

AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON AUGUST 14, 1997

REGISTRATION NO. 333-

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

BLOCK FINANCIAL CORPORATION  
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE  
(STATE OR OTHER JURISDICTION OF  
INCORPORATION OR ORGANIZATION)

52-1781495  
(IRS EMPLOYER IDENTIFICATION NUMBER)

4435 MAIN STREET, SUITE 500  
KANSAS CITY, MISSOURI 64111  
(816) 751-6000  
(ADDRESS, INCLUDING ZIP CODE, AND TELEPHONE NUMBER,  
INCLUDING AREA CODE, OF REGISTRANT'S PRINCIPAL EXECUTIVE OFFICES)

H&R BLOCK, INC.  
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

MISSOURI  
(STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)

44-0607856  
(IRS EMPLOYER IDENTIFICATION NUMBER)

4400 MAIN STREET  
KANSAS CITY, MISSOURI 64111  
(816) 753-6900  
(ADDRESS, INCLUDING ZIP CODE, AND TELEPHONE NUMBER,  
INCLUDING AREA CODE, OF REGISTRANT'S PRINCIPAL EXECUTIVE OFFICES)

JOHN R. COX, ESQ.  
DIRECTOR, CONTRACTS AND REGULATORY AFFAIRS  
4435 MAIN STREET, SUITE 500  
KANSAS CITY, MISSOURI 64111  
(816) 751-6000  
(NAME, ADDRESS, INCLUDING ZIP CODE, AND TELEPHONE  
NUMBER, INCLUDING AREA CODE, OF AGENT FOR SERVICE)

Copies to:

LARRY D. IRICK, ESQ.  
GREGORY G. JOHNSON, ESQ.

B. ROBBINS KIESSLING  
CRAVATH, SWAINE & MOORE

BRYAN CAVE LLP  
1200 MAIN STREET, SUITE 3500  
KANSAS CITY, MISSOURI 64105  
(816) 374-3200

825 EIGHTH AVENUE  
NEW YORK, NEW YORK 10019  
(212) 474-1500

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APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: From time to time after the effective date of this Registration Statement as determined by market factors and other conditions.

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

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

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

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

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

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CALCULATION OF REGISTRATION FEE

| TITLE OF EACH CLASS<br>OF SECURITIES TO BE REGISTERED | PROPOSED<br>MAXIMUM AGGREGATE<br>OFFERING PRICE(1) | AMOUNT OF<br>REGISTRATION FEE |
|---|--|-------------------------------|
| Debt Securities of Block Financial Corporation.....   | \$1,000,000,000(2)                                 | \$303,030                     |
| Guarantee of H&R Block, Inc.....                      | (3)  | (3)                           |

- (1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o).
- (2) Or, if any Debt Securities are issued (i) at an original issue discount, such greater principal amount as shall result in an aggregate initial offering price of \$1,000,000,000, or (ii) with a principal amount denominated in a currency other than U.S. dollars or a composite currency, such U.S. dollar amount as shall result from converting the aggregate public offering price of such Debt Securities into U.S. dollars at the spot exchange rate in effect on the date such Debt Securities are initially offered to the public.
- (3) No separate consideration will be received for the Guarantee.

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THE REGISTRANTS HEREBY AMEND THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANTS SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(A) OF THE SECURITIES ACT OF 1933 OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(A), MAY DETERMINE.  
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INFORMATION CONTAINED HEREIN IS SUBJECT TO COMPLETION OR AMENDMENT. A REGISTRATION STATEMENT RELATING TO THESE SECURITIES HAS BEEN FILED WITH THE

SECURITIES AND EXCHANGE COMMISSION. THESE SECURITIES MAY NOT BE SOLD NOR MAY OFFERS TO BUY BE ACCEPTED PRIOR TO THE TIME THE REGISTRATION STATEMENT BECOMES EFFECTIVE. THIS PROSPECTUS SHALL NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY NOR SHALL THERE BE ANY SALE OF THESE SECURITIES IN ANY STATE IN WHICH SUCH OFFER, SOLICITATION OR SALE WOULD BE UNLAWFUL PRIOR TO REGISTRATION OR QUALIFICATION UNDER THE SECURITIES LAWS OF ANY SUCH STATE.

SUBJECT TO COMPLETION, DATED AUGUST 14, 1997

PROSPECTUS

[LOGO]

BLOCK FINANCIAL CORPORATION  
DEBT SECURITIES  
UNCONDITIONALLY GUARANTEED BY H&R BLOCK, INC.

Block Financial Corporation (the 'Company' or 'BFC') may offer from time to time, in one or more series, debentures, notes, bonds or other obligations ('Debt Securities'), which may be senior ('Senior Securities') or subordinated ('Subordinated Securities') to other indebtedness of the Company, all having an aggregate initial public offering price not to exceed \$1,000,000,000 or the equivalent thereof in one or more foreign currencies, foreign currency units or composite currencies, including European Currency Units. The Debt Securities may be offered separately or as units with other securities, in separate series in amounts, at prices and on terms to be determined at or prior to the time of sale. The Debt Securities will be direct unsecured obligations of the Company. The payment of principal, premium, if any, and interest with respect to the Debt Securities will be unconditionally guaranteed by H&R Block, Inc. (the 'Guarantor' or 'Block'), the indirect parent company of BFC.

The specific terms of the Debt Securities with respect to which this Prospectus is being delivered will be set forth in one or more supplements to this Prospectus (each a 'Prospectus Supplement'), together with the terms of the offering and sale of the Debt Securities, the initial offering price and the net proceeds to the Company from the sale thereof. Each Prospectus Supplement will include, among other things, the specific designation, aggregate principal amount, ranking, authorized denomination, maturity, rate or method of calculation of interest and dates for payment thereof, any index or formula for determining the amount of any principal, premium, or interest payment, any exchange, redemption, prepayment or sinking fund provisions, the currency or currency unit in which principal, premium, or interest is payable, whether the securities are issuable in registered form or in the form of global securities, and the designation of the trustee acting under the indenture. Each Prospectus Supplement will also contain information, where applicable, about material United States federal income tax considerations relating to, and any listings on a securities exchange of, the Debt Securities covered by such Prospectus Supplement.

The Company may sell the Debt Securities directly to purchasers, through agents designated from time to time or through underwriters or dealers on terms

determined by market conditions at the time of sale. If any agents, underwriters, or dealers are involved in the sale of the Debt Securities, the names of such agents, underwriters or dealers and any applicable commissions or discounts and the net proceeds to the Company from such sale will be set forth in the applicable Prospectus Supplement.

THIS PROSPECTUS MAY NOT BE USED TO CONSUMMATE SALES OF DEBT SECURITIES UNLESS ACCOMPANIED BY A PROSPECTUS SUPPLEMENT.

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

NO DEALER, SALESPERSON OR OTHER INDIVIDUAL HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS OTHER THAN THOSE CONTAINED OR INCORPORATED BY REFERENCE IN THIS PROSPECTUS OR ANY ACCOMPANYING PROSPECTUS SUPPLEMENT AND, IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATIONS MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE COMPANY OR THE GUARANTOR, OR ANY UNDERWRITER, AGENT OR DEALER. NEITHER THE DELIVERY OF THIS PROSPECTUS OR ANY PROSPECTUS SUPPLEMENT NOR ANY SALE MADE THEREUNDER SHALL, UNDER ANY CIRCUMSTANCE, CREATE ANY IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE COMPANY OR THE GUARANTOR SINCE THE DATE HEREOF OR THEREOF. THIS

PROSPECTUS AND ANY RELATED PROSPECTUS SUPPLEMENT DO NOT CONSTITUTE AN OFFER TO SELL OR A SOLICITATION OF ANY OFFER TO BUY ANY OF THE SECURITIES OFFERED HEREBY IN ANY JURISDICTION TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH OFFER OR SOLICITATION IN SUCH JURISDICTION.

The date of this Prospectus is August 14, 1997.

#### AVAILABLE INFORMATION

The Company and the Guarantor have filed with the Securities and Exchange Commission (the 'Commission') a Registration Statement on Form S-3 (together with all amendments and exhibits thereto, the 'Registration Statement') under the Securities Act of 1933, as amended (the 'Securities Act'), for the registration of the Debt Securities offered hereby. This Prospectus, which constitutes a part of the Registration Statement, does not contain all of the information set forth in the Registration Statement, certain items of which are contained in exhibits and schedules to, or incorporated by reference in, the Registration Statement as permitted by the rules and regulations of the Commission. For further information with respect to the Company, the Guarantor and the Debt Securities offered hereby, reference is made to the Registration Statement, including the exhibits thereto, and financial statements and notes filed as a part thereof or incorporated by reference therein. Statements made in this Prospectus and in the accompanying Prospectus Supplement concerning the contents of any document referred to herein are not necessarily complete. With respect to each such document filed with the Commission as an exhibit to, or incorporated by reference in, the Registration Statement, reference is made to the exhibit for a more complete description of the matter involved, and each such statement shall be deemed qualified in its entirety by such reference.

The Guarantor is subject to the informational requirements of the Securities Exchange Act of 1934, as amended (the 'Exchange Act'), and in accordance therewith the Guarantor files reports, proxy statements and other information with the Commission. Reports, proxy statements and other information filed by the Guarantor may be inspected and copied at the public reference facilities maintained by the Commission at 450 Fifth Street, N.W., Washington, D.C. 20549, and at the Commission's Regional Offices located at Citicorp Center, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661 and 7 World Trade Center, Suite 1300, New York, New York 10048. Copies of such material can be obtained at prescribed rates from the Public Reference Section of the Commission at 450 Fifth Street, N.W., Washington D.C. 20549. The Commission maintains an Internet Web site at <http://www.sec.gov> that contains reports, proxy statements and other information regarding registrants that file electronically with the Commission. In addition, such material filed by the Guarantor may also be inspected and copied at the offices of the New York Stock Exchange, Inc., 20 Broad Street, New York, New York 10005, and the Pacific Stock Exchange Incorporated, 301 Pine Street, San Francisco, California 94104, on which exchanges the Common Stock of the Guarantor is listed.

#### INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents filed by the Guarantor with the Commission pursuant to the Exchange Act under File No. 1-6089 are incorporated herein by reference and shall be deemed to be a part hereof:

1. the Guarantor's Annual Report on Form 10-K for the fiscal year ended April 30, 1997 (as amended on Form 10-K/A for such fiscal year);
2. the Guarantor's Current Report on Form 8-K dated July 2, 1997 (as amended on Form 8-K/A filed August 14, 1997).

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

This Prospectus incorporates documents by reference which are not presented herein or delivered herewith, as indicated above. The Company will provide without charge to each person, including any beneficial owner, to whom a copy of this Prospectus is delivered, upon the written or oral request of such person, a copy of any or all of the documents which are incorporated herein by reference (other than exhibits to such documents unless they are specifically incorporated by reference into such documents). Requests for such copies should be directed to Block Financial Corporation, 4435 Main Street, Suite 500, Kansas City, Missouri 64111, Attention: John R. Cox, telephone (816) 751-6019.

#### CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

Certain statements contained in the section entitled 'The Company' and 'The Guarantor,' and certain statements incorporated by reference from documents filed with the Commission by the Company and the Guarantor, are or may constitute forward-looking statements (as such term is defined in the Private Securities Litigation Reform Act of 1995). Because such statements are subject to risks and uncertainties, actual results may differ materially from those expressed or implied by such forward-looking statements.

#### THE COMPANY

BFC is an indirect subsidiary of Block. It was organized in May 1992 for the purpose of developing and providing tax-related and technology-related financial services. The principal business activities of BFC include (i) the origination, purchase, servicing, sale and securitization of nonconforming residential mortgages, (ii) the purchase of participation interests in refund anticipation loans ('RALs') made by Beneficial National Bank ('Beneficial') to Block tax customers, (iii) the offering of credit cards for CompuServe Corporation ('CompuServe') and WebBank Corporation, a Utah Industrial Loan Company and wholly-owned subsidiary of BFC, (iv) the development, publishing, and marketing of software products designed to assist individuals in managing their personal finances and preparing tax returns, and (v) the offering of equity lines of credit to Block's tax preparation franchisees. BFC's principal executive office is located at 4435 Main Street, Suite 500, Kansas City,

Missouri 64111 and its telephone number is (816) 751-6000.

**Nonconforming Mortgages.** BFC operates a nonconforming mortgage origination and funding business in which fixed and adjustable-rate mortgages, including purchase money first mortgages, refinance first mortgages and second mortgages, are offered to the public. Nonconforming mortgages are those that may not be offered through government-sponsored loan agencies.

In a strategic initiative to develop a retail nonconforming mortgage business, BFC and Block formed Block Mortgage Company, L.L.C. ('Block Mortgage') in August 1995 to offer nonconforming mortgages at H&R Block tax offices. Block Mortgage is a limited liability company in which a subsidiary of Block owns a 99% membership interest and BFC owns a 1% membership interest. During the 1997 tax season, Block Mortgage offered nonconforming mortgages through 31 tax offices in Colorado, Indiana, North Carolina and Virginia. Block Mortgage plans to continue the test of this business in additional tax offices during fiscal year 1998.

BFC further increased its commitment to the nonconforming mortgage business with its purchase of Option One Mortgage Corporation ('Option One') from Fleet Financial Group, Inc. ('Fleet') in June 1997. Option One engages in the origination, purchase, securitization, sale and servicing of one-to-four family residential mortgage loans made primarily to sub-prime borrowers who do not qualify for loans which conform to FNMA and FHLMC guidelines. Option One is headquartered in Santa Ana, California, and has a network of more than 5,000 mortgage brokers in 46 states. In calendar 1996, Option One originated more than \$1 billion in mortgage loans. BFC believes that Option One will provide BFC with experienced associates in the nonconforming mortgage business and assist BFC and Block in handling

mortgage applications, processing loans and underwriting mortgages originated through Block Mortgage.

BFC paid \$218.1 million in cash for Option One, consisting of \$28.1 million in adjusted stockholder's equity and a premium of \$190 million. In addition, BFC made a cash payment of \$456 million to Fleet to eliminate intercompany loans made by Fleet to Option One to finance Option One's mortgage loan business. The \$456 million payment was recorded as an intercompany loan from BFC to Option One and was repaid by Option One on June 30, 1997, when Option One sold mortgage loans to a third party in the ordinary course of business.

BFC completed its first securitization of nonconforming mortgage loans on January 30, 1997 through a \$102 million asset-backed security issue. Substantially all of the mortgages involved in this securitization were mortgages offered through independent mortgage brokers. On July 30, 1997, BFC completed its second securitization of nonconforming mortgages through a \$215 million asset-backed security issue. This securitization included \$134 million of mortgages offered through independent mortgage brokers, \$81 million of mortgages offered by Option One and \$10 million of mortgages offered by Block Mortgage.

Refund Anticipation Loans. In July 1996, BFC announced its agreement with Beneficial to purchase a participation interest in RALs provided by Beneficial to Block tax customers. In the 10-year agreement, BFC agreed to purchase an initial 40% participation interest in such RALs, which interest would be increased to nearly 50% in specific circumstances. BFC's purchases of participation interests are financed through short-term borrowings. BFC bears all of the risks associated with its interests in the RALs. BFC's total RAL revenue in fiscal year 1997 was approximately \$54.5 million, which generated approximately \$8.1 million in pretax profits.

Credit Cards. BFC offers Gold and Classic versions of two types of co-branded credit cards: CompuServe Visa and WebCard(Service Mark) Visa. The credit cards are issued under a co-branding agreement between BFC and Columbus Bank and Trust Company, Columbus, Georgia. Approximately 110,000 CompuServe Visa credit cards were issued by the end of fiscal year 1997, compared to 113,425 credit cards at the end of fiscal 1996. The number of WebCard(Service Mark) Visa accounts at April 30, 1997, was 57,223, compared to approximately 6,000 accounts at the end of fiscal year 1996. The aggregate portfolio for the credit cards issued by BFC increased from approximately \$165 million at the end of fiscal year 1996 to more than \$246 million by the end of fiscal year 1997.

BFC developed the CONDUCTOR(Registered) service, a technology that facilitates the delivery of financial services online through existing commercial online services, the Internet or directly through leased networks. CONDUCTOR(Registered) features a national online electronic credit card statement that provides the cardholder with access to transaction records and credit availability and the ability to download transactions from the Internet into a personal financial software program. A similar service that allows cardholders access online is offered on CompuServe's information service. CONDUCTOR(Registered) allows, or may in the future allow, subscribers to engage in online electronic bill payment, discounted brokerage and mutual fund transactions, and to review other financial account statements.

Software Products. BFC's software business develops and markets the Kiplinger Tax Cut(Registered) tax preparation software package, and markets the Kiplinger Home Legal Advisor(Service Mark) and Kiplinger Small Business Attorney(Service Mark) software products. As a result of the increase in sales of TaxCut's final edition in fiscal year 1997, BFC's share in the income tax return preparation software market is now greater than 30%.

Equity Lines of Credit. BFC offers to Block's tax preparation franchisees lines of credit with reasonable interest rates under a program designed to better enable the franchisees to refinance existing business debt, expand or renovate offices or meet off-season cash flow needs. A franchise equity loan is a revolving line of credit secured by the H&R Block franchise and the underlying business.

Block is a diversified services corporation that was organized in 1955 under the laws of Missouri. It is the parent corporation in a two-tier holding company structure following a 1993 corporate restructuring. The second-tier holding company is H&R Block Group, Inc., which is the direct owner of (i) all of the shares of H&R Block Tax Services, Inc. ('Tax Services'), a subsidiary involved in the business of income tax return preparation, electronic filing of income tax returns and the performance of other tax related services in the United States, (ii) approximately 80.1% of the shares of CompuServe, a corporation that offers worldwide online and Internet access services to consumers and worldwide network access, management and applications, and Internet services to businesses, and (iii) all of the shares of BFC. Indirect subsidiaries of H&R Block Group, Inc. operate income tax return preparation and related services businesses in Canada, Australia, the United Kingdom and Guam, and offer H&R Block franchises in other parts of the world as a part of the operations of H&R Block International. Block's principal executive office is located at 4400 Main Street, Kansas City, Missouri 64111 and its telephone number is (816) 753-6900. Block's common stock is listed on the New York Stock Exchange and Pacific Stock Exchange and is quoted under the symbol 'HRB.'

Tax Services. The income tax return preparation and related services business is the original core business of Block. These services are provided to the public through a system of offices operated by Block or by others to whom Block has granted franchises. Block and its franchisees provide income tax return preparation services, electronic filing services and other services relating to income tax return preparation in many parts of the world. For U.S. returns, Block offers RALs through Beneficial and BFC in conjunction with Block's electronic filing service. Block also markets its income tax preparation knowledge through its income tax training schools.

Block's tax operations are divided structurally into three areas, each targeting specific markets and focusing on new products and services and areas for expansion. Tax Services focuses on tax business operations in the United States. H&R Block Premium, a division of Tax Services, competes for those clients who typically have more complex income tax returns and features meetings by appointment any time of the year, private offices and more experienced tax return preparers. H&R Block International focuses on strengthening operations in current foreign markets, such as Canada and Australia, and identifying and developing new markets.

CompuServe. CompuServe was incorporated in Delaware on February 16, 1996. CompuServe is the parent corporation in a holding company structure, and holds all of the outstanding stock of CompuServe Incorporated. CompuServe Incorporated was founded in 1969 as a computer timesharing service and introduced its first online service in 1979. Until April 1996, CompuServe was an indirect wholly-owned subsidiary of Block. In April 1996, CompuServe completed an initial public offering of 18,400,000 shares of its common stock. CompuServe's common stock is quoted on the Nasdaq quotation system under the symbol 'CSRV.'

CompuServe is a worldwide leader in the market for computer-based interactive services and data communications and a pioneer in the development of consumer online and Internet access services. CompuServe was the first online service provider to establish a major international presence, and continues to be one of the largest global online and Internet service providers. CompuServe operates what its management believes is the most extensive network in the world dedicated solely to data transmission.

CompuServe Interactive Service(Service Mark) ('CSi'), CompuServe's flagship product, offers traditional online services and integrated Internet access. Through SPRYNET(Service Mark), CompuServe also offers a stand-alone Internet-access-only service. Management believes consumer online services are a preferred access vehicle to the Internet for the average user due to the ability of online services to focus and aggregate content and provide centralized billing and support. Management also believes CompuServe's business networking experience and infrastructure position it to be a leader in the commercialization of the Internet.

In April 1997, Block and CompuServe each announced that they were engaged in external discussions regarding a possible business combination involving

CompuServe. The announcements stated that there were no assurances that such discussions would result in any agreement or transaction. In August 1996, Block's Board of Directors announced its decision not to present to shareholders at Block's 1996 annual meeting the previously proposed pro rata distribution of Block's CompuServe shares. The announcement reiterated the Board of Directors' belief that a separation of CompuServe is in the best interests of Block's shareholders and stated that the Board will continue to consider the matter.

USE OF PROCEEDS

The Company intends to use the net proceeds from the sale of the Debt Securities for general corporate purposes which may include acquisitions, capital expenditures, working capital requirements, repayment of certain indebtedness or for such other purposes as may be specified in the applicable Prospectus Supplement.

RATIO OF EARNINGS TO FIXED CHARGES

THE COMPANY

The following table sets forth the ratio of earnings to fixed charges for the Company for each of the five years ended April 30.

|   | 1997<br>----- | 1996<br>----- | 1995<br>----- | 1994<br>----- | 1993<br>----- |
|---|---------------|---------------|---------------|---------------|---------------|
| Ratio of Earnings to Fixed Charges..... | 1.6:1         | 2.5:1         | (a)           | (b)<br>(c)    | 6.9:1         |

NOTES TO COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES

The ratio of earnings to fixed charges is calculated by dividing (1) pretax earnings from continuing operations plus fixed charges by (2) fixed charges.

Fixed charges consist of interest expense and the interest component of rent expense.

- (a) Earnings were insufficient to cover fixed charges for the year ended April 30, 1995 by \$5,788.
- (b) Earnings were insufficient to cover fixed charges for the year ended April 30, 1994 by \$15,644.
- (c) Earnings for the year ended April 30, 1994 included a nonrecurring charge of \$25,072 for purchased research and development related to the acquisition of MECA Software, Inc. as disclosed in the Acquisitions note to the Guarantor's consolidated financial statements for the year ended April 30, 1996. If such charges had not occurred, the ratio of earnings to fixed charges would have been 4.2:1.

THE GUARANTOR

The following table sets forth the ratio of earnings to fixed charges for the Guarantor on a consolidated basis for each of the five years ended April 30, which ratios are based on the historical consolidated financial statements of the Guarantor.

|   | 1997<br>-----   | 1996<br>----- | 1995<br>----- | 1994<br>----- | 1993<br>----- |
|---|-----------------|---------------|---------------|---------------|---------------|
| Ratio of Earnings to Fixed Charges..... | 1.9:1(a)<br>(b) | 10.4:1        | 9.0:1(c)      | 12.3:1(d)     | 11.5:1        |

NOTES TO COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES

The ratio of earnings to fixed charges is calculated by dividing (1) pretax earnings from continuing operations plus fixed charges by (2) fixed charges. Pretax income from continuing operations includes the minority interest in



CompuServe. Fixed charges consist of interest expense and the interest component of rent expense.

- (a) Earnings for the year ended April 30, 1997 included nonrecurring charges of \$34,754 related to CompuServe as disclosed in the Other Expenses note to the Guarantor's consolidated financial statements for such year. If such charges had not occurred, the ratio of earnings to fixed charges would have been 2.7:1.
- (b) The decrease in the ratio of earnings to fixed charges in 1997 is primarily attributable to the operations of CompuServe, which negatively impacted the computation by 5.1. Interest expense incurred in connection with the Company's mortgage loan business also contributed to the decrease.
- (c) Earnings for the year ended April 30, 1995 included a nonrecurring charge of \$83,508 for purchased research and development related to the acquisition of SPRY, Inc. as disclosed in the Acquisitions note to the Guarantor's consolidated financial statements for the year ended April 30, 1997. If such charges had not occurred, the ratio of earnings to fixed charges would have been 12.0:1.
- (d) Earnings for the year ended April 30, 1994 included a nonrecurring charge of \$25,072 for purchased research and development related to the acquisition of MECA Software, Inc. as disclosed in the Acquisitions note to the Guarantor's consolidated financial statements for the year ended April 30, 1996. If such charges had not occurred, the ratio of earnings to fixed charges would have been 13.3:1.

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#### DESCRIPTION OF DEBT SECURITIES

The following description of the terms of the Debt Securities and Guarantees sets forth certain general terms and provisions of the Debt Securities to which any Prospectus Supplement may relate. The particular terms of the Debt Securities offered by any Prospectus Supplement and the extent, if any, to which such general provisions may apply to the Debt Securities so offered will be described in the Prospectus Supplement relating to such Debt Securities. Accordingly, for a description of the terms of a particular issue of Debt Securities and Guarantees, reference must be made to both the Prospectus Supplement relating thereto and to the following description.

The Debt Securities will be general obligations of the Company and may be subordinated to 'Senior Indebtedness' (as defined below) of the Company to the extent set forth in the Prospectus Supplement relating thereto. See 'Description of Debt Securities--Subordination' below. The Guarantor will irrevocably and unconditionally guarantee payments of principal, interest and premium, if any, on the Debt Securities. Debt Securities and Guarantees will be issued under an indenture (the 'Indenture') to be entered into between the Company, the Guarantor and Bankers Trust Company (the 'Trustee'). A copy of the form of Indenture has been filed as an exhibit to the Registration Statement filed with the Commission. The following discussion of certain provisions of the Indenture is a summary only and does not purport to be a complete description of the terms and provisions of the Indenture. Accordingly, the following discussion is qualified in its entirety by reference to the provisions of the Indenture, including the definition therein of terms used below with their initial letters capitalized.

#### GENERAL

The Indenture does not limit the aggregate principal amount of Debt Securities that can be issued thereunder. The Debt Securities may be issued in one or more series as may be authorized from time to time by the Company. Reference is made to the applicable Prospectus Supplement for the following terms of the Debt Securities of the series with respect to which such Prospectus Supplement is being delivered:

(a) The title of Debt Securities of the series;

(b) Any limit on the aggregate principal amount of the Debt Securities of the series that may be authenticated and delivered under the Indenture;

(c) The date or dates on which the principal and premium, if any, with respect to the Debt Securities of the series are payable;

(d) The rate or rates (which may be fixed or variable) at which the Debt Securities of the series shall bear interest (if any) or the method of determining such rate or rates, the date or dates from which such interest shall accrue, the interest payment dates on which such interest shall be payable or the method by which such date will be determined, the record dates for the determination of Holders thereof to whom such interest is payable (in the case of Registered Securities), and the basis upon which

interest will be calculated if other than that of a 360-day year of twelve 30-day months;

(e) The Place or Places of Payment, if any, in addition to or instead of the corporate trust office of the Trustee where the principal, premium, if any, and interest with respect to Debt Securities of the series shall be payable;

(f) The price or prices at which, the period or periods within which, and the terms and conditions upon which Debt Securities of the series may be redeemed, in whole or in part, at the option of the Company or otherwise;

(g) The obligation, if any, of the Company to redeem, purchase, or repay Debt Securities of the series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the price or prices at which, the period or periods within which, and the terms and conditions upon

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which Debt Securities of the series shall be redeemed, purchased, or repaid, in whole or in part, pursuant to such obligations;

(h) The terms, if any, upon which the Debt Securities of the series may be convertible into or exchanged for Common Stock, Preferred Stock (which may be represented by depositary shares), other Debt Securities or warrants for Common Stock, Preferred Stock or indebtedness or other securities of any kind of the Company, the Guarantor or any other obligor and the terms and conditions upon which such conversion or exchange shall be effected, including the initial conversion or exchange price or rate, the conversion or exchange period and any other provision in addition to or in lieu of those described herein;

(i) If other than denominations of \$1,000 or any integral multiple thereof, the denominations in which Debt Securities of the series shall be issuable;

(j) If the amount of principal, premium, if any, or interest with respect to the Debt Securities of the series may be determined with reference to an index or pursuant to a formula, the manner in which such amounts will be determined;

(k) If the principal amount payable at the stated maturity of Debt Securities of the series will not be determinable as of any one or more dates prior to such stated maturity, the amount that will be deemed to be such principal amount as of any such date for any purpose, including the principal amount thereof that will be due and payable upon any maturity other than the stated maturity or that will be deemed to be outstanding as of any such date (or, in such case, the manner in which such deemed principal amount is to be determined), and if necessary, the manner of determining the equivalent thereof in United States currency;

(l) Any changes or additions to the provisions of the Indenture dealing with defeasance, including the addition of additional covenants that may be subject to the Company's covenant defeasance option;

(m) The coin or currency or currencies or units of two or more currencies in which payment of the principal and premium, if any, and interest with respect to Debt Securities of the series shall be payable;

(n) If other than the principal amount thereof, the portion of the principal amount of Debt Securities of the series which shall be payable upon declaration of acceleration or provable in bankruptcy;

(o) The terms, if any, of the transfer, mortgage, pledge or assignment as security for the Debt Securities of the series of any properties, assets, moneys, proceeds, securities or other collateral, including whether certain provisions of the Trust Indenture Act are applicable and any corresponding changes to provisions of the Indenture as currently in effect;

(p) Any addition to or change in the Events of Default with respect to the Debt Securities of the series and any change in the right of the Trustee or the holders to declare the principal of and interest on, such Debt Securities due and payable;

(q) If the Debt Securities of the series shall be issued in whole or in part in the form of a Global Security, the terms and conditions, if any, upon which such Global Security may be exchanged in whole or in part for other individual Debt Securities in definitive registered form and the Depository for such Global Security;

(r) Any trustees, authenticating or paying agents, transfer agents or registrars;

(s) The applicability of, and any addition to or change in the covenants and definitions currently set forth in the Indenture or in the terms relating to permitted consolidations, mergers, or sales of assets, including conditioning any merger, conveyance, transfer or lease permitted by the

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Indenture upon the satisfaction of an Indebtedness coverage standard by the Company and Successor Company;

(t) The terms, if any, of any Guarantee (other than the Guarantee of the Guarantor) of the payment of principal of, and premium, if any, and interest on, Debt Securities of the series and any corresponding changes to the provisions of the Indenture as currently in effect;

(u) The subordination, if any, of the Debt Securities of the series pursuant to the Indenture and any changes or additions to the provisions of the Indenture relating to subordination;

(v) With regard to Debt Securities of the series that do not bear interest, the dates for certain required reports to the Trustee; and

(w) Any other terms of the Debt Securities of the series (which terms shall not be prohibited by the Indenture).

The Prospectus Supplement will also describe any material United States federal income tax consequences or other special considerations applicable to the series of Debt Securities to which such Prospectus Supplement relates, including those applicable to (a) Debt Securities with respect to which payments of principal, premium, or interest are determined with reference to an index or formula (including changes in prices of particular securities, currencies, or commodities), (b) Debt Securities with respect to which principal, premium, or interest is payable in a foreign or composite currency, (c) Debt Securities that are issued at a discount below their stated principal amount, bearing no interest or interest at a rate that at the time of issuance is below market rates ('Original Issue Discount Debt Securities'), and (d) variable rate Debt Securities that are exchangeable for fixed rate Debt Securities.

Payments of interest on Debt Securities shall be made at the corporate trust office of the Trustee or at the option of the Company by check mailed to the registered holders thereof or, if so provided in the applicable Prospectus Supplement, at the option of a Holder by wire transfer to an account designated by such Holder.

Unless otherwise provided in the applicable Prospectus Supplement, Debt

Securities may be transferred or exchanged at the office of the Trustee at which its corporate trust business is principally administered in the United States or at the office of the Trustee or the Trustee's agent in the Borough of Manhattan, the City and State of New York, at which its corporate agency business is conducted, subject to the limitations provided in the Indenture, without the payment of any service charge, other than any tax or governmental charge payable in connection therewith.

#### GUARANTEES

The Guarantor will irrevocably and unconditionally guarantee to each holder of a Debt Security the due and punctual payment of the principal of, and any premium and interest on, such Debt Security, when and as the same shall become due and payable, whether at maturity, upon acceleration, by call for redemption or otherwise. The Guarantor has (a) agreed that its obligations under the Guarantees in the event of an Event of Default will be as if it were principal obligor and not merely surety, and will be enforceable irrespective of any invalidity, irregularity or unenforceability of any series of the Debt Securities or the Indenture or any supplement thereto and (b) waived its right to require the Trustee or the Holders to pursue or exhaust its legal or equitable remedies against the Company prior to exercising its rights under the Guarantees.

#### GLOBAL SECURITIES

The Debt Securities of a series may be issued in whole or in part in the form of one or more fully registered global securities (a 'Global Security') that will be deposited with a depository (the 'Depository'), or with a nominee for a Depository identified in the Prospectus Supplement relating to such series. In such case, one or more Global Securities will be issued in a denomination or aggregate

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denomination equal to the portion of the aggregate principal amount of outstanding registered Debt Securities of the series to be represented by such Global Security or Securities. Unless and until it is exchanged in whole or in part for Debt Securities in definitive registered form, a Global Security may not be transferred except as a whole by the Depository for such Global Security to a nominee of such Depository or by a nominee of such Depository to such Depository or another nominee of such Depository or by such Depository or any such nominee to a successor of such Depository or a nominee of such successor.

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

Upon the issuance of a Global Security, the Depository for such Global Security will credit, on its book-entry registration and transfer system, the respective principal amounts of the Debt Securities represented by such Global Security to the accounts of persons that have accounts with such Depository ('participants'). The amounts to be credited shall be designated by any underwriters or agents participating in the distribution of such Debt Securities. Ownership of beneficial interests in a Global Security will be limited to participants or persons that may hold interest through participants. Ownership of beneficial interests in such Global Security will be shown on, and the transfer of that ownership will be effected only through, records maintained by the Depository for such Global Security (with respect to interests of participants) or by participants or persons that hold through participants (with respect to interests of persons other than participants). So long as the Depository for a Global Security, or its nominee, is the registered owner of such Global Security, such Depository or such nominee, as the case may be, will be considered the sole owner or Holder of the Debt Securities represented by such Global Security for all purposes under the Indenture. Except as set forth below, owners of beneficial interests in a Global Security will not be entitled to have the Debt Securities represented by such Global Security registered in their names, will not receive or be entitled to receive physical delivery of such Debt Securities in definitive form and will not be considered the owners or Holders thereof under the Indenture.

Principal, premium, if any, and interest payments on Debt Securities represented by a Global Security registered in the name of a Depositary or its nominee will be made to such Depositary or its nominee, as the case may be, as the registered owner of such Global Security. None of the Company, the Trustee or any paying agent for such Debt Securities will have any responsibility or

liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in such Global Securities or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

The Company expects that the Depositary for any Debt Securities represented by a Global Security, upon receipt of any payment of principal, premium, or interest, will immediately credit participants' accounts with payments in amounts proportionate to their respective beneficial interests in the principal amount of such Global Security as shown on the records of the Depositary. The Company also expects that payments by participants to owners of beneficial interests in such Global Security held through such participants will be governed by standing instructions and customary practices, as is now the case with the securities held for the accounts of customers registered in 'street name', and will be the responsibility of such participants.

If the Depositary for any Debt Securities represented by a Global Security is at any time unwilling or unable to continue as Depositary and a successor Depositary is not appointed by the Company within ninety days, the Company will issue such Debt Securities in definitive form in exchange for such Global Security. In addition, the Company may at any time and in its sole discretion determine not to have any of the Debt Securities of a series represented by one or more Global Securities and, in such event, will

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issue Debt Securities of such series in definitive form in exchange for the Global Security or Securities representing such Debt Securities.

#### SUBORDINATION

Debt Securities may be subordinated ('Subordinated Debt Securities') to senior debt to the extent set forth in the Prospectus Supplement relating thereto.

Subordinated Debt Securities will be subordinate in right of payment, to the extent and in the manner set forth in the Indenture and the Prospectus Supplement relating to such Subordinated Debt Securities, to the prior payment of all Indebtedness of the Company that is designated as 'Senior Indebtedness' (as defined in the Indenture) with respect to such Subordinated Debt Securities. Senior Indebtedness, with respect to any series of Subordinated Debt Securities, will consist of (a) any and all amounts payable under or with respect to the Company's Indebtedness to banks and (b) any other Indebtedness of the Company that is designated in a resolution of the Company's Board of Directors or the supplemental Indenture establishing such series as Senior Indebtedness with respect to such series.

Upon any payment or distribution of assets of the Company to creditors or upon a total or partial liquidation or dissolution of the Company or in a bankruptcy, receivership, or similar proceeding relating to the Company or its property, holders of Senior Indebtedness shall be entitled to receive payment in full in cash of the Senior Indebtedness before holders of Subordinated Debt

Securities shall be entitled to receive any payment of principal, premium, or interest with respect to the Subordinated Debt Securities, and until the Senior Indebtedness is paid in full, any distribution to which holders of Subordinated Debt Securities would otherwise be entitled shall be made to the Holders of Senior Indebtedness (except that such Holders may receive shares of stock and any debt securities that are subordinated to Senior Indebtedness to at least the same extent as the Subordinated Debt Securities).

The Company may not make any payments of principal, premium, or interest with respect to Subordinated Debt Securities, make any deposit for the purpose of defeasance of such Subordinated Debt Securities, or repurchase, redeem, or otherwise retire (except, in the case of Subordinated Debt Securities that provide for a mandatory sinking fund, by the delivery of Subordinated Debt Securities by the Company to the Trustee in satisfaction of the Company's

sinking fund obligation) any Subordinated Debt Securities if (a) any principal, premium, if any, or interest with respect to Senior Indebtedness is not paid within any applicable grace period (including at maturity) or (b) any other default on Senior Indebtedness occurs and the maturity of such Senior Indebtedness is accelerated in accordance with its terms, unless, in either case, the default has been cured or waived and such acceleration has been rescinded, such Senior Indebtedness has been paid in full in cash, or the Company and the Trustee receive written notice approving such payment from the representatives of each issue of 'Designated Senior Indebtedness' (which will include the Bank Indebtedness and any other specified issue of Senior Indebtedness. During the continuance of any default (other than a default described in clause (a) or (b) above) with respect to any Senior Indebtedness pursuant to which the maturity thereof may be accelerated immediately without further notice (except such notice as may be required to effect such acceleration) or the expiration of any applicable grace periods, the Company may not pay the Subordinated Debt Securities for a period (the 'Payment Blockage Period') commencing on the receipt by the Company and the Trustee of written notice of such default from the representative of any Designated Senior Indebtedness specifying an election to effect a Payment Blockage Period (a 'Blockage Notice'). The Payment Blockage Period may be terminated before its expiration by written notice to the Trustee and the Company from the person who gave the Blockage Notice, by repayment in full in cash of the Senior Indebtedness with respect to which the Blockage Notice was given, or because the default giving rise to the Payment Blockage Period is no longer continuing. Unless the holders of such Senior Indebtedness shall have accelerated the maturity thereof, the Company may resume payments on the Subordinated Debt Securities after the expiration of the Payment Blockage Period. Not more than one Blockage Notice may be given in any period of 360 consecutive days unless the first

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Blockage Notice within such 360-day period is given by or on behalf of holders of Designated Senior Indebtedness other than the Bank Indebtedness, in which case the representative of the Bank Indebtedness may give another Blockage Notice within such period. In no event, however, may the total number of days during which any Payment Blockage Period or Periods is in effect exceed 179 days in the aggregate during any period of 360 consecutive days. After all Senior

Indebtedness is paid in full and until the Subordinated Debt Securities are paid in full, Holders of the Subordinated Debt Securities shall be subrogated to the rights of Holders of Senior Indebtedness to receive distributions applicable to Senior Indebtedness.

All payments by the Guarantor pursuant to any Guarantees of Subordinated Debt Securities will be subordinated in right of payment to the prior payment in full of all Senior Indebtedness of the Guarantor.

By reason of such subordination, in the event of insolvency, creditors of the Company or the Guarantor who are Holders of Senior Indebtedness, as well as certain general creditors of the Company or the Guarantor, may recover more, ratably, than the Holders of the Subordinated Debt Securities.

#### EVENTS OF DEFAULT AND REMEDIES

The following events are defined in the Indenture as 'Events of Default' with respect to a series of Debt Securities:

(a) Default in the payment of any installment of interest on any Debt Securities of that series as and when the same shall become due and payable (whether or not, in the case of Subordinated Debt Securities, such payment shall be prohibited by reason of the subordination provision described above) and continuance of such default for a period of 30 days;

(b) Default in the payment of principal or premium with respect to any Debt Securities of that series as and when the same become due and payable, whether at maturity, upon redemption, by declaration, upon required repurchase, or otherwise (whether or not, in the case of Subordinated Debt Securities, such payment shall be prohibited by reason of the subordination provision described above);

(c) Default in the payment of any sinking fund payment with respect to any Debt Securities of that series as and when the same shall become due

and payable;

(d) Failure on the part of the Company or the Guarantor to comply with the provisions of the Indenture relating to consolidations, mergers and sales of assets;

(e) Failure on the part of the Company or the Guarantor duly to observe or perform any other of the covenants or agreements on the part of the Company or the Guarantor in the Debt Securities of that series, in any resolution of the Board of Directors of the Company authorizing the issuance of that series of Debt Securities, in the Indenture with respect to such series, or in any supplemental Indenture with respect to such series (other than a covenant or agreement a default in the performance of which is otherwise specifically dealt with) continuing for a period of 60 days after the date on which written notice specifying such failure and requiring the Company or the Guarantor to remedy the same shall have been given to the Company or the Guarantor by the Trustee or to the Company or the Guarantor and the Trustee by the holders of at least 25% in aggregate principal amount of the Debt Securities of that series at the time outstanding;

(f) Indebtedness of the Guarantor or any Subsidiary of the Guarantor is not paid within any applicable grace period after final maturity or is accelerated by the Holders thereof because of a default, the total amount of such indebtedness unpaid or accelerated exceeds \$100 million or the United States dollar equivalent thereof at the time, and such default remains uncured or such acceleration is not rescinded for 10 days after the date on which written notice specifying such failure and requiring the Guarantor to remedy the same shall have been given to the Guarantor by

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the Trustee or to the Guarantor and the Trustee by the Holders of at least 25% in aggregate principal amount of the Debt Securities of that series at the time outstanding;

(g) The Company or the Guarantor or any of its Restricted Subsidiaries shall (1) voluntarily commence any proceeding or file any petition seeking relief under the United States Bankruptcy Code or other federal or state bankruptcy, insolvency, or similar law, (2) consent to the institution of, or fail to controvert within the time and in the manner prescribed by law, any such proceeding or the filing of any such petition, (3) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, or similar official for the Company or the Guarantor or any such Restricted Subsidiary or for a substantial part of its property, (4) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (5) make a general assignment for the benefit of creditors, (6) admit in writing its inability or fail generally to pay its debts as they become due, (7) take corporate action for the purpose of effecting any of the foregoing, or (8) take any comparable action under any foreign laws relating to insolvency;

(h) The entry of an order or decree by a court having competent jurisdiction for (1) relief with respect to the Company or the Guarantor or any of its Restricted Subsidiaries or a substantial part of any of their property under the United States Bankruptcy Code or any other federal or state bankruptcy, insolvency, or similar law, (2) the appointment of a receiver, trustee, custodian, sequestrator, or similar official for the Company or the Guarantor or any such Restricted Subsidiary or for a substantial part of any of their property (except any decree or order appointing such official of any Restricted Subsidiary pursuant to a plan under which the assets and operations of such Restricted Subsidiary are transferred to or combined with another Restricted Subsidiary of the Guarantor or to the Guarantor), or (3) the winding-up or liquidation of the Company or the Guarantor or any such Restricted Subsidiary (except any decree or order approving or ordering the winding-up or liquidation of the affairs of a Restricted Subsidiary pursuant to a plan under which the assets and operations of such Restricted Subsidiary are transferred to or combined with another Restricted Subsidiary or Subsidiaries of the Guarantor or to the Guarantor), and such order or decree shall continue unstayed and in effect for 60 consecutive days, or any similar relief is granted under any foreign laws and the order or decree stays in effect for

60 consecutive days; or

(i) Any other Event of Default provided under the terms of the Debt Securities of that series.

An Event of Default with respect to one series of Debt Securities is not necessarily an Event of Default for another series.

If an Event of Default occurs and is continuing with respect to any series of Debt Securities, unless the principal and interest with respect to all the Debt Securities of such series shall have already become due and payable, either the Trustee or the holders of not less than 25% in aggregate principal amount of the Debt Securities of such series then outstanding may declare the principal of (or, if Original Issue Discount Debt Securities, such portion of the principal amount as may be specified in such series) and interest on all the Debt Securities of such series due and payable immediately.

If an Event of Default occurs and is continuing, the Trustee shall be entitled and empowered to institute any action or proceeding for the collection of the sums so due and unpaid or to enforce the performance of any provision of the Debt Securities of the affected series or the Indenture, to prosecute any such action or proceeding to judgment or final decree, and to enforce any such judgment or final decree against the Company or any other obligor on the Debt Securities of such series. In addition, if there shall be pending proceedings for the bankruptcy or reorganization of the Company or any other obligor on the Debt Securities, or if a receiver, trustee, or similar official shall have been appointed for its property, the Trustee shall be entitled and empowered to file and prove a claim for the whole amount of principal, premium and interest (or, in the case of Original Issue Discount Debt Securities, such portion of the principal amount as may be specified in the terms of such series) owing and unpaid with respect to the Debt Securities. No Holder of any Debt Securities of any series shall have any right to institute any action or proceeding upon or under or with respect to the Indenture, for the appointment of a

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receiver or trustee, or for any other remedy, unless (a) such Holder previously shall have given to the Trustee written notice of an Event of Default with respect to Debt Securities of that series and of the continuance thereof, (b) the Holders of not less than 25% in aggregate principal amount of the outstanding Debt Securities of that series shall have made written request to the Trustee to institute such action or proceeding with respect to such Event of Default and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses, and liabilities to be incurred therein or thereby, and (c) the Trustee, for 60 days after its receipt of such notice, request, and offer of indemnity shall have failed to institute such action or proceeding and no direction inconsistent with such written request shall have been given to the Trustee pursuant to the provisions of the Indenture.

Prior to the acceleration of the maturity of the Debt Securities of any series, the Holders of a majority in aggregate principal amount of the Debt Securities of that series at the time outstanding may, on behalf of the Holders

of all Debt Securities of that series, waive any past default or Event of Default and its consequences for that series, except (a) a default in the payment of the principal, premium, or interest with respect to such Debt Securities or (b) a default with respect to a provision of the Indenture that cannot be amended without the consent of each Holder affected thereby. In case of any such waiver, such default shall cease to exist, any Event of Default arising therefrom shall be deemed to have been cured for all purposes, and the Company, the Trustee and the Holders of the Debt Securities of that series shall be restored to their former positions and rights under the Indenture.

The Trustee shall, within 90 days after the occurrence of a default known to it with respect to a series of Debt Securities, give to the Holders of the Debt Securities of such series notice of all uncured defaults with respect to such series known to it, unless such defaults shall have been cured or waived before the giving of such notice; provided, however, that except in the case of default in the payment of principal, premium, or interest with respect to the Debt Securities of such series or in the making of any sinking fund payment with respect to the Debt Securities of such series, the Trustee shall be protected in withholding such notice if it in good faith determines that the withholding of



such notice is in the interest of the Holders of such Debt Securities.

#### MODIFICATION OF THE INDENTURE

The Company, the Guarantor and the Trustee may enter into supplemental indentures without the consent of the Holders of Debt Securities issued under the Indenture for one or more of the following purposes:

(a) To evidence the succession of another person to the Company or the Guarantor pursuant to the provisions of the Indenture relating to consolidations, mergers, and sales of assets and the assumption by such successor of the covenants, agreements, and obligations of the Company or the Guarantor in the Indenture and in the Debt Securities;

(b) To surrender any right or power conferred upon the Company or the Guarantor by the Indenture, to add to the covenants of the Company or the Guarantor such further covenants, restrictions, conditions, or provisions for the protection of the Holders of all or any series of Debt Securities as the Board of Directors of the Company or the Guarantor shall consider to be for the protection of the Holders of such Debt Securities, and to make the occurrence, or the occurrence and continuance of a default in any of such additional covenants, restrictions, conditions, or provisions, a default or an Event of Default under the Indenture (provided, however, that with respect to any such additional covenant, restriction, condition, or provision, such supplemental indenture may provide for a period of grace after default, which may be shorter or longer than that allowed in the case of other defaults, may provide for an immediate enforcement upon such default, may limit the remedies available to the Trustee upon such default, or may limit the right of Holders of a majority in aggregate principal amount of any or all series of Debt Securities to waive such default);

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(c) To cure any ambiguity or to correct or supplement any provision contained in the Indenture, in any supplemental indenture, or in any Debt Securities that may be defective or inconsistent with any other provision contained therein, to convey, transfer, assign, mortgage, or pledge any property to or with the Trustee, or to make such other provisions in regard to matters or questions arising under the Indenture as shall not adversely affect the interests of any Holders of Debt Securities of any series;

(d) To modify or amend the Indenture in such a manner as to permit the qualification of the Indenture or any supplemental Indenture under the Trust Indenture Act as then in effect;

(e) To add or change any of the provisions of the Indenture to change or eliminate any restriction on the payment of principal or premium with respect to Debt Securities so long as any such action does not adversely affect the interest of the Holders of Debt Securities in any material respect or permit or facilitate the issuance of Debt Securities of any series in uncertificated form;

(f) To comply with the provisions of the Indenture relating to consolidations, mergers, and sales of assets;

(g) In the case of Subordinated Debt Securities, to make any change in the provisions of the Indenture relating to subordination that would limit or terminate the benefits available to any Holder of Senior Indebtedness under such provisions (but only if such Holder of Senior Indebtedness consents to such change);

(h) To add additional Guarantees with respect to the Debt Securities or to secure the Debt Securities;

(i) To make any change that does not adversely affect the rights of any Holder;

(j) To add to, change, or eliminate any of the provisions of the Indenture with respect to one or more series of Debt Securities, so long as any such addition, change, or elimination not otherwise permitted under the Indenture shall (1) neither apply to any Debt Securities of any series created prior to the execution of such supplemental Indenture and entitled

to the benefit of such provision nor modify the rights of the Holders of any such Debt Security with respect to such provision or (2) become effective only when there is no such Debt Security outstanding;

(k) To evidence and provide for the acceptance of appointment by a successor or separate Trustee with respect to the Debt Securities of one or more series and add to or change any of the provisions of the Indenture as shall be necessary to provide for or facilitate the administration of the Indenture by more than one Trustee; and

(l) To establish the form or terms of Debt Securities of any series, as described under 'Description of Debt Securities--General' above.

With the consent of the Holders of a majority in aggregate principal amount of the outstanding Debt Securities of each series affected thereby, the Company,

the Guarantor and the Trustee may from time to time and at any time enter into a supplemental Indenture for the purpose of adding any provisions to, changing in any manner, or eliminating any of the provisions of the Indenture or of any supplemental Indenture or modifying in any manner the rights of the Holder of the Debt Securities of such series; provided, however, that without the consent of the Holders of each Debt Security so affected, no such supplemental Indenture shall (a) reduce the percentage in principal amount of Debt Securities of any series whose Holders must consent to an amendment, (b) reduce the rate of or extend the time for payment of interest on any Debt Security, (c) reduce the principal of or extend the stated maturity of any Debt Security, (d) reduce the premium payable upon the redemption of any Debt Security or change the time at which any Debt Security may or shall be redeemed, (e) make any Debt Security payable in a currency other than that stated in the Debt Security, (f) in the case of any Subordinated Debt Security, make any change in the provisions of the Indenture relating to subordination that adversely affects the rights of any Holder under such provisions, (g) release any security that may have been granted with

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respect to the Debt Securities, or (h) make any change in the provisions of the Indenture relating to waivers of defaults or amendments that require unanimous consent.

#### CERTAIN COVENANTS

**Limitation on Liens.** The Guarantor may not, and may not permit any of its Subsidiaries to, directly or indirectly, create or permit to exist any Lien on any Principal Property, whether owned on the date of issuance of the Debt Securities or thereafter acquired, securing any obligation unless the Guarantor contemporaneously secures the Debt Securities equally and ratably with (or prior to) such obligation. The preceding sentence will not require the Guarantor to secure the Debt Securities if the Lien consists of the following: (i) Permitted Liens; or (ii) Liens securing Indebtedness if, after giving pro forma effect to the Incurrence of such Indebtedness (and the receipt and application of the proceeds thereof) or the securing of outstanding Indebtedness, all Indebtedness of the Guarantor and its Subsidiaries secured by Liens on Principal Property (other than Permitted Liens), at the time of determination does not exceed 10% of the total consolidated stockholders' equity of the Guarantor as shown on the audited consolidated balance sheet contained in the latest annual report to stockholders of the Guarantor.

**Ownership of the Company.** The Indenture contains a covenant that, so long as any of the Debt Securities are outstanding and subject to certain rights described below under 'Consolidation or Merger,' the Guarantor will continue to own, directly or indirectly, all of the outstanding voting shares of the Company.

**Certain Definitions.** The following definitions, among others, are used in the Indenture. Many of the definitions of terms used in the Indenture have been negotiated specifically for the purposes of inclusion in the Indenture and may not be consistent with the manner in which such terms are defined in other

contexts. Prospective purchasers of Debt Securities are encouraged to read each of the following definitions carefully and to consider such definitions in the context in which they are used in the Indenture. Capitalized terms used herein but not defined have the meanings assigned thereto in the Indenture.

'Capitalized Lease Obligation' means an obligation that is required to be classified and accounted for as a capitalized lease for financial reporting purposes in accordance with GAAP; and the amount of Indebtedness represented by such obligation shall be the capitalized amount of such obligation determined in accordance with GAAP; and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty.

'Currency Exchange Protection Agreement' means, in respect of any Person, any foreign exchange contract, currency swap agreement, currency option or other similar agreement or arrangement designed to protect such Person against fluctuations in currency exchange rates.

'Disqualified Stock' of a Person means Redeemable Stock of such Person as to which the maturity, mandatory redemption, conversion or exchange or redemption at the option of the holder thereof occurs, or may occur, on or prior to the first anniversary of the Stated Maturity of the Debt Securities.

'GAAP' means generally accepted accounting principles in the United States as in effect as of the date on which the Debt Securities of the applicable series are issued, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession. All ratios and computations based on GAAP contained in this Indenture shall be computed in conformity with GAAP consistently applied.

'Government Contract Lien' means any Lien required by any contract, statute, regulation or order in order to permit the Company or any of its Subsidiaries to perform any contract or subcontract made

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by it with or at the request of the United States or any State thereof or any department, agency or instrumentality of either or to secure partial, progress, advance or other payments by the Company or any of its Subsidiaries to the United States or any State thereof or any department agency or instrumentality of either pursuant to the provisions of any contract, statute, regulation or order.

'Hedging Obligations' of any Person means the obligations of such Person pursuant to any Interest Rate Protection Agreement, Currency Exchange Protection Agreement or Commodity Price Protection Agreement or other similar agreement.

'Indebtedness' means, with respect to any Person on any date of determination (without duplication),

(i) the principal of Indebtedness of such Person for borrowed money;

(ii) the principal of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;

(iii) all Capitalized Lease Obligations of such Person;

(iv) all obligations of such Person to pay the deferred and unpaid purchase price of property or services (except Trade Payables);

(v) all obligations of such Person in respect of letters of credit, banker's acceptances or other similar instruments or credit transactions (including reimbursement obligations with respect thereto), other than obligations with respect to letters of credit securing obligations (other than obligations described in (i) through (iv) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the third business day following receipt by such Person of a demand for reimbursement following payment on the letter of credit;

(vi) the amount of all obligations of such Person with respect to the

redemption, repayment or other repurchase of any Disqualified Stock (but excluding, in each case, any accrued dividends);

(vii) all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; provided, however, that the amount of such Indebtedness shall be the lesser of (A) the fair market value of such asset at such date of determination and (B) the amount of such Indebtedness of such other Persons; and

(viii) all Indebtedness of other Persons to the extent Guaranteed by such Person.

For purposes of this definition, the maximum fixed redemption, repayment or repurchase price of any Disqualified Stock or Preferred Stock that does not have a fixed redemption, repayment or repurchase price shall be calculated in accordance with the terms of such Stock as if such Stock were redeemed, repaid or repurchased on any date on which Indebtedness shall be required to be determined pursuant to this Indenture; provided, however, that if such Stock is not then permitted to be redeemed, repaid or repurchased, the redemption, repayment or repurchase price shall be the book value of such Stock as reflected in the most recent financial statements of such Person. The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligation, of any contingent obligations at such date.

'Interest Rate Protection Agreement' means, in respect of any Person, any interest rate swap agreement, interest rate option agreement, interest rate cap agreement, interest rate collar agreement, interest rate floor agreement or other similar agreement or arrangement designed to protect such Person against fluctuations in interest rates.

'Lien' means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

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'Net Amount of Rent' as to any lease for any period means the aggregate amount of rent payable by the lessee with respect to such period after excluding amounts required to be paid on account of maintenance and repairs, insurance, taxes, assessments, water rates and similar charges. In the case of any lease that is terminable by the lessee upon the payment of a penalty, such net amount shall also include the amount of such penalty, but no rent shall be considered as payable under such lease subsequent to the first date upon which it may be so terminated.

'Permitted Liens' means, with respect to any Person, (a) pledges or deposits by such Person under worker's compensation laws, unemployment insurance laws, social security laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or bonds to secure performance, surety or appeal bonds to which such Person is a party or which are otherwise required of such Person, or deposits as security for contested taxes or import duties or for the payment of rent or other obligations of like nature, in each case incurred in the ordinary course of business; (b) Liens imposed by law, such as carriers', warehousemen's, laborers', materialmen's, landlords', vendors', workmen's, operators', factors and mechanics liens, in each case for sums not yet due or being contested in good faith by appropriate proceedings; (c) Liens for taxes, assessments and other governmental charges or levies not yet delinquent or which are being contested in good faith by appropriate proceedings; (d) survey exceptions, encumbrances, easements or reservations of or with respect to, or rights of others for or with respect to, licenses, rights-of-way, sewers, electric and other utility lines and usages, telegraph and telephone lines, pipelines, surface use, operation of equipment, permits, servitudes and other similar matters, or zoning or other restrictions as to the use of real property or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Indebtedness and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person; (e) Liens existing on

or provided for under the terms of agreements existing on the Issue Date (including, without limitation, under the Credit Agreement); (f) Liens on property at the time the Company or any of its Subsidiaries acquired the property or the entity owning such property, including any acquisition by means of a merger or consolidation with or into the Guarantor; provided, however, that any such Lien may not extend to any other property owned by the Guarantor or any of its Subsidiaries; (g) Liens on any Principal Property, or any shares of stock or Indebtedness of any Subsidiary, acquired (including by way of merger or consolidation) after the date of the Indenture by the Company or any Subsidiary which are created contemporaneously with such acquisition, or within 24 months

thereafter, to secure or provide for the payment or financing of any part of the purchase price thereof; (h) Liens on any property of CompuServe Corporation or any of its Subsidiaries, including any shares of stock or Indebtedness of any such Subsidiaries; (i) Liens arising in connection with the securitization of any mortgage loans owned by the Company or any of its Subsidiaries; (j) Liens arising in connection with the sale of any credit card receivables owned by the Company or any of its Subsidiaries; (k) Liens securing a Hedging Obligation so long as such Hedging Obligation is of the type customarily entered into for the purpose of limiting risk; (l) Purchase Money Liens; (m) Liens securing only Indebtedness of a Subsidiary of the Guarantor to the Guarantor or one or more wholly owned Subsidiaries of the Guarantor; (n) Liens on any property to secure Indebtedness Incurred in connection with the construction, installation or financing of pollution control or abatement facilities or other forms of industrial revenue bond financing or Indebtedness issued or Guaranteed by the United States, any state or any department, agency or instrumentality thereof; (o) Government Contract Liens; (p) Liens securing Indebtedness of joint ventures in which the Guarantor or a Subsidiary has an interest to the extent such Liens are on property or assets of, such joint ventures; (q) Liens resulting from the deposit of funds or evidences of Indebtedness in trust for the purpose of defeasing Indebtedness of the Guarantor or any of its Subsidiaries; (r) legal or equitable encumbrances deemed to exist by reason of negative pledges or the existence of any litigation or other legal proceeding and any related lis pendens filing (excluding any attachment prior to judgment lien or attachment lien in aid of execution on a judgment); (s) any

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attachment Lien being contested in good faith and by proceedings promptly initiated and diligently conducted, unless the attachment giving rise thereto will not, within 60 days after the entry thereof, have been discharged or fully bonded or will not have been discharged within 60 days after the termination of any such bond; (t) any judgment Lien, unless the judgment it secures will not, within 60 days after the entry thereof, have been discharged or execution thereof stayed pending appeal, or will not have been discharged within 60 days after the expiration of any such stay; (u) Liens to banks arising from the issuance of letters of credit issued by such banks ('issuing banks') on the following: (i) any and all shipping documents, warehouse receipts, policies or certificates of insurance and other document accompanying or relative to drafts drawn under any credit, and any draft drawn thereunder (whether or not such documents, goods or other property be released to or upon the order of the Guarantor or any Subsidiary under a security agreement or trust or bailee receipt or otherwise), and the proceeds of each and all of the foregoing; (ii) the balance of every deposit account, now or at the time hereafter existing, of the Guarantor or any Subsidiary with the issuing banks, and any other claims of the Guarantor or any Subsidiary against the issuing banks; and all property claims and demands and all rights and interests therein of the Guarantor or any Subsidiary and all evidences thereof and all proceeds thereof which have been or at any time will be delivered to or otherwise come into any issuing bank's possession, custody or control, or into the possession, custody or control of any bailee for the issuing bank or of any of its agents or correspondents for the account of the issuing bank, for any purpose, whether or not the express purpose of being used by the issuing bank as collateral security or for the

safekeeping or for any other of different purpose, the issuing bank being deemed to have possession or control of all of such property actually in transit to or from or set apart for the issuing bank, any bailee for the issuing bank or any of its correspondents acting in its behalf, it being understood that the receipt at any time by the issuing bank, or any of its bailees, agents or correspondents, of other security, of whatever nature, including cash, will not be deemed a waiver of any of the issuing bank's rights or power hereunder; (iii) all property shipped under or pursuant to or in connection with any credit or drafts drawn thereunder or in any way related thereto, and all proceeds thereof;

(iv) all additions to and substitutions for any of the property enumerated above in this subsection; (v) rights of a common owner of any interest in property held by such Person; (w) any defects, irregularities or deficiencies in title to easements, rights-of-way or other properties which do not in the aggregate materially adversely affect the value of such properties or materially impair their use in the operation of the business of such Person; and (x) Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancings, refundings, extensions, renewals or replacements), as a whole, or in part, of any Indebtedness secured by any Lien referred to in the foregoing clauses (e) through (p); provided, however, that (i) such new Lien shall be limited to all or part of the same property that secured the original Lien (plus improvements on such property) and (ii) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (A) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clauses (e) through (l) at the time the original Lien became a Permitted Lien under this Indenture and (B) an amount necessary to pay any fees and expenses, including premiums, related to such refinancing, refunding, extension, renewal or replacement.

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

'Principal Property' means, as of any date of determination, any property or assets owned by the Company or any Subsidiary other than any property which, in the good faith opinion of the Board of Directors of the Company, is not of material importance to the business conducted by the Company and its Subsidiaries taken as a whole.

'Purchase Money Lien' means a Lien on property securing Indebtedness Incurred by the Guarantor or any of its Subsidiaries to provide funds for all or any portion of the cost of acquiring, constructing, altering, expanding, improving or repairing such property or assets used in connection with such property.

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'Redeemable Stock' means, with respect to any Person, any Capital Stock which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event (i) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise,

(ii) is convertible or exchangeable for Indebtedness (other than Preferred Stock) or Disqualified Stock or (iii) is redeemable at the option of the holder thereof, in whole or in part.

'Subsidiary' of any Person means any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person, (ii) such Person and one or more Subsidiaries of such Person or (iii) one or more Subsidiaries of such Person.

#### CONSOLIDATION, MERGER, AND SALE OF ASSETS

Neither the Guarantor nor the Company may consolidate with or merge with or into any person, or convey, transfer, or lease all or substantially all of its assets, unless the following conditions have been satisfied:

(a) Either (1) the Guarantor shall be the continuing person in the case of a merger or (2) the resulting, surviving, or transferee person, if other than the Guarantor (the 'Successor Company'), shall be a corporation organized and existing under the laws of the United States, any State, or the District of Columbia and shall expressly assume all of the obligations of the Company and the Guarantor under the Debt Securities and the Indenture;

(b) Immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Company or any subsidiary of the Guarantor as a result of such transaction as having been

incurred by the Successor Company or such subsidiary at the time of such transaction), no Default or Event of Default would occur or be continuing; and

(c) The Guarantor shall have delivered to the Trustee an officers' certificate and an opinion of counsel, each stating that such consolidation, merger, or transfer complies with the Indenture.

A disposition by the Guarantor of its ownership interest in CompuServe Corporation shall not be deemed a transfer or conveyance of substantially all of the Company's assets.

#### SATISFACTION AND DISCHARGE OF THE INDENTURE; DEFEASANCE

The Indenture shall generally cease to be of any further effect with respect to a series of Debt Securities if (a) the Company has delivered to the Trustee for cancellation all Debt Securities of such series (with certain limited exceptions) or (b) all Debt Securities of such series not theretofore delivered to the Trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption within one year, and the Company shall have deposited with the Trustee as trust funds the entire amount in the currency in which the Debt Securities are denominated sufficient to pay at maturity or upon redemption all such Debt Securities (and if, in either case, the Company shall also pay or cause to be paid all other sums payable under the Indenture by the Company).

In addition, the Company shall have a 'legal defeasance option' (pursuant to which it may terminate, with respect to the Debt Securities of the particular series, all of its obligations under such Debt Securities and the Indenture with respect to such Debt Securities) and 'covenant defeasance option' (pursuant to which it may terminate, with respect to the Debt Securities of a particular series, its obligations with respect to such Debt Securities under certain specified covenants contained in the Indenture). If the Company exercises its legal defeasance option with respect to a series of Debt Securities, payment of such Debt Securities may not be accelerated because of an Event of Default. If the Company exercises its covenant defeasance option with respect to a series of Debt Securities,

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payment of such Debt Securities may not be accelerated because of an Event of Default related to the specified covenants.

The Company may exercise its legal defeasance option or its covenant defeasance option with respect to the Debt Securities of a series only if (a) the Company irrevocably deposits in trust with the Trustee cash or U.S. Government Obligations (as defined in the Indenture) for the payment of principal, premium, and interest with respect to such Debt Securities to maturity or redemption, as the case may be, (b) the Company delivers to the Trustee a certificate from a nationally recognized firm of independent accountants expressing their opinion that the payment of principal and interest when due and without reinvestment on the deposited U.S. Government Obligations plus any deposited money without investment will provide cash at such times and in such amounts as will be sufficient to pay the principal, premium, and interest when due with respect to all the Debt Securities of such series to maturity or redemption, as the case may be, (c) 91 days after the deposit is made and during the 91-day period no default described in clause (g) or (h) under 'Description of Debt Securities Events of Default and Remedies' above with respect to the Company or the Guarantor occurs that is continuing at the end of such period, (d) no Default has occurred and is continuing on the date of such deposit and after giving effect thereto, (e) the deposit does not constitute a default under any other agreement binding on the Company or the Guarantor, and, in the case of Subordinated Debt Securities, is not prohibited by the provisions of the Indenture relating to subordination, (f) the Company delivers to the Trustee an opinion of counsel to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the Investment Company Act of 1940, (g) the Company shall have delivered to the Trustee an opinion of counsel addressing certain federal income tax matters relating to the defeasance, and (h) the Company delivers to the Trustee an officer's certificate and an opinion of counsel, each stating that all conditions precedent to the defeasance and discharge of the Debt Securities of such series as contemplated by the Indenture have been complied with.

The Trustee shall hold in trust cash or U.S. Government Obligations deposited with it as described above and shall apply the deposited cash and the proceeds from deposited U.S. Government Obligations to the payment of principal, premium, and interest with respect to the Debt Securities of the defeased series. In the case of Subordinated Debt Securities, the money and U.S.

Government Obligations so held in trust will not be subject to the subordination provisions of the Indenture.

THE TRUSTEE

The Company may maintain banking and other commercial relationships with the Trustee and its affiliates in the ordinary course of business and the Trustee may own Debt Securities.

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#### PLAN OF DISTRIBUTION

The Company may sell the Debt Securities in or outside the United States through underwriters, through or to dealers, directly to one or more purchasers, or through agents. Each Prospectus Supplement with respect to the Debt Securities offered hereby will set forth the terms of the offering of applicable Debt Securities, including the name or names of any underwriters, dealers or agents, the purchase price of the Debt Securities and the proceeds to the Company from such sale, any delayed delivery arrangements, any underwriting discounts and other items constituting underwriters' compensation, the initial public offering price, any discounts or concessions allowed or re-allowed or paid to dealers and any securities exchanges on which the Debt Securities may be listed.

If underwriters are used in the sale, the Debt Securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The Debt Securities may be offered to the public either through underwriting syndicates represented by one or more managing underwriters or directly by one or more firms acting as underwriters. The underwriter or underwriters with respect to a particular underwritten offering of Debt Securities will be named in the Prospectus Supplement relating to such offering, and if an underwriting syndicate is used, the managing underwriter or underwriters will be set forth on the cover of such Prospectus Supplement. Unless otherwise set forth in the Prospectus Supplement relating thereto, the obligations of the underwriters or agents to purchase the Debt Securities will be subject to conditions precedent and the underwriters will be obligated to purchase all the Debt Securities if any are purchased. The initial public offering price and any discounts or concessions allowed or re-allowed or paid to dealers may be changed from time to time.

If dealers are used in the sale of Debt Securities with respect to which this Prospectus is delivered, the Company will sell such Debt Securities to the dealers as principals. The dealers may then resell such Debt Securities to the public at varying prices to be determined by such dealers at the time of resale. The names of the dealers and the terms of the transaction will be set forth in the Prospectus Supplement relating thereto.

Debt Securities may be sold directly by the Company or through agents designated by the Company from time to time at fixed prices, which may be

changed, or at varying prices determined at the time of sale. Any agent involved in the offer or sale of the Debt Securities with respect to which this Prospectus is delivered will be named, and any commissions payable by the Company to such agent will be set forth in the Prospectus Supplement relating thereto. Unless otherwise indicated in the Prospectus Supplement, any such agent will be acting on a best efforts basis for the period of its appointment.

In connection with the sale of the Debt Securities, underwriters or agents may receive compensation from the Company or from purchasers of Debt Securities for whom they may act as agents in the form of discounts, concessions, or commissions. Underwriters, agents and dealers participating in the distribution of the Debt Securities may be deemed to be underwriters, and any discounts or commissions received by them from the Company and any profit on the resale of



the Debt Securities by them may be deemed to be underwriting discounts or commissions under the Securities Act.

If so indicated in the Prospectus Supplement, the Company will authorize agents, underwriters, or dealers to solicit offers from certain types of institutions to purchase Debt Securities from the Company at the public offering price set forth in such Prospectus Supplement pursuant to delayed delivery contracts providing for payment and delivery on a specified date in the future. Such contracts will be subject only to those conditions set forth in such Prospectus Supplement, and the Prospectus Supplement will set forth the commission payable for solicitation of such contracts.

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Agents, dealers, and underwriters may be entitled under agreements entered into with the Company and Block to indemnification by the Company and Block against certain civil liabilities, including liabilities under the Securities Act, or to contribution with respect to payments that such agents, dealers, or underwriters may be required to make with respect thereto. Agents, dealers, and underwriters may be customers of, engage in transactions with, or perform services for the Company and Block in the ordinary course of business.

The Debt Securities may or may not be listed on a national securities exchange. No assurances can be given that there will be a market for the Debt Securities.

#### GLOBAL CLEARANCE, SETTLEMENT AND TAX DOCUMENTATION PROCEDURE

When so provided in the Prospectus Supplement, investors in the Global Securities representing any of the Securities issued hereunder may hold a beneficial interest in such Global Securities through DTC, CEDEL or Euroclear (as defined below) or through participants. The Global Securities may be traded as home market instruments in both the European and U.S. domestic markets. Initial settlement and all secondary trades will settle as set forth in the applicable Prospectus Supplement.

Cedel S.A. ('CEDEL') is incorporated under the laws of Luxembourg as a professional depository. CEDEL holds securities for its participating

organizations and facilitates the clearance and settlement of securities transactions between CEDEL participants through electronic book-entry changes in accounts of CEDEL participants, thereby eliminating the need for physical movement of certificates. Transactions may be settled in CEDEL in any of 28 currencies, including United States dollars. CEDEL provides to its participants, among other things, services for safekeeping, administration, clearance and settlement of internationally traded securities and securities lending and borrowing. CEDEL interfaces with domestic markets in several countries. As a professional depository, CEDEL is subject to regulation by the Luxembourg Monetary Institute. CEDEL participants are recognized financial institutions around the world, including underwriters, securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations and may include the underwriters. Indirect access to CEDEL is also available to others, such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a CEDEL participant, either directly or indirectly.

The Euroclear System was created in 1968 to hold securities for participants of the Euroclear System and to clear and settle transactions between Euroclear participants through simultaneous electronic book-entry delivery against payment, thereby eliminating the need for physical movement of certificates and any risk from lack of simultaneous transfers of securities and cash. Transactions may now be settled in any of 32 currencies, including United States dollars. The Euroclear System includes various other services, including securities lending and borrowing, and interfaces with domestic markets in several countries generally similar to the arrangements for cross-market transfers with DTC. The Euroclear System is operated by Morgan Guaranty Trust Company of New York, Brussels, Belgium office (the 'Euroclear Operator' or 'Euroclear'), under contract with Euroclear Clearance System S.C., a Belgian cooperative corporation (the 'Cooperative'). All operations are conducted by the Euroclear Operator, and all Euroclear securities clearance accounts and Euroclear cash accounts are accounts with the Euroclear Operator, not the Cooperative. The Cooperative establishes policy for the Euroclear System on

behalf of Euroclear participants. Euroclear participants include banks (including central banks), securities brokers and dealers and other professional financial intermediaries and may include the underwriters. Indirect access to the Euroclear System is also available to other firms that clear through or maintain a custodial relationship with a Euroclear participant, either directly or indirectly.

The Euroclear Operator is the Belgian branch of Morgan Guaranty Trust Company of New York ('Morgan') which is a member bank of the Federal Reserve System. As such, it is regulated and examined by the Federal Reserve Board and the New York State Banking Department, as well as the Belgian Banking Commission.

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Securities clearance accounts and cash accounts with the Euroclear Operator are governed by the Terms and Conditions Governing Use of Euroclear and the related Operating Procedures of the Euroclear System, and applicable Belgian law (collectively, the 'Terms and Conditions'). The Terms and Conditions govern

transfers of securities and cash within the Euroclear System, withdrawals of securities and cash from the Euroclear System, and receipts of payments with respect to securities in the Euroclear System. All securities in the Euroclear System are held on a fungible basis without attribution of specific certificates to specific securities clearance accounts. The Euroclear Operator acts under the Terms and Conditions only on behalf of Euroclear participants, and has no record of or relationship with persons holding through Euroclear participants.

Principal, premium, if any, and interest payments with respect to Securities held through CEDEL or Euroclear will be credited to the cash accounts of CEDEL participants or Euroclear participants in accordance with the relevant system's rules and procedures, to the extent received by its depository. Such distributions will be subject to tax reporting in accordance with relevant United States tax laws and regulations as described below. The CEDEL or the Euroclear Operator, as the case may be, will take any other action permitted to be taken by a holder under the relevant Indenture on behalf of a CEDEL participant or Euroclear participant only in accordance with its relevant rules and procedures and subject to its depository's ability to effect such actions on its behalf through the depository.

#### INITIAL SETTLEMENT

All Global Securities will be registered in the name of Cede & Co. as nominee of DTC. Investors' interests in the Global Securities will be represented through financial institutions acting on their behalf as direct and indirect participants in the depository. As a result, CEDEL and Euroclear will hold positions on behalf of their participants through their respective depositories, Citibank and Morgan, which in turn will hold such positions in accounts as participants of DTC.

Global Securities held through DTC will follow the settlement practices described above. Investor securities custody accounts will be credited with their holdings against payment on the settlement date. Global Securities held through CEDEL or Euroclear accounts will follow the settlement procedures applicable to conventional eurobonds, except that there will be no temporary global security and no 'lock-up' or restricted period. Global Securities will be credited to the securities custody accounts on the settlement date against payment.

#### SECONDARY MARKET TRADING

Since the purchaser determines the place of delivery, it is important to establish at the time of the trade where both the purchaser's and seller's accounts are located to ensure that settlement can be made on the desired value date.

Trading between DTC Participants. Secondary market trading between DTC participants will be settled using the procedures described above. See 'Description of Debt Securities--Book-Entry Debt Securities.'

Trading between CEDEL and/or Euroclear Participants. Secondary market trading between CEDEL participants and/or Euroclear participants will be settled using the procedures applicable to conventional eurobonds.

Trading between DTC Seller and CEDEL or Euroclear Purchaser. When beneficial interests in the Global Securities are to be transferred from the account of a DTC participant to the account of a CEDEL participant or a Euroclear participant, the purchaser will send instructions to CEDEL or Euroclear through a participant at least one business day prior to settlement. CEDEL or Euroclear will instruct Citibank or Morgan, respectively, as the case may be, to receive a beneficial interest in the Global Securities against payment. Unless otherwise set forth in the Prospectus Supplement, payment will include interest accrued on the beneficial interest in the Global Securities so transferred from and

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including the last coupon payment date to and excluding the settlement date, on the basis on which interest is calculated on the Debt Securities. For transactions settling on the 31st of the month, payment will include interest accrued to and excluding the first day of the following month. Payment will then be made by Citibank or Morgan to the DTC participant's account against delivery of the beneficial interest in the Global Securities. After settlement has been completed, the beneficial interest in the Global Securities will be credited to the respective clearing system and by the clearing system, in accordance with its usual procedures, to the CEDEL or Euroclear participant's account. The securities credit will appear the next day (European time) and the cash debit will be back-valued to, and the interest on the beneficial interest in Global Securities will accrue from, the value date (which would be the preceding day when settlement occurred in New York). If settlement is not completed on the intended value date (that is, the trade fails), the CEDEL or Euroclear cash debit will be valued instead as of the actual settlement date.

CEDEL participants and Euroclear participants will need to make available to the respective clearing systems the funds necessary to process same-day funds settlement. The most direct means of doing so is to preposition funds for settlement, either from cash on hand or existing lines of credit, as they would for any settlement occurring within CEDEL or Euroclear. Under this approach, they may take on credit exposure to CEDEL, or Euroclear until the Global Securities are credited to their accounts one day later.

As an alternative, if CEDEL or Euroclear has extended a line of credit to them, participants can elect not to preposition funds and allow that credit line to be drawn upon to finance settlement. Under this procedure, CEDEL participants or Euroclear participants purchasing beneficial interest in Global Securities would incur overdraft charges for one day, assuming they cleared the overdraft when the beneficial interests in the Global Securities were credited to their accounts. However, interest on the beneficial interests in the Global Securities would accrue from the value date. Therefore, in many cases the investment income on the Global Securities earned during that one-day period may substantially reduce or offset the amount of such overdraft charges, although this result will depend on each participant's particular cost of funds.

Since the settlement is taking place during New York business hours, DTC participants can employ their usual procedures for sending a beneficial interest in Global Securities to Citibank or Morgan for the benefit of CEDEL participants or Euroclear participants. The sale proceeds will be available to the DTC seller on the settlement date. Thus, to the DTC participant a cross-market transaction will settle no differently than a trade between two DTC participants.

Trading between CEDEL or Euroclear Seller and DTC Purchaser. Due to time zone differences in their favor, CEDEL and Euroclear participants may employ their customary procedures to transactions in which the beneficial interest in the Global Securities is to be transferred by the respective clearing system, through Citibank or Morgan, to a DTC participant. The seller will send instructions to CEDEL or Euroclear through a participant at least one business day prior to settlement. In these cases, CEDEL or Euroclear will instruct Citibank or Morgan, as appropriate, to deliver the beneficial interest in the Global Securities to the DTC participant's account against payment. Payment will include interest accrued on the beneficial interests in the Global Securities from and including the last coupon payment date to and excluding the settlement date on the basis on which interest is calculated on the Global Securities. For transactions settling on the 31st of the month, payment will include interest accrued to and excluding the first day of the following month. The payment will

then be reflected in the account of the CEDEL or Euroclear participant the following day, and receipt of the cash proceeds in the CEDEL or Euroclear participant's account would be back-valued to the value date (which would be the preceding day, when settlement occurred in New York). Should the CEDEL or Euroclear participant have a line of credit with its respective clearing system and elect to be in debit in anticipation of receipt of the sale proceeds in its account, the back-valuation will extinguish any overdraft charges incurred over that one-day period. If settlement is not completed on the intended value date (that is, the trade fails), receipt of the cash

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proceeds in the CEDEL or Euroclear participant's account would instead be valued as of the actual settlement date.

Finally, day traders that use CEDEL or Euroclear and that purchase beneficial interests in Global Securities from DTC participants for credit to CEDEL participants or Euroclear participants should note that these trades would automatically fail on the sale side unless affirmative action were taken. At least three techniques should be readily available to eliminate this potential problem:

(1) borrowing through CEDEL or Euroclear for one day (until the purchase side of the day trade is reflected in their CEDEL or Euroclear accounts) in accordance with the clearing system's customary procedures;

(2) borrowing beneficial interests in the Global Securities in the U.S. from a DTC participant no later than one day prior to settlement, which would give beneficial interests in the Global Securities sufficient time to be reflected in the appropriate CEDEL or Euroclear account in order to settle the sale side of the trade; or

(3) staggering the value dates for the buy and sell sides of the trade so that the value date for the purchase from the DTC participant is at

least one day prior to the value date for the sale to the CEDEL participant or Euroclear participant.

Although the DTC, CEDEL and Euroclear have agreed to the foregoing procedures in order to facilitate transfers of beneficial interests in Global Securities among participants of the DTC, CEDEL and Euroclear, they are under no obligation to perform or continue to perform such procedures and such procedures may be discontinued at any time.

#### CERTAIN U.S. FEDERAL INCOME TAX DOCUMENTATION REQUIREMENTS

A beneficial owner of Global Securities holding securities, directly or indirectly, through CEDEL or Euroclear (or through DTC if the holder has an address outside the U.S.) will be subject to the 30% U.S. withholding tax that generally applies to payments of interest (including original issue discount) on registered debt issued by U.S. persons, unless (i) each clearing system, bank or other financial institution that holds customers' securities in the ordinary course of its trade or business in the chain of intermediaries between such beneficial owner and the U.S. entity required to withhold tax complies with applicable certification requirements, and (ii) such beneficial owner takes one of the following steps to obtain an exemption or reduced tax rate:

Exemption for non-U.S. persons (Form W-8). Non-U.S. persons that are beneficial owners (other than a beneficial owner that owns actually or constructively 10% or more of the total combined voting power of all classes of stock of the Company entitled to vote or a controlled foreign corporation that is related to the Company through stock ownership) can obtain a complete exemption from the withholding tax by filing a properly completed Form W-8 (Certificate of Foreign Status).

Exemption for non-U.S. persons with effectively connected income (Form 4224). A non-U.S. person, including a non-U.S. corporation or bank with a U.S. branch, that is a beneficial owner and for which the interest income is effectively connected with its conduct of a trade or business in the United States, can obtain an exemption from the withholding tax by filing a properly completed Form 4224 (Exemption from Withholding of Tax on Income Effectively Connected with the Conduct of a Trade or Business in the United States).

Exemption or reduced rate for non-U.S. persons resident in treaty countries (Form 1001). Non-U.S. persons that are beneficial owners that are entitled to the benefits of an income tax treaty with the United States can obtain an exemption or reduced tax rate (depending on the treaty terms) by filing a properly completed Form 1001 (Ownership, Exemption or Reduced Rate Certificate). If the treaty provides only for a reduced rate, withholding tax will be imposed at that rate unless the filer alternatively files Form W-8. Form 1001 may be filed by the beneficial owner or the beneficial owner's agent.

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Exemption for U.S. Persons (Form W-9). U.S. persons can obtain a complete exemption from the withholding tax by filing a properly completed Form W-9 (Request for Taxpayer Identification Number and Certification).

#### U.S. FEDERAL INCOME TAX REPORTING, PROCEDURE

The beneficial owner of the Global Security or, in the case of a Form 1001 or a Form 4224 filer, his agent, files by submitting the appropriate form to the entity through whom it directly holds the Global Security. For example, if the beneficial owner is listed directly on the books of Euroclear or CEDEL as the holder of the Debt Security, the IRS Form must be provided to Euroclear or CEDEL, as the case may be. Each person through which a Debt Security is held must submit, on behalf of the beneficial owner, the IRS Form (or in certain cases a copy thereof) under applicable procedures to the person through which it holds the Debt Security, until the IRS Form is received by the U.S. person who would otherwise be required to withhold U.S. federal income tax from interest on the Debt Security. For example, in the case of Debt Securities held through Euroclear or CEDEL, the IRS Form (or a copy thereof) must be received by the U.S. depository of such clearing agency. Applicable procedures include, if a beneficial owner of the Debt Security provides an IRS Form W-8 to a securities clearing organization, bank or other financial institution (a 'financial institution') that holds the Debt Security in the ordinary course of its trade or business on the owner's behalf, that such financial institution certify to the person otherwise required to withhold U.S. federal income tax from such interest, under penalties of perjury, that such statement has been received from the beneficial owner by it or by a financial institution between it and the beneficial owner and that it furnish the payor with a copy thereof.

As used in this section on tax documentation requirements, the term 'U.S. person' means (i) a citizen or resident of the United States, (ii) a corporation or partnership organized in or under the laws of the United States or any State thereof or (iii) an estate or trust the income of which is includable in gross income for U.S. tax purposes, regardless of its source.

This summary does not deal with all aspects of U.S. income tax and withholding that may be relevant to foreign beneficial owners of the Global Securities, including special categories of foreign investors who may not be eligible for exemptions from U.S. withholding tax. Investors are advised to consult their own tax advisors for specific tax advice concerning their holding and disposing of beneficial interests in the Global Securities. Any additional requirements, if applicable, will be set forth in the Prospectus Supplement.

#### LEGAL MATTERS

Certain legal matters in connection with the Debt Securities and the Guarantee will be passed upon for the Company and for the Guarantor by Bryan Cave LLP, Kansas City, Missouri. Certain matters will be passed upon for any underwriters or agents by a firm named in the Prospectus Supplement relating to a particular issue of Debt Securities.

#### EXPERTS

The consolidated financial statements and financial statement schedule incorporated in this Prospectus by reference from the Guarantor's Annual Report on Form 10-K/A for the year ended April 30, 1997, have been audited by Deloitte

& Touche LLP, independent auditors, as stated in their reports, which are incorporated by reference, and have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in accounting and

auditing.

The financial statements of Option One Mortgage Corporation as of December 31, 1996 and 1995 and for the year ended December 31, 1996 and for the period March 3, 1995 to December 31, 1995 (Successor period) and from January 1, 1995 to March 2, 1995 (Predecessor period) have been incorporated by reference herein from the Guarantor's Current Report on Form 8-K/A dated July 2, 1997 (filed on August 14, 1997) in reliance upon the report of KPMG Peat Marwick LLP, independent certified

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public accountants, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

The report of KPMG Peat Marwick LLP covering the financial statements of Option One Mortgage Corporation as of December 31, 1996 and 1995 and for the year ended December 31, 1996 and for the period March 3, 1995 to December 31, 1995 (Successor period) and from January 1, 1995 to March 2, 1995 (Predecessor period) contains an explanatory paragraph that states that effective March 3, 1995, Fleet National Bank, Rhode Island acquired all of the outstanding stock of Option One Mortgage Corporation in a business combination accounted for as a purchase. As a result of the acquisition, the financial information for the periods after the acquisition is presented on a different cost basis than that for the periods before the acquisition and, therefore, is not comparable. Effective September 27, 1995, Fleet National Bank, Rhode Island transferred its investment in the Company to one of its wholly owned subsidiaries, Fleet Holding Corporation.

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## PART II

### INFORMATION NOT REQUIRED IN PROSPECTUS

#### ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION

The following table sets forth the estimated expenses to be incurred by the Company in connection with the issuance and distribution of the Debt Securities.

|  |           |
|--|-----------|
| SEC Filing Fee for Registration Statement..... | \$303,030 |
| Accounting Fees and Expenses.....              | 25,000    |
| Legal Fees and Expenses.....                   | 100,000   |
| Printing and Engraving Expenses.....           | 20,000    |
| Blue Sky Fees and Expenses.....                | 10,000    |
| Rating Agency Fees.....                        | 150,000   |
| Trustee and Registrar Fees and Expenses.....   | 10,000    |
| Miscellaneous.....                             | 5,000     |
|  | -----     |
| Total.....                                     | \$623,030 |
|  | -----     |
|  | -----     |

#### ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS

##### 1. THE COMPANY

(a) Section 145 of the General Corporation Law of the State of Delaware ('Section 145') permits a Delaware corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the corporation) by reason of the fact that such person is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit, or proceeding if such person acted in good faith and in a

manner such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful.

In the case of an action by or in the right of the corporation, Section 145 permits the corporation to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation

as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation. No indemnification may be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

To the extent that a director, officer, employee, or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in the preceding two

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paragraphs, Section 145 requires that such person be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

Section 145 provides that expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative, or investigative action, suit, or proceeding may be paid by the corporation in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the corporation as authorized in Section 145.

(b) The Company's Certificate of Incorporation eliminates the personal liability of the directors of the Company to the Company or its stockholders for monetary damages for breach of fiduciary duty as directors, except for liability (i) for any breach of the director's duty of loyalty to the Company or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of the State of Delaware, or (iv) for any transaction from which the director derived an improper personal benefit. In addition, the Company's Certificate of Incorporation provides that the Company shall indemnify its directors and officers to the fullest extent permitted by Section 145.

(c) The Guarantor maintains insurance on behalf of the Company's directors, officers, employees and other agents against any liability which may be asserted against or expense which may be incurred by such person in connection with the activities of the Company.

## 2. THE GUARANTOR

(a) Section 351.355 of The General and Business Corporation Law of Missouri ('Section 351.355') provides that a Missouri corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against

expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

A Missouri corporation may also indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including attorneys' fees, and amounts paid in settlement actually and reasonably incurred by him in connection with the defense or settlement of the action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation unless and only to the extent that the court in which the action or suit was brought determines upon application that, despite the adjudication of liability and in view of all the circumstances

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of the case, the person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to above or in defense of any claim, issue or matter therein, he shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the action, suit, or proceeding. Any indemnification, unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the

circumstances because he has met the applicable standard of conduct set forth herein. The determination shall be made by the board of directors by a majority vote of a quorum consisting of directors who were not parties to the action, suit, or proceeding, or if such a quorum is not obtainable, or even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or by the shareholders. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of the action, suit, or proceeding as authorized by the board of directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in Section 351.355.

The indemnification provided by Section 351.355 is not exclusive of any other rights to which those seeking indemnification may be entitled under the articles of incorporation or Bylaws or any agreement, vote of shareholders or disinterested directors or otherwise, both as to action of a person in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

A Missouri corporation has the power to give any further indemnity to any person who is or was a director, officer, employee or agent, or to any person who is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, provided such further indemnity is either (i) authorized, directed, or provided for in the articles of incorporation of the corporation or



any duly adopted amendment thereof or (ii) is authorized, directed, or provided for in any Bylaw or agreement of the corporation which has been adopted by a vote of the shareholders of the corporation, and provided further that no such indemnity shall indemnify any person from or on account of such person's conduct which was finally adjudged to have been knowingly fraudulent, deliberately dishonest or willful misconduct.

A Missouri corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of Section 351.355.

(b) The Guarantor's Bylaws provide the Guarantor with the powers set forth in Section 351.355 to indemnify its directors and officers. In addition, the Guarantor's Bylaws further provide that the Guarantor may enter into certain indemnification agreements with each director and officer (or authorize indemnification of officers to the extent provided in such indemnification agreements) by vote of or resolution adopted by a majority of a quorum of disinterested directors. Such indemnification agreements generally provide for indemnification of the Guarantor