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Notes of any series shall be appointed by Act of the Holders of 66 2/3% in aggregate principal amount of the Outstanding Notes of such series delivered to the Obligor and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 5.11, become the successor Trustee with respect to the Notes of such series and to that extent supersede the successor Trustee appointed by the Obligor. If no successor Trustee with respect to the Notes of any series shall have been so appointed by the Obligor or the Holders and accepted appointment in the manner required by Section 5.11, any Holder who has been a bona fide Holder of a Note of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Notes of such series.

(6) The Obligor shall give notice of each resignation and each removal of the Trustee with respect to the Notes of any series and each appointment of a successor

Trustee with respect to the Notes of any series to all Holders of Notes of such series in the manner provided in Section 1.06. Each notice shall include the name of the successor Trustee with respect to the Notes of such series and the address of its Corporate Trust Office.

SECTION 5.11. Acceptance of Appointment by Successor. In case of the appointment hereunder of a successor Trustee with respect to all Notes, every such successor Trustee so appointed shall execute, acknowledge and deliver to the Obligor and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Obligor or the successor Trustee, such retiring Trustee shall, upon payment of its reasonable charges and subject to its lien, if any, provided by Section 5.07, 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.

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

Upon request of any such successor Trustee, the Obligor shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in the first or second preceding paragraph, as the case may be.

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

SECTION 5.12. Merger, Conversion, Consolidation or Succession to Business. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided that such corporation shall be otherwise qualified and eligible under this Article V, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Notes shall have been authenticated, but not delivered, by the Trustee then in office, any successor Trustee by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Notes so authenticated with the same effect as if such successor Trustee had itself authenticated such Notes.

SECTION 5.13. Preferential Collection of Claims Against Obligor. If and when the Trustee shall be or shall become a creditor of the Obligor (or of any other obligor upon the Notes), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Obligor (or against any such other obligor, as the case may be).

SECTION 5.14. Appointment of Authenticating Agent.

(1) At any time when any of the Notes remain Outstanding the Trustee, with the approval of the Obligor, may appoint an Authenticating Agent or Agents with respect to one or more series of Notes which shall be authorized to act on behalf of the Trustee to authenticate Notes of such series issued upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 2.05, and Notes so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Notes by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Obligor and shall at all times be a corporation organized and doing business under the laws of the United States of America, any state thereof or the District of Columbia, authorized under such laws to act as an Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 and, if other than the Obligor itself, subject to supervision or examination by Federal or State authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section 5.14, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 5.14, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section 5.14.

(2) Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Section 5.14, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

(3) An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and, if other than the Obligor, to the Obligor. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and, if other than the Obligor, to the Obligor. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 5.14, the Trustee, with the approval of the Obligor, may appoint a successor Authenticating Agent which shall be acceptable to the Obligor and shall mail written notice of such appointment by first-class mail, postage prepaid, to all Holders of Notes of the series with respect to which such Authenticating Agent will serve, as their names and addresses appear in the Security Register. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 5.14.

(4) The Obligor agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section 5.14.

(5) If an appointment is made pursuant to this Section 5.14, the Notes may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternate certificate of authentication in the following form:

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

The Bank of New York Mellon  
as Trustee

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

By: \_\_\_\_\_  
Authorized Officer



## ARTICLE VI

### HOLDERS' LISTS AND REPORTS BY TRUSTEE AND OBLIGOR

SECTION 6.01. Obligor to Furnish Trustee Names and Addresses of Holders. The Obligor will furnish or cause to be furnished to the Trustee:

(1) semi-annually, not more than 15 days after the Record Date for the payment of interest in respect of each series of Notes, in such form as the Trustee may reasonably require, a list of the names and addresses of the Holders of such Notes as of such date,

(2) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Obligor of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished,

provided that, in the case of (1) and (2), if the Trustee shall be the Registrar, such list shall not be required to be furnished.

SECTION 6.02. Preservation of Information; Communications to Holders.

(1) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders of Notes of each series contained in the most recent list furnished to the Trustee as provided in Section 6.01 and the names and addresses of Holders of Notes received by the Trustee. The Trustee may destroy any list furnished to it as provided in Section 6.01 upon receipt of a new list so furnished.

(2) Holders of Notes may communicate as provided in Section 312(b) of the Trust Indenture Act with other Holders of Notes with respect to their rights under this Indenture or under the Notes.

(3) Every Holder of Notes, by receiving and holding the same, agrees with the Obligor that the Obligor shall not be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Notes in accordance with Section 6.02(2), regardless of the source from which such information was derived.

SECTION 6.03. Reports by Trustee.

(1) Within 60 days after May 15 of each year commencing with the first May 15 following the date of the initial issuance of Notes under this Indenture, the Trustee shall transmit by mail to the Holders of Notes as their names and addresses appear in the Security Register, a brief report dated as of such May 15, to the extent required under Section 313(a) of the Trust Indenture Act.

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

(3) A copy of each such report shall, at the time for such transmission to Holders of Notes, be filed by the Trustee with the Obligor, with each stock exchange upon which any Notes are listed (if so listed) and also with the Commission. The Obligor agrees to promptly notify the Trustee when any Notes become listed on any stock exchange and of any delisting thereof.

SECTION 6.04. Reports by Obligor and Guarantor.

The Obligor and the Guarantor shall comply with the provisions of Section 314(a) and 314(c) of the TIA.

ARTICLE VII

CONSOLIDATION, MERGER OR TRANSFER

SECTION 7.01. Obligor May Consolidate, Etc., Only on Certain Terms. The Obligor may consolidate or merge with or into, or transfer or lease all or substantially all of its assets to, any Entity that is organized and validly existing under the laws of any state of the United States of America or the District of Columbia, and may permit any such Entity to consolidate with or merge into the Obligor or transfer or lease all or substantially all of its assets to the Obligor, provided that:

(1) the Obligor will be the surviving Entity or, if not, that the successor Entity will expressly assume by a supplemental indenture, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of and premium, if any, and interest on all the Notes and the performance of every covenant of the Indenture to be performed or observed by the Obligor;

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

(3) the Obligor shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, transfer or lease and any such assumption involving the Obligor complies with the provisions of this Article VII.

SECTION 7.02. Guarantor May Consolidate, Etc., Only on Certain Terms. The Guarantor may consolidate or merge with or into, or transfer or lease all or substantially all of its assets to, any Entity, provided that:

(1) the Guarantor will be the surviving Entity or, if not, that the successor Entity formed by such consolidation or into which the Guarantor is merged or the Entity which acquires by transfer or lease all or substantially all of the properties and assets of the Guarantor will be an Entity organized and existing under the laws of any state of the United States of America or the District of Columbia, and will expressly assume, by a supplemental indenture hereto, executed and delivered to the Trustee, in form satisfactory

to the Trustee, all of the obligations of the Guarantor under this Indenture and the Guarantee;

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

(3) the Guarantor shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, transfer or lease and any such assumption involving the Guarantor complies with the provisions of this Article VII.

In the event that the Guarantee shall not become effective and the Guarantee Commencement Date shall not occur in accordance with the provisions of Section 11.01(3), the provisions of this Section 7.02 shall not be applicable to the Guarantor.

SECTION 7.03. Successor Entity Substituted. Upon any consolidation or merger, or any transfer or lease of all or substantially all of the properties and assets of the Obligor, in accordance with Section 7.01 or Section 7.02, as the case may be, the successor Entity will succeed to and be substituted for the Obligor or the Guarantor, as the case may be, as Obligor or Guarantor, as the case may be, on the Notes or on the Guarantee, as the case may be, with the same effect as if it had been named in this Indenture as the Obligor or as the Guarantor, as the case may be, and the Obligor or the Guarantor, as the case may be, shall thereupon, except in the case of a lease, be released from all obligations hereunder and under the Notes and the Guarantee, as applicable. Such successor to the Obligor may cause to be signed, and may issue either in its own name or in the name of the Obligor prior to such succession any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Obligor and delivered to the Trustee; and, upon the order of such successor Entity instead of the Obligor and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee, pursuant to the terms hereof, shall authenticate and shall deliver any Notes which previously shall have been signed and delivered by the Officers of the Obligor to the Trustee for authentication, and any Notes which such successor to the Obligor thereafter shall cause to be signed and delivered to the Trustee for that purpose. All of the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof.

#### ARTICLE VIII

##### SUPPLEMENTAL INDENTURES

SECTION 8.01. Supplemental Indentures Without Consent of Holders. Without the consent of the Holders of any Notes, the Obligor, the Guarantor and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto (which shall conform to the provisions of the TIA as in force at the date of execution thereof), in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another Entity to the Obligor or the Guarantor, or successive successions, and the assumption by any such successor of the covenants, agreements and obligations of the Obligor or the Guarantor pursuant to Article VII; or

(2) to add to the covenants of the Obligor or the Guarantor such further covenants, restrictions or conditions for the protection of the Holders of the Notes as the Obligor, the Guarantor and the Trustee shall consider to be for the protection of the Holders of the Notes (and if such covenants are to be for the benefit of less than all series of Notes, stating that such covenants are expressly being included solely for the benefit of such series); or

(3) to evidence the surrender of any right or power of the Obligor or the Guarantor; or

(4) to cure any defect or ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein or in any supplemental indenture, or to make any other provisions with respect to matters or questions arising under this Indenture; or

(5) to add to this Indenture such provisions as may be expressly permitted by the TIA as in effect at the date as of which this instrument is executed or any corresponding provision in any similar federal statute hereafter enacted; or

(6) to comply with any requirements of the Commission in connection with qualifying, or maintaining the qualification of, this Indenture under the TIA; or

(7) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Notes of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 5.11; or

(8) to add to the rights of the Holders of the Notes; or

(9) to provide for the issuance of and establish the form or forms and terms and conditions of Notes of any series as permitted by this Indenture; or

(10) to add any additional Events of Default for the benefit of the Holders of all or any series of Notes (and if such additional Events of Default are to be for the benefit of less than all series of Notes, stating that such additional Events of Default are expressly being included solely for the benefit of such series); or

(11) to conform this Indenture to the section entitled "Description of Debt Securities" in the prospectus dated October [•], 2008 or any prospectus supplement to such prospectus relating to the Notes or any corresponding section of such prospectus or prospectus supplement pursuant to which any additional series of Notes is issued under this Indenture, except as restricted under the TIA.

No supplemental indenture for the purposes identified in clause (2), (3), (4), (8) or (10) above may be entered into if to do so would adversely affect the interest of the Holders of Notes.

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

**SECTION 8.02. Supplemental Indentures with Consent of Holders.** With the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Notes of all series affected by such supplemental indenture (voting as one class), the Obligor, when authorized by a Managing Directors Resolution, the Guarantor, when authorized by a Board Resolution, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the Holders of the Notes of each such series under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Note affected thereby:

(1) change the Maturity Date or the stated payment date of any payment of premium or interest payable on such Note, or reduce the principal amount thereof, or any amount of interest payable thereon, or change the method of computing the amount of interest payable thereon on any date, or change any Place of Payment where, or the coin or currency in which, any such Note or any payment of principal, premium or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the same shall become due and payable, whether at Maturity or, in the case of redemption, on or after the Redemption Date; or

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

(3) modify any of the provisions of this Section 8.02, Section 4.08 or Section 4.13, except to increase any such percentage set forth in this Section 8.02 or Section 4.13 or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Note 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, or the deletion of this proviso, in accordance with the requirements of Section 5.11 and 8.01(7).

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Notes, or which modifies the rights of the Holders of Notes 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 Notes of any other series.

It shall not be necessary for any Act of Holders under this Section 8.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

SECTION 8.03. Execution of Supplemental Indentures. In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article VIII or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 5.01) shall be fully protected in relying upon, in addition to the documents required by Section 1.02, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. Upon request of the Obligor and, in the case of Section 8.02, upon filing with the Trustee of evidence of an Act of Holders as aforementioned, the Trustee and the Guarantor shall join with the Obligor in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, powers, trusts, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

SECTION 8.04. Effect of Supplemental Indentures. Upon the execution of any supplemental indenture under this Article VIII, this Indenture shall be and be deemed to be modified and amended in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and the respective rights, limitation of rights, duties, powers, trusts and immunities under this Indenture of the Trustee, the Obligor, the Guarantor and every Holder of Notes theretofore or thereafter authenticated and delivered hereunder shall be determined, exercised and enforced thereunder to the extent provided therein.

SECTION 8.05. Conformity with Trust Indenture Act. Every supplemental indenture executed pursuant to this Article VIII shall conform to the requirements of the TIA as then in effect.

SECTION 8.06. Documents to Be Given to Trustee. The Trustee, subject to the provisions of Section 5.01, may receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant to this Article VIII complies with the applicable provisions of this Indenture.

SECTION 8.07. Notation on Notes in Respect of Supplemental Indentures. Notes of any series authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article may bear a notation in form approved by the Trustee for such series as to any matter provided for by such supplemental indenture. If the Obligor or the Trustee shall so determine, new Notes of any series so modified as to conform, in the opinion of the Trustee and the Managing Directors, to any modification of this Indenture contained in any such supplemental indenture may be prepared by the Obligor, authenticated by the Trustee and delivered in exchange for the Notes of such series then Outstanding.

## ARTICLE IX COVENANTS

SECTION 9.01. Payment of Principal, Premium and Interest. The Obligor covenants and agrees for the benefit of each series of Notes that it will duly and punctually pay or cause to be paid the principal, premium, if any, and interest on such series of Notes on the dates and in the manner provided in such series of Notes, and will duly comply with all the other terms, agreements and conditions contained in this Indenture for the benefit of such series of Notes.

The Obligor shall pay interest (including post-petition interest in any proceeding under any Federal or state bankruptcy, insolvency, reorganization, or other similar law) on overdue principal and premium, if any, from time to time on demand at the applicable rate of interest determined from time to time in the manner provided for in each series of Notes; it shall pay interest (including post-petition interest in any proceeding under any Federal or State bankruptcy, insolvency, reorganization, or other similar law) on overdue installments of interest and (without regard to any applicable grace periods) from time to time on demand at the same rates to the extent lawful.

SECTION 9.02. Maintenance of Office or Agency. So long as any of the Notes remain outstanding, the Obligor will maintain an office or agency in the City of New York where Notes may be presented or surrendered for payment, where Notes may be surrendered for transfer or exchange, and where notices and demands to or upon the Obligor in respect of the Notes and this Indenture may be served. The Obligor will give prompt written notice to the Trustee of the location, and of any change in the location, of such office or agency. If at any time the Obligor shall fail to maintain such office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Obligor hereby appoints the Trustee its agent to receive all such presentations, surrenders, notices and demands.

The Obligor may also from time to time designate one or more other offices or agencies where one or more series of Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Obligor of its obligation to maintain an office or agency in the City of New York for such purposes. The Obligor shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

SECTION 9.03. Money for Note Payments to be Held in Trust. If the Obligor shall at any time act as its own Paying Agent, it will, on or before each due date of the principal, premium, if any, or interest on any series of Notes, segregate and hold in trust for the benefit of the Holders of such series of Notes a sum sufficient to pay such principal, premium or interest so becoming due until such sums shall be paid to such Holders of the Notes of such series or otherwise disposed of as herein provided, and will promptly notify the Trustee of its action or failure so to act.

Whenever the Obligor shall have one or more Paying Agents, it will, on or prior to each due date of the principal, premium, if any, or interest, on any series of Notes, deposit with a Paying Agent a sum sufficient to pay such principal, premium, or interest so becoming due, such sum to be held in trust for the benefit of the Holders of the Notes of such series entitled

to the same and (unless such Paying Agent is the Trustee) the Obligor will promptly notify the Trustee of its action or failure so to act.

The Obligor will cause each Paying Agent 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 9.03, that such Paying Agent will:

- (1) hold all sums held by it for the payment of principal, premium, if any, or interest, on Notes of any series in trust for the benefit of the Holders of the Notes of such series entitled thereto until such sums shall be paid to such Holders or otherwise disposed of as herein provided;
- (2) give the Trustee prompt notice of any default by the Obligor (or any other obligor upon the Notes of such series) in the making of any such payment of principal, premium, if any, or interest, on such Notes; 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 Obligor may, at any time, for the purpose of obtaining the 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 Obligor or such Paying Agent or, if for any other purpose, all sums so held in trust by the Obligor in respect of all series of Notes, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Obligor or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

SECTION 9.04. Certificate to Trustee.

(1) The Obligor will deliver to the Trustee, within 120 days after the end of each fiscal year of the Obligor ending after the initial issuance of Notes under this Indenture, an Officers' Certificate that complies with TIA Section 314(a)(4) stating that in the course of the performance by the signers of their duties as officers of the Obligor, they would normally have knowledge of any default by the Obligor in the performance of any of its covenants or agreements contained herein, stating whether or not they have knowledge of any such default and, if so, specifying each such default of which the signers have knowledge and the nature thereof.

(2) The Guarantor will deliver to the Trustee, within 120 days after the end of each fiscal year of the Guarantor ending after the initial issuance of Notes under this Indenture, an Officers' Certificate that complies with TIA Section 314(a)(4) stating that in the course of the performance by the signers of their duties as officers of the Guarantor, they would normally have knowledge of any default by the Guarantor in the performance of any of its covenants or agreements contained herein, stating whether or not they have knowledge of any such default and, if so, specifying each such default of which the signers have knowledge and the nature thereof.



SECTION 9.05. Existence. Subject to Article VII, (1) the Obligor will do or cause to be done all things necessary to preserve and keep in full force and effect its limited liability company existence and (2) the Guarantor will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

SECTION 9.06. Limitation on Liens.

(1) Limitation on Liens with Respect to the Obligor: So long as any of the Notes shall be Outstanding, neither the Obligor nor any Restricted Subsidiary of the Obligor will incur, suffer to exist or guarantee any Debt, secured by a mortgage, pledge or lien (a "Lien") on any Principal Property (as such term is defined with respect to the Obligor) or on any shares of stock of (or other interests in) any Restricted Subsidiary of the Obligor unless the Obligor or such first mentioned Restricted Subsidiary secures or the Obligor causes such Restricted Subsidiary to secure the Notes (and any other Debt of the Obligor or such Restricted Subsidiary, at the option of the Obligor or such Restricted Subsidiary, as the case may be, not subordinate to the Notes), equally and ratably with (or prior to) such secured Debt, for so long as such secured Debt shall be so secured. This restriction will not, however, apply to Debt secured by:

- (i) Liens existing prior to the initial issuance of Notes hereunder;
- (ii) Liens on property of or shares of stock of (or other interests in) any Entity existing at the time such Entity becomes a Restricted Subsidiary of the Obligor;
- (iii) Liens on property of or shares of stock of (or other interests in) any Entity existing at the time of acquisition thereof (including acquisition through merger or consolidation);
- (iv) Liens securing indebtedness incurred to finance all or any part of the purchase price of property or the cost of construction of such property (or additions, substantial repairs, alterations or substantial improvements thereto), provided that such Lien and the indebtedness secured thereby are incurred within 365 days after the later of (a) acquisition of such property or the completion of construction (or addition, repair, alteration or improvement) thereon and (b) the commencement of full operation thereof;
- (v) Liens in favor of the Obligor or any of its Restricted Subsidiaries;
- (vi) Liens in favor of, or required by contracts with, governmental entities; or
- (vii) any extension, renewal, or refunding referred to in any of the preceding clauses (i) through (vi), provided that in the case of a Lien permitted under clause (i), (ii), (iii), (iv) or (v), the Debt secured is not increased nor the Lien extended to any additional assets.

Notwithstanding the foregoing, the Obligor or any of its Restricted Subsidiaries may incur, suffer to exist or guarantee any Debt secured by a Lien on any Principal Property (as such term is defined with respect to the Obligor) or on any shares of stock of (or other interests

in) any Restricted Subsidiary of the Obligor if, after giving effect thereto, the aggregate amount of Exempted Debt does not exceed 15% of Consolidated Net Tangible Assets of the Obligor.

(2) **Limitation on Liens with Respect to the Guarantor.** On and after the Guarantee Commencement Date (in the event that the Guarantee Commencement Date shall occur) and so long as any of the Notes shall be Outstanding, neither the Guarantor nor any Restricted Subsidiary of the Guarantor will incur, suffer to exist or guarantee any Debt, secured by a Lien on any Principal Property (as such term is defined with respect to the Guarantor) or on any shares of stock of (or other interests in) any Restricted Subsidiary of the Guarantor unless the Guarantor or such first mentioned Restricted Subsidiary secures or the Guarantor causes such Restricted Subsidiary to secure the Guarantee (and any other Debt of the Guarantor or such Restricted Subsidiary, at the option of the Guarantor or such Restricted Subsidiary, as the case may be, not subordinate to the Guarantee), equally and ratably with (or prior to) such secured Debt, for so long as such secured Debt shall be so secured. This restriction will not, however, apply to Debt secured by:

(i) Liens existing prior to the Guarantee Commencement Date;

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

(iii) Liens on property or shares of stock of (or other interests in) any Entity existing at the time of acquisition thereof (including acquisition through merger or consolidation) or to secure the payment of all or part of the purchase price thereof or construction or improvements on such property or to secure any Debt incurred prior to, at the time of, or within 365 days after the later of the acquisition, the completion of construction, or the commencement of full operation of such property, or within 365 days after the acquisition of such shares (or other interests) for the purpose of financing all or any part of the purchase price of such shares (or other interests);

(iv) Liens in favor of the Guarantor or any of its Restricted Subsidiaries;

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

(vi) any extension, renewal, or refunding referred to in any of the preceding clauses (i) through (v).

Notwithstanding the foregoing, the Guarantor or any of its Restricted Subsidiaries may incur, suffer to exist or guarantee any Debt secured by a Lien on any Principal Property (as such term is defined with respect to the Guarantor) or on any shares of stock of (or other interests in) any Restricted Subsidiary of the Guarantor if, after giving effect thereto, the aggregate amount of such Debt does not exceed 15% of Consolidated Net Tangible Assets of the Guarantor.

The transfer of a Principal Property by the Guarantor to an Unrestricted Subsidiary of the Guarantor or the change in designation by the Guarantor of a Subsidiary which

owns a Principal Property from Restricted Subsidiary to Unrestricted Subsidiary shall not be restricted.

**SECTION 9.07. Limitation on Sale-Leaseback Transactions.**

(1) The Obligor will not, and will not permit any of its Restricted Subsidiaries to, sell or transfer, directly or indirectly, except to the Obligor or a Restricted Subsidiary of the Obligor, any Principal Property (as such term is defined with respect to the Obligor) as an entirety, or any substantial portion thereof, with the intention of taking back a lease of all or part of such property, except a lease for a period of three years or less at the end of which it is intended that the use of such property by the lessee will be discontinued; provided that, notwithstanding the foregoing, the Obligor or any of its Restricted Subsidiaries may sell a Principal Property (as such term is defined with respect to the Obligor) and lease it back for a period longer than three years (i) if the Obligor or such Restricted Subsidiary would be entitled, pursuant to Section 9.06(1), to create a Lien on the property to be leased securing Debt in an amount equal to the Attributable Debt with respect to the sale and lease-back transaction without equally and ratably securing the Outstanding Notes or (ii) if (A) the Obligor promptly informs the Trustee of such transactions, (B) the net proceeds of such transactions are at least equal to the fair value (as determined by a Managing Directors Resolution) of such property and (C) the Obligor causes an amount equal to the net proceeds of the sale to be applied either (x) to the retirement (whether by redemption, cancellation after open-market purchases, or otherwise), within 365 days after receipt of such proceeds, of Funded Debt having an outstanding principal amount equal to such net proceeds or (y) to the purchase or acquisition (or in the case of property, the construction) of property or assets used in the business of the Obligor or any Restricted Subsidiary, within 365 days after receipt of such proceeds.

(2) Notwithstanding Section 9.07(1), the Obligor or any Restricted Subsidiary of the Obligor may enter into sale and lease-back transactions in addition to those permitted by Section 9.07(1), and without any obligation to retire any outstanding Funded Debt or to purchase property or assets, provided that at the time of entering into such sale and lease-back transactions and after giving effect thereto, Exempted Debt does not exceed 15% of Consolidated Net Tangible Assets of the Obligor.

**ARTICLE X**

**REDEMPTION OF NOTES**

**SECTION 10.01. Election to Redeem; Notice to Trustee.** If the Obligor elects to redeem any series of Notes pursuant to the optional redemption provisions of Section 10.07 or any other optional redemption provision provided for with respect to such series of Notes, it shall furnish to the Trustee, at least 45 days but not more than 60 days before the Redemption Date, an Officers' Certificate setting forth (1) the Redemption Date, and (2) the CUSIP and/or ISIN numbers of the series of Notes to be redeemed.

SECTION 10.02. Selection by Trustee of the Notes to be Redeemed. If fewer than all the Notes of any series are to be redeemed, the particular Notes of such series to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee from the Outstanding Notes of such series not previously called for redemption, by such method as the Trustee shall deem fair and appropriate. The portions of the principal of Notes of such series so selected for partial redemption shall be equal to \$2,000, or an integral multiple of \$1,000 in excess thereof, and the principal amount which remains Outstanding shall not be less than \$2,000.

The Trustee shall promptly notify the Obligor in writing of the Notes selected for redemption and, in the case of any Notes selected for partial redemption, the principal amount thereof to be redeemed.

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

SECTION 10.03. Notice of Redemption.

(1) Notice of redemption to the Holders of Notes to be redeemed as a whole or in part at the option of the Obligor shall be given by first-class mail, postage prepaid, mailed not fewer than 30 nor more than 60 days prior to the Redemption Date, to each such Holder at such Holder's last address appearing in the Security Register.

(2) All notices of redemption shall state:

(i) the Redemption Date;

(ii) the Redemption Price, or if not then ascertainable, the manner of calculating the Redemption Price;

(iii) if fewer than all Outstanding Notes of any series are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Notes of such series to be redeemed from the Holder to whom the notice is given and that on and after the Redemption Date, upon surrender of such Note, a new Note or Notes of such series in the aggregate principal amount equal to the unredeemed portion thereof will be issued in accordance with Section 10.06;

(iv) that on the Redemption Date the Redemption Price will become due and payable upon each Note of such series called for redemption, and that interest, if any, thereon shall cease to accrue from and after said date;

(v) the place where Notes of such series called for redemption are to be surrendered for payment of the Redemption Price, which shall be the office or agency maintained by the Obligor pursuant to Section 9.02;

(vi) the name and address of the Paying Agent;

(vii) that the Notes called for redemption must be surrendered to the Paying Agent to collect the Redemption Price; and

(viii) the CUSIP and/or ISIN number, and that no representation is made as to the correctness or accuracy of the CUSIP and/or ISIN number, if any, listed in such notice or printed on the series of Notes.

(3) Notice of redemption of Notes shall be given by the Obligor or, at the Obligor's request, by the Trustee in the name and at the expense of the Obligor.

SECTION 10.04. Deposit of Redemption Price. On or prior to 10 a.m., New York City time, on any Redemption Date, the Obligor shall deposit with the Trustee or with a Paying Agent (or, if the Obligor is acting as its own Paying Agent, segregate and hold in trust as provided in Section 9.03) an amount of money sufficient to pay the Redemption Price of all the Notes of such series which are to be redeemed on that date.

SECTION 10.05. Notes Payable on Redemption Date.

(1) Notice of redemption having been given as aforesaid, the Notes so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified and from and after such date (unless the Obligor shall default in the payment of the Redemption Price) such Notes shall cease to bear interest. Upon surrender of such Notes for redemption in accordance with the notice, such Notes shall be paid by the Obligor at the Redemption Price. Any installment of interest due and payable on or prior to the Redemption Date shall be payable to the Holders of such Notes registered as such on the relevant Record Date according to the terms and the provisions of Section 2.06.

(2) If any Note called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor by the Note.

SECTION 10.06. Notes Redeemed in Part. Any Note that is to be redeemed only in part shall be surrendered at the office or agency maintained by the Obligor pursuant to Section 9.02 (with, if the Obligor or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Obligor and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing) and the Obligor shall execute and the Trustee shall authenticate and deliver to the Holder of such Note without service charge and at the expense of the Obligor, a new Note or Notes of the same series, 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 such Note so surrendered.

SECTION 10.07. Optional Redemption. The Notes of any series will be redeemable at any time in whole or from time to time in part at the option of the Obligor, regardless of whether the Notes of any other series are to be redeemed, at the Redemption Price equal to the greater of:

(1) 100% of the principal amount of the Notes being redeemed, or

(2) as determined by an Independent Investment Banker, the sum of the present values of the remaining scheduled payments of principal and interest on the Notes being redeemed (not including any portion of such payments of interest on the Notes accrued to the Redemption Date) from the Redemption Date to the Maturity Date discounted to the Redemption Date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at a discount rate equal to the Treasury Rate plus the number of basis points, if any, provided for with respect to such series of Notes being redeemed; plus, for (1) or (2) above, whichever is applicable, accrued and unpaid interest on the Notes to be redeemed to, but not including, the Redemption Date. The Treasury Rate shall be calculated on the third Business Day preceding the Redemption Date and notice thereof shall promptly be given by the Obligor to the Trustee.

Any redemption pursuant to this Section 10.07 shall be made pursuant to the provisions of Section 10.01 through 10.06.

Notwithstanding anything in this Section 10.07 to the contrary, the Obligor may provide pursuant to Section 2.01(1)(v)(j) for optional redemption provisions with respect to a series of Notes in addition to, or in substitution of, the provision contained in this Section 10.07 and may provide with respect to a series of Notes for an optional redemption provision identical to the provision contained in this Section but providing for different definitions of the terms “Comparable Treasury Issue,” “Comparable Treasury Price,” “Reference Treasury Dealer,” “Reference Treasury Dealer Quotations” and “Treasury Rate.”

SECTION 10.08. Mandatory Redemption. Unless otherwise provided pursuant to Section 2.01(1)(v)(j), the Obligor shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes of any series.

## ARTICLE XI

### GUARANTEE

#### SECTION 11.01. Guarantee.

##### (1) Provisions Relating to a Full Guarantee.

(a) Subject to the provisions of this Article XI, in the event that:

(A) the Obligor has deposited irrevocably with the 2009 Notes Trustee, prior to the 2009 Notes Payment Deposit Date, sufficient cash in immediately available funds to pay in full the principal of and interest and premium, if any, that will become due and payable on the 2009 Notes on the 2009 Notes Payment Date; or

(B) (x) the Obligor has not deposited irrevocably with the 2009 Notes Trustee, prior to the 2009 Notes Payment Deposit Date, sufficient cash in immediately available funds to pay in full the principal of and interest and premium, if any, that will become due and payable on the 2009 Notes on the 2009 Notes Payment Date and (y) the Guarantor has not delivered to the Obligor and the Trustee an Officers' Certificate by 5:00 p.m., New York City time, on the 2009 Notes Payment Deposit Date, stating that the

Guarantor has determined in good faith that the Guarantor is likely to have to pay some or all of the principal amount of the 2009 Notes (and the interest and premium, if any, with respect thereto) due and payable on the 2009 Notes Payment Date under the 2009 Notes Guarantee; then,

beginning on the Guarantee Commencement Date, the Guarantor unconditionally and irrevocably guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, that: (a) the principal of, premium, if any, and interest on the Notes will be duly and punctually paid in full when due, whether at stated maturity, by acceleration, redemption or otherwise, together with interest on overdue principal, and premium, if any, and (to the extent permitted by law) interest on any interest, if any, on the Notes and all other monetary obligations of the Obligor to the Holders hereunder or under the Notes will be promptly paid in full, all in accordance with the terms hereof; and (b) in case of any extension of time of payment or renewal of any of the Notes or any of such other monetary obligations, the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration, redemption or otherwise.

(b) In the event of the foregoing, on or promptly after the 2009 Notes Payment Deposit Date, the Guarantor shall notify the Trustee of the Guarantee Commencement Date and of the Guarantor's full Guarantee.

(2) Provisions Relating to a Partial Guarantee.

(a) Subject to the provisions of this Article XI, in the event that:

(A) the Obligor has not deposited irrevocably with the 2009 Notes Trustee, prior to the 2009 Notes Payment Deposit Date, sufficient cash in immediately available funds to pay in full the principal of and interest and premium, if any, that will become due and payable on the 2009 Notes on the 2009 Notes Payment Date; and

(B) the Guarantor has delivered to the Obligor and the Trustee an Officers' Certificate by 5:00 p.m., New York City time, on the 2009 Notes Payment Deposit Date, stating that the Guarantor has determined in good faith that the Guarantor is likely to have to pay some but not all of the principal amount of the 2009 Notes (and the interest and premium, if any, with respect thereto) due and payable on the 2009 Notes Payment Date under the 2009 Notes Guarantee (the "Partial Payment Notice"); then,

beginning on the Guarantee Commencement Date, the Guarantor unconditionally and irrevocably guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, that (x) the Partial Guarantee Percentage of each of the principal of, premium, if any, and interest on the Notes will be duly and punctually paid in full when due, whether at stated maturity, by acceleration, redemption or otherwise, together with interest on the Partial Guarantee Percentage of such overdue principal, and premium, if any, and (to the extent permitted by law) interest, if any, on the Notes and the Partial Guarantee Percentage of all other monetary

obligations of the Obligor to the Holders hereunder or under the Notes, all in accordance with the terms hereof; and (y) in case of any extension of time of payment or renewal of any of the Notes or any of such other monetary obligations, the amount set forth in clause (x) above will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration, redemption or otherwise.

(b) In the event of the foregoing, on or promptly after the 2009 Notes Payment Deposit Date, the Guarantor shall notify the Trustee as to the Guarantee Commencement Date, of the Guarantor's partial Guarantee and of the Partial Guarantee Percentage.

(c) In the event that (a) the Obligor defaults in the payment of principal of and interest and premium, if any, on the Outstanding Notes upon the Maturity Date, the Redemption Date or by acceleration or otherwise, in each case, on and after the Guarantee Commencement Date (in the event that the Guarantee Commencement Date shall occur), and (b) the Guarantor makes the payment of the Partial Guarantee Percentage of each of the principal of and interest and premium, if any, on the Outstanding Notes under the Guarantor's partial Guarantee, a replacement Note in the principal amount equal to the principal of the Note that was not paid or redeemed will be issued in the name of the Holder of the Note upon cancellation of the original Note, and upon request of the Obligor, the Trustee shall authenticate and deliver such replacement Note. Any such replacement Note shall not have an executed Guarantee endorsed thereon and shall accrue interest from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid, from the Issue Date. The issuance of such replacement Note shall be deemed to be a replacement of the cancelled Note and not the incurrence of new or additional indebtedness under this Indenture.

(3) Provisions Relating to the Absence of a Guarantee:

(a) In the event that:

(A) prior to the Scheduled Guarantee Commencement Date, there occurs an Event of Default or any default or other event which, with the giving of notice or passage of time, would constitute an Event of Default under this Indenture or the Notes; or

(B) (x) the Obligor has not deposited irrevocably with the 2009 Notes Trustee, prior to the 2009 Notes Payment Deposit Date, sufficient cash in immediately available funds to pay in full the principal of and interest and premium, if any, that will become due and payable on the 2009 Notes on the 2009 Notes Payment Date and (y) the Guarantor has delivered to the Obligor and the Trustee an Officers' Certificate by 5:00 p.m., New York City time, on the 2009 Notes Payment Deposit Date, stating that the Guarantor has determined in good faith that the Guarantor is likely to have to pay all of the principal amount of the 2009 Notes (and the interest and premium, if any, with respect thereto) due and payable on the 2009 Notes Payment Date under the 2009 Notes Guarantee; then



the Guarantee shall not become effective, the Guarantee Commencement Date shall not occur, and the Guarantor shall not have any obligations under the Guarantee or the Indenture.

(b) Promptly upon the occurrence of any event described in clause (a) or (b) of Section 11.03(1), the Guarantor shall notify the Trustee that the Guarantee shall not become effective and that the Guarantee Commencement Date shall not occur.

(4) In accordance with the terms of this Article XI and the Guarantee, failing payment when due of any amount so guaranteed, or failing performance of any other monetary obligation of the Obligor to the Holders, for whatever reason, the Guarantor will be obligated to pay, or to perform or to cause the performance of, such amount so guaranteed immediately. An Event of Default under this Indenture or the Notes shall constitute an event of default under the Guarantee, and shall entitle the Holders of the Notes to accelerate the obligations of the Guarantor under the Guarantee in the same manner and to the same extent as the obligations of the Obligor.

(5) In accordance with the terms of this Article XI and the Guarantee, the Guarantor hereby agrees that its obligations under the Guarantee shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any thereof, the entry of any judgment against the Obligor, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of the Guarantor. The Guarantor hereby waives and relinquishes: (i) any right to require the Trustee, the Holders or the Obligor (each, a "Benefitted Party;" ) to proceed against the Obligor or any other Person or to proceed against or exhaust any security held by a Benefitted Party at any time or to pursue any other remedy in any secured party's power before proceeding against the Guarantor; (ii) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other Person or Persons or the failure of a Benefitted Party to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other Person or Persons; (iii) demand, protest and notice of any kind (except as expressly required by this Indenture), including but not limited to notice of any action or non-action on the part of the Guarantor, the Obligor, any Benefitted Party, any creditor of the Guarantor, the Obligor or on the part of any other Person whomsoever in connection with any obligations the performance of which are guaranteed under the Guarantee; (iv) any defense based upon an election of remedies by a Benefitted Party, including but not limited to an election to proceed against the Guarantor for reimbursement; (v) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; and (vi) any defense based on any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code. The Guarantor hereby covenants that the Guarantee will not be discharged except (a) in the event the Guarantee Commencement Date shall occur, (x) by payment in full of all principal, premium, if any, and interest on the Notes and all other monetary obligations to the Holders to the extent provided for under this Indenture by the Obligor or (y) by payment in full of all of or the Partial Guarantee Percentage of (as the case may be) the principal, premium, if any, and

interest on the Notes and all other monetary obligations to the Holders to the extent provided for under this Indenture by the Guarantor, (b) before any Scheduled Guarantee Commencement Date, by the payment in full of all of the principal, premium, if any, and interest on the Notes and all other monetary obligations to the Holders to the extent provided for under this Indenture, (c) upon the occurrence of any event described in clause (i) of Section 11.01(3), (d) upon satisfaction and discharge of this Indenture in accordance with Section 3.01 or (e) upon the occurrence of Legal Defeasance in accordance with Section 3.02(a). This is a Guarantee of payment and not of collectibility.

(6) If any Holder or the Trustee is required by any court or otherwise to return to either the Obligor or the Guarantor, or any trustee or similar official acting in relation to either the Obligor or the Guarantor, any amount paid by the Obligor or the Guarantor to the Trustee or such Holder, the Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect. The Guarantor agrees that, as between it, on the one hand, and the Holders of the Notes and the Trustee, on the other hand, (i) the maturity of the obligations guaranteed under the Guarantee may be accelerated as provided in Article V for the purposes hereof, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (ii) in the event of any acceleration of such obligations as provided in Article V, such obligations so guaranteed under the Guarantee (whether or not due and payable) shall forthwith become due and payable by such Guarantor for the purpose of the Guarantee.

SECTION 11.02. Execution and Delivery of the Guarantee.

(1) To evidence the Guarantee set forth in Section 11.01, the Guarantor agrees that a notation of the Guarantee substantially in the form included in Exhibit A hereto shall be endorsed on each Note authenticated and delivered by the Trustee (except as otherwise provided in Sections 2.01(1) and 11.01(2)(iii)) and executed on behalf of the Guarantor by one of the Officers of the Guarantor by manual or facsimile signature. The Guarantor agrees that the Guarantee set forth in this Article XI will remain in full force and effect and apply to all the Notes, notwithstanding any failure to endorse on each Note a notation of the Guarantee (except as otherwise provided in Section 11.01(2)(iii)).

(2) If an Officer of the Guarantor whose manual or facsimile signature is on a Guarantee no longer holds that office at the time the Trustee authenticates the Note on which the Guarantee is endorsed, the Guarantee shall be valid nevertheless.

(3) The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Guarantee endorsed on such Note on behalf of the Guarantor.

SECTION 11.03. Limitation of the Guarantor's Liability.

The Guarantor, and by its acceptance hereof, each Holder, hereby confirms that it is the intention of both parties that the Guarantee not constitute a fraudulent transfer or conveyance for purposes of the Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the

Uniform Fraudulent Transfer Act or any similar Federal or State law. To effectuate the foregoing intention, the Holders and the Guarantor hereby irrevocably agree that the obligations of the Guarantor under this Article XI shall be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of the Guarantor, result in the obligations of the Guarantor under the Guarantee not constituting a fraudulent transfer or conveyance under federal or state law.

SECTION 11.04. Subrogation.

Upon making any payment with respect to any obligation of the Obligor under this Article, the Indenture or the Notes, the Guarantor will be subrogated to the rights of the payee against the Obligor with respect to such obligation, *provided* that the Guarantor may not enforce any right of subrogation with respect to such payment so long as any amount payable by the Obligor hereunder or under the Notes remains unpaid.

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

BOTTLING GROUP, LLC,  
as Obligor

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

PEPSICO, INC.,  
as Guarantor

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

THE BANK OF NEW YORK MELLON,  
as Trustee

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

## GUARANTEE

PepsiCo, Inc., a North Carolina corporation (hereinafter referred to as the “Guarantor”), which term includes any successor or assign under the Indenture, dated as of October [•], 2008, among Bottling Group, LLC, a Delaware limited liability company or any successor thereto (the “Obligor”), the Guarantor and The Bank of New York Mellon, as trustee, (the “Indenture”), hereby irrevocably and unconditionally guarantees to the Holders of the Notes and the Trustee that: (i) (A) in the event of a full guarantee as described in Section 11.01(1) of the Indenture, the principal of, premium, if any, and interest on the Notes will be duly and punctually paid in full when due, whether at stated maturity, by acceleration, redemption or otherwise, together with interest on overdue principal, and premium, if any, and (to the extent permitted by law) interest on any interest, if any, on the Notes and all other monetary obligations of the Obligor to the Holders under the Indenture or the Notes will be promptly paid in full, all in accordance with the terms hereof or (B) in the event of a partial guarantee as described in Section 11.01(2) of the Indenture, the Partial Guarantee Percentage of the principal of, premium, if any, and interest on the Notes will be duly and punctually paid in full when due, whether at stated maturity, by acceleration, redemption or otherwise, together with interest on the Partial Guarantee Percentage of such overdue principal, and premium, if any, and (to the extent permitted by law) interest, if any, on the Notes and the Partial Guarantee Percentage of all other monetary obligations of the Obligor to the Holders under the Indenture or the Notes, all in accordance with the terms hereof; and (ii) in case of any extension of time of payment or renewal of any of the Notes or any of such other monetary obligations, the amount set forth in clause (A) or (B) above, whichever is applicable, will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration, redemption or otherwise.

The obligations of the Guarantor to the Holders and to the Trustee pursuant to this Guarantee and the Indenture are expressly set forth in Article XI of the Indenture and reference is hereby made to such Indenture for the precise terms of this Guarantee.

No stockholder, officer, director or incorporator, as such, past, present or future of the Guarantor shall have any liability under this Guarantee by reason of his, her or its status as such stockholder, officer, director or incorporator.

This is a continuing Guarantee and shall remain in full force and effect from and including the Guarantee Commencement Date (in the event that the Guarantee Commencement Date shall occur) and shall, in accordance with the terms of the Guarantee and the Indenture, be binding upon the Guarantor and its successors and assigns until (a) full and final payment and performance of all other monetary obligations of the Obligor to the Holders under the Indenture or the Notes or (b) full and final payment by the Guarantor of the same to the extent specified in clause (i)(A) or (i)(B) above, and shall inure to the benefit of the successors and assigns of the Trustee and the Holders, and, in the event of any transfer or assignment of rights by any Holder or the Trustee, the rights and privileges herein conferred upon that party shall automatically

extend to and be vested in such transferee or assignee, all subject to the terms and conditions hereof. This is a Guarantee of payment and not of collectibility.

This Guarantee shall not be valid or obligatory for any purpose until the certificate of authentication on the Note upon which this Guarantee is endorsed shall have been executed by the Trustee under the Indenture by the manual signature of one of its authorized officers.

IF THE GUARANTEE COMMENCEMENT DATE SHALL NOT OCCUR, THIS GUARANTEE SHALL NOT BECOME EFFECTIVE, AND THE GUARANTOR SHALL NOT HAVE ANY OBLIGATIONS UNDER THIS GUARANTEE OR THE INDENTURE.

THE TERMS OF ARTICLE XI OF THE INDENTURE ARE INCORPORATED HEREIN BY REFERENCE.

Capitalized terms used herein have the same meanings given in the Indenture unless otherwise indicated.

Dated:

PEPSICO, INC.

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

DAVIS POLK & WARDWELL  
450 LEXINGTON AVENUE  
NEW YORK, NEW YORK 10017

October 15, 2008

Re: Automatic Shelf Registration Statement on Form S-3

PepsiCo, Inc.  
700 Anderson Hill Road  
Purchase, New York 10577

Ladies and Gentlemen:

We have acted as special New York counsel for PepsiCo, Inc., a North Carolina corporation (the “**Company**”) in connection with the automatic shelf registration statement on Form S-3 (the “**Registration Statement**”) filed by the Company with the Securities and Exchange Commission on or about the date hereof pursuant to the Securities Act of 1933, as amended (the “**Securities Act**”), for the registration of the offer and sale from time to time of (a) shares of common stock, par value one and two-thirds cents (1-2/3 cents) per share, of the Company (“**Common Stock**”); (b) debt securities and subordinated debt securities of the Company (collectively, “**Debt Securities**”), which may be issued pursuant to an Indenture (the “**Indenture**”) dated as of May 21, 2007 between the Company and The Bank of New York, as trustee (the “**Trustee**”); (c) guarantees by the Company (“**Guarantees**”) of debt securities (“**PBG Debt Securities**”) of Bottling Group, LLC, The Pepsi Bottling Group, Inc. or any other direct or indirect subsidiary of The Pepsi Bottling Group, Inc. (collectively, “**PBG**”), which may be issued pursuant to an indenture (the “**PBG Indenture**,” and together with the Indenture and any supplemental indenture relating to the Indenture or the PBG Indenture, the “**Indentures**”) among PBG, the Company and The Bank of New York Mellon, as trustee (the “**PBG Trustee**”); (d) warrants of the Company (“**Warrants**”) to purchase Debt Securities, Common Stock or securities of third parties or other rights, or any combination of the foregoing, which may be issued pursuant to one or more warrant agreements (each, a “**Warrant Agreement**”) between the Company and one or more banks or trust companies, as warrant agent (each, a “**Warrant Agent**”); and (e) units (“**Units**”) consisting of Common Stock, Debt Securities or Warrants, or any combination of the foregoing, which may be issued pursuant to one or more unit agreements (each, a “**Unit Agreement**”) among the Company, one or more banks or trust companies, as unit agent (each, “**Unit Agent**”), and the holders from time to time of the Units.

We, as your counsel, have examined originals or copies, certified or otherwise identified to our satisfaction, of such documents, corporate records, certificates of public officials and other instruments as we have deemed necessary or advisable for the purposes of rendering this opinion.

Based upon the foregoing, we are of the opinion that:

1. When the Indenture and any supplemental indenture to be entered into in connection with the issuance of a particular series of Debt Securities have been duly authorized, executed and delivered by the Trustee and the Company; the specific terms of such Debt Securities have been duly authorized and established in accordance with the Indenture; and such Debt Securities have been duly authorized, executed, authenticated, issued and delivered in accordance with the Indenture and the applicable underwriting or other agreement against payment therefor, such Debt Securities will constitute valid and binding obligations of the Company, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors’ rights generally, concepts of reasonableness and equitable principles of general applicability.
2. When the PBG Indenture and any supplemental indenture to be entered into in connection with the issuance of a particular series of PBG Debt Securities and related Guarantees have been duly authorized, executed and delivered by the PBG Trustee, PBG and the Company; the specific terms of such PBG Debt



Securities and related Guarantees have been duly authorized and established in accordance with the PBG Indenture; and such PBG Debt Securities and related Guarantees have been duly authorized, executed, authenticated, endorsed, issued and delivered in accordance with the PBG Indenture and the applicable underwriting or other agreement against payment therefor, such Guarantees will constitute valid and binding obligations of the Company, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, concepts of reasonableness and equitable principles of general applicability.

3. When the Warrant Agreement to be entered into in connection with the issuance of any particular Warrants has been duly authorized, executed and delivered by the applicable Warrant Agent and the Company; the specific terms of such Warrants have been duly authorized and established in accordance with such Warrant Agreement; and such Warrants have been duly authorized, executed, issued and delivered in accordance with such Warrant Agreement and the applicable underwriting or other agreement against payment therefor, such Warrants will constitute valid and binding obligations of the Company, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, concepts of reasonableness and equitable principles of general applicability.

4. When the Unit Agreement to be entered into in connection with the issuance of any particular Units has been duly authorized, executed and delivered by the applicable Unit Agent and the Company; the specific terms of such Units have been duly authorized and established in accordance with such Unit Agreement; and such Units have been duly authorized, executed, issued and delivered in accordance with such Unit Agreement and the applicable underwriting or other agreement against payment therefor, such Units will constitute valid and binding obligations of the Company, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, concepts of reasonableness and equitable principles of general applicability.

In connection with the opinion expressed above, we have assumed:

(a) that, at or prior to the time of the delivery of any such Debt Security, Guarantee, Warrant or Unit (collectively, the "**Securities**"), (i) the Board of Directors of the Company shall have duly established the terms of such Securities and duly authorized the issuance and sale of such Securities and such authorization shall not have been modified or rescinded; (ii) the Registration Statement shall be effective and such effectiveness shall not have been terminated or rescinded; and (iii) there shall not have occurred any change in law affecting the validity or enforceability of such Securities;

(b) that none of the terms of any Securities to be established subsequent to the date hereof, nor the issuance and delivery of such Securities, nor the compliance by the Company with the terms of such Securities will violate any applicable law or public policy or will result in a violation of any provision of any instrument or agreement then binding upon the Company, or any restriction imposed by any court or governmental body having jurisdiction over the Company;

(c) that the PBG Indenture, any Warrant Agreement and any Unit Agreement will be governed by the laws of the State of New York; and

(d) the accuracy of the opinion of Womble Carlyle Sandridge & Rice, PLLC rendered to you with respect to the validity, full payment and nonassessability of the Common Stock and filed as an exhibit to the Registration Statement.

In rendering the opinion expressed above, we express no view as to:

(w) the enforceability of any waiver of rights under any usury or stay law;

(x) the applicability (and if applicable, the effect) of Section 548 of the United States Bankruptcy Code or any comparable provision of state law to the questions addressed above or on the conclusions expressed with respect thereto;

(y) the validity, legally binding effect or enforceability of any provision of the Indentures or any related provision in the Securities that requires or relates to adjustments to the conversion price at a rate or in an amount that a court would determine in the circumstances under applicable law to be commercially unreasonable or a penalty or forfeiture; or

(z) the validity, legally binding effect or enforceability of any provision that permits holders of Securities to collect any portion of stated principal amount upon acceleration of the Securities to the extent determined to constitute unearned interest.

We are members of the Bar of the State of New York and the foregoing opinion is limited to the laws of the State of New York.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and further consent to the reference to our name under the caption “Validity of Securities” in the prospectus which is a part of the Registration Statement. In giving this consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

This opinion is rendered solely to you in connection with the above matter. This opinion may not be relied upon by you for any other purpose or relied upon by or furnished to any other person without our prior written consent.

Very truly yours,

/s/ Davis Polk & Wardwell

II-3

## [Letterhead of Womble Carlyle Sandridge &amp; Rice, PLLC]

October 15, 2008

PepsiCo, Inc.  
700 Anderson Hill Road  
Purchase, New York 10577

Re: Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as special North Carolina counsel to PepsiCo, Inc., a North Carolina corporation (the “Company”), in connection with the registration by the Company, under the Securities Act of 1933, as amended (the “Securities Act”), of the offer and sale by the Company from time to time, pursuant to Rule 415 under the Securities Act, of shares of common stock, par value 1-2/3 cents per share (the “Common Stock”), including any shares of Common Stock issuable upon conversion, exercise or exchange of any securities that are convertible into or exercisable or exchangeable for shares of Common Stock or that otherwise require the issuance of Common Stock (collectively, the “Securities”). The Common Stock will be offered in amounts, at prices and on terms to be determined in light of market conditions at the time of sale and to be set forth in supplements to the prospectus contained in the Company’s registration statement on Form S-3, as it may be amended from time to time (the “Registration Statement”), to which this opinion is an exhibit.

As the Company’s special North Carolina counsel, we have reviewed the Company’s articles of incorporation and by-laws, each as amended to date, and have examined the originals, or copies certified or otherwise identified to our satisfaction, of corporate records, certificates of public officials and of representatives of the Company, statutes and other instruments and documents, as a basis for the opinions hereinafter expressed. In rendering this opinion, we have relied upon certificates of public officials and representatives of the Company with respect to the accuracy of the factual matters contained in such certificates.

In connection with such review, we have assumed with your permission (i) that the Company is a well-known seasoned issuer pursuant to Rule 405 under the Securities Act and, accordingly, the Registration Statement will become effective upon filing with the Securities and Exchange Commission (the “Commission”) and that the Registration Statement and any amendments thereto (including post-effective amendments) will remain effective for so long as shares of the Common Stock are offered pursuant to the Registration Statement; (ii) that a prospectus supplement will have been prepared and filed with the Commission describing any Common Stock offered thereby; (iii) that the Common Stock will be issued and sold in the manner stated in the Registration Statement and the applicable prospectus supplement; (iv) that at the time of any offering or sale of any shares of Common Stock, the Company will have such number of shares of Common Stock, as set forth in such offering or sale, duly authorized and available for issuance; (v) that a definitive purchase, underwriting or similar agreement with respect to any

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Common Stock offered will have been properly authorized, executed and delivered by the Company and the other parties thereto; (vi) that there shall not have occurred any change in law affecting the validity of the Common Stock; (vii) the genuineness of all signatures and the legal capacity of all signatories; (viii) 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; and (ix) the proper issuance and accuracy of certificates of public officials and representatives of the Company. We have also assumed that the issuance and delivery of such Common Stock will not violate any applicable law or result in a violation of any provision of any instrument or agreement then binding upon the Company or any restriction imposed by any court or governmental body having jurisdiction over the Company.

This opinion is limited to the laws of the State of North Carolina, excluding local laws of the State of North Carolina (i.e., the statutes and ordinances, the administrative decisions and the rules and regulations of counties, towns, municipalities and special political subdivisions of, or authorities or quasi-governmental bodies constituted under the laws of, the State of North Carolina and judicial decisions to the extent they deal with any of the foregoing), and we are expressing no opinion as to the effect of the laws of any other jurisdiction.

Based upon and subject to the foregoing, and having regard for such legal considerations as we deem relevant, it is our opinion that when (a) all necessary corporate action has been taken to approve the issuance and sale of any shares of Common Stock, and (b) such shares have been issued and sold as contemplated in the Registration Statement, any prospectus supplement relating thereto and any definitive purchase, underwriting or similar agreement, all such shares will be validly issued, fully paid and nonassessable. The shares of Common Stock covered in the opinion in this paragraph include any shares of Common Stock that may be issued upon conversion, exercise, exchange or otherwise pursuant to the terms of any other Securities.

This opinion is rendered as of the date hereof, and we undertake no obligation to advise you of any changes in applicable law or any other matters that may come to our attention after the date hereof.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of our name in the prospectus forming a part of the Registration Statement under the caption "Validity of Securities." In giving this consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act and the rules and regulations thereunder.

Sincerely,

/s/ WOMBLE CARLYLE SANDRIDGE & RICE  
A Professional Limited Liability Company

KNS  
RHP

**ACCOUNTANT'S ACKNOWLEDGEMENT**

Board of Directors and Shareholders  
PepsiCo, Inc.

Re: Registration Statement on Form S-3 filed with the Securities and Exchange Commission

With respect to the subject registration statement, we acknowledge our awareness of the incorporation by reference therein of our reports dated April 24, 2008, July 23, 2008 and October 15, 2008 related to our reviews of PepsiCo Inc.'s interim financial information.

Pursuant to Rule 436 under the Securities Act of 1933 (the "Act"), such report is not considered part of a registration statement prepared or certified by an accountant, or report prepared or certified by an accountant within the meaning of Sections 7 and 11 of the Act.

/s/ KPMG LLP  
New York, New York  
October 15, 2008

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

Board of Directors and Shareholders  
PepsiCo, Inc.

We consent to the incorporation by reference in the Registration Statement to be filed on Form S-3 (the “Registration Statement”) of PepsiCo, Inc. and Subsidiaries (“PepsiCo, Inc.”) of our report dated February 15, 2008, except as to Notes 1, 3 and 4, which are dated as of April 7, 2008, relating to the Consolidated Balance Sheet of PepsiCo, Inc. as of December 29, 2007 and December 30, 2006 and the related Consolidated Statements of Income, Cash Flows and Common Shareholders' Equity for each of the years in the three-year period ended December 29, 2007, and the effectiveness of internal control over financial reporting as of December 29, 2007, which report appears in PepsiCo, Inc.'s Current Report on Form 8-K dated April 7, 2008.

We also consent to the reference to our firm under the heading “Independent Registered Public Accounting Firm” in the Registration Statement.

/s/ KPMG LLP  
New York, New York  
October 15, 2008

FORM T-1

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

STATEMENT OF ELIGIBILITY  
UNDER THE TRUST INDENTURE ACT OF 1939 OF A  
CORPORATION DESIGNATED TO ACT AS TRUSTEE

CHECK IF AN APPLICATION TO DETERMINE  
ELIGIBILITY OF A TRUSTEE PURSUANT TO  
SECTION 305(b)(2) ☐

THE BANK OF NEW YORK MELLON  
(Exact name of trustee as specified in its charter)

New York  
(State of incorporation  
if not a U.S. national bank)  
  
One Wall Street, New York, N.Y.  
(Address of principal executive offices)

13-5160382  
(I.R.S. employer  
identification no.)  
  
10286  
(Zip code)

PepsiCo, Inc.  
(Exact name of obligor as specified in its charter)

North Carolina  
(State or other jurisdiction of  
incorporation or organization)  
  
700 Anderson Hill Road  
Purchase, New York  
(Address of principal executive offices)

13-1584302  
(I.R.S. employer  
identification no.)  
  
10577  
(Zip code)

Debt Securities  
(Title of the indenture securities)

1. General information. Furnish the following information as to the Trustee:

(a) Name and address of each examining or supervising authority to which it is subject.

Name	Address
Superintendent of Banks of the State of New York	One State Street, New York, N.Y. 10004-1417, and Albany, N.Y. 12223
Federal Reserve Bank of New York	33 Liberty Street, New York, N.Y. 10045
Federal Deposit Insurance Corporation	Washington, D.C. 20429
New York Clearing House Association	New York, New York 10005

(b) Whether it is authorized to exercise corporate trust powers.

Yes.

2. Affiliations with Obligor.

If the obligor is an affiliate of the trustee, describe each such affiliation.

None.

16. List of Exhibits.

Exhibits identified in parentheses below, on file with the Commission, are incorporated herein by reference as an exhibit hereto, pursuant to Rule 7a-29 under the Trust Indenture Act of 1939 (the “Act”) and 17 C.F.R. 229.10(d).

1. A copy of the Organization Certificate of The Bank of New York Mellon (formerly known as The Bank of New York, itself formerly Irving Trust Company) as now in effect, which contains the authority to commence business and a grant of powers to exercise corporate trust powers. (Exhibit 1 to Amendment No. 1 to Form T-1 filed with Registration Statement No. 33-6215, Exhibits 1a and 1b to Form T-1 filed with Registration Statement No. 33-21672, Exhibit 1 to Form T-1 filed with Registration Statement No. 33-29637, Exhibit 1 to Form T-1 filed with Registration Statement No. 333-121195 and Exhibit 1 to Form T-1 filed with Registration Statement No. 333-152735).



4. A copy of the existing By-laws of the Trustee. (Exhibit 4 to Form T-1 filed with Registration Statement No. 333-121195).
6. The consent of the Trustee required by Section 321(b) of the Act (Exhibit 6 to Form T-1 filed with Registration Statement No. 333-152735).
7. A copy of the latest report of condition of the Trustee published pursuant to law or to the requirements of its supervising or examining authority.

SIGNATURE

Pursuant to the requirements of the Act, the Trustee, The Bank of New York Mellon, a corporation organized and existing under the laws of the State of New York, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in The City of New York, and State of New York, on the 10th day of October, 2008.

THE BANK OF NEW YORK MELLON

By: /s/ SHERMA THOMAS

Name: SHERMA THOMAS

Title: ASSISTANT TREASURER

## Consolidated Report of Condition of

## THE BANK OF NEW YORK

of One Wall Street, New York, N.Y. 10286  
And Foreign and Domestic Subsidiaries,

a member of the Federal Reserve System, at the close of business June 30, 2008, published in accordance with a call made by the Federal Reserve Bank of this District pursuant to the provisions of the Federal Reserve Act.

	Dollar Amounts In Thousands
<b>ASSETS</b>	
Cash and balances due from depository institutions:	
Noninterest-bearing balances and currency and coin	3,463,000
Interest-bearing balances	31,232,000
Securities:	
Held-to-maturity securities	1,631,000
Available-for-sale securities	24,769,000
Federal funds sold and securities purchased under agreements to resell:	
Federal funds sold in domestic offices	19,485,000
Securities purchased under agreements to resell	0
Loans and lease financing receivables:	
Loans and leases held for sale	0
Loans and leases, net of unearned income	33,282,000
LESS: Allowance for loan and lease losses	244,000
Loans and leases, net of unearned income and allowance	33,038,000
Trading assets	4,207,000
Premises and fixed assets (including capitalized leases)	906,000
Other real estate owned	6,000
Investments in unconsolidated subsidiaries and associated companies	760,000
Not applicable	
Intangible assets:	
Goodwill	2,495,000

	Dollar Amounts In Thousands
Other intangible assets	998,000
Other assets	7,072,000
<b>Total assets</b>	<b>130,062,000</b>
<b>LIABILITIES</b>	
Deposits:	
In domestic offices	34,562,000
Noninterest-bearing	20,410,000
Interest-bearing	14,152,000
In foreign offices, Edge and Agreement subsidiaries, and IBFs	64,413,000
Noninterest-bearing	2,092,000
Interest-bearing	62,321,000
Federal funds purchased and securities sold under agreements to repurchase:	
Federal funds purchased in domestic offices	884,000
Securities sold under agreements to repurchase	89,000
Trading liabilities	3,678,000
Other borrowed money:	
(includes mortgage indebtedness and obligations under capitalized leases)	1,999,000
Not applicable	
Not applicable	
Subordinated notes and debentures	2,940,000
Other liabilities	12,854,000
<b>Total liabilities</b>	<b>121,419,000</b>
Minority interest in consolidated subsidiaries	133,000
<b>EQUITY CAPITAL</b>	
Perpetual preferred stock and related surplus	0
Common stock	1,135,000
Surplus (exclude all surplus related to preferred stock)	2,375,000
Retained earnings	6,131,000
Accumulated other comprehensive income	-1,131,000
Other equity capital components	0
<b>Total equity capital</b>	<b>8,510,000</b>
<b>Total liabilities, minority interest, and equity capital</b>	<b>130,062,000</b>

I, Thomas P. Gibbons, Chief Financial Officer of the above-named bank do hereby declare that this Report of Condition is true and correct to the best of my knowledge and belief.

Thomas P. Gibbons,  
Chief Financial Officer

We, the undersigned directors, attest to the correctness of this statement of resources and liabilities. We declare that it has been examined by us, and to the best of our knowledge and belief has been prepared in conformance with the instructions and is true and correct.

Gerald L. Hassell  
Steven G. Elliott  
Robert P. Kelly

Directors

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Guarantees of Debt Securities  
(Title of the indenture securities)

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(a) Name and address of each examining or supervising authority to which it is subject.

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(b) Whether it is authorized to exercise corporate trust powers.

Yes.

2. Affiliations with Obligor.

If the obligor is an affiliate of the trustee, describe each such affiliation.

None.

16. List of Exhibits.

- Exhibits identified in parentheses below, on file with the Commission, are incorporated herein by reference as an exhibit hereto, pursuant to Rule 7a-29 under the Trust Indenture Act of 1939 (the “Act”) and 17 C.F.R. 229.10(d).
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7. A copy of the latest report of condition of the Trustee published pursuant to law or to the requirements of its supervising or examining authority.



SIGNATURE

Pursuant to the requirements of the Act, the Trustee, The Bank of New York Mellon, a corporation organized and existing under the laws of the State of New York, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in The City of New York, and State of New York, on the 14th day of October, 2008.

THE BANK OF NEW YORK MELLON

By: /S/ SHERMA THOMAS

Name: SHERMA THOMAS

Title: ASSISTANT TREASURER

## Consolidated Report of Condition of

## THE BANK OF NEW YORK

of One Wall Street, New York, N.Y. 10286  
And Foreign and Domestic Subsidiaries,

a member of the Federal Reserve System, at the close of business June 30, 2008, published in accordance with a call made by the Federal Reserve Bank of this District pursuant to the provisions of the Federal Reserve Act.

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Total equity capital	<u>8,510,000</u>
Total liabilities, minority interest, and equity capital	<u>130,062,000</u>

I, Thomas P. Gibbons, Chief Financial Officer of the above-named bank do hereby declare that this Report of Condition is true and correct to the best of my knowledge and belief.

Thomas P. Gibbons,  
Chief Financial Officer

We, the undersigned directors, attest to the correctness of this statement of resources and liabilities. We declare that it has been examined by us, and to the best of our knowledge and belief has been prepared in conformance with the instructions and is true and correct.

Gerald L. Hassell  
Steven G. Elliott  
Robert P. Kelly

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Directors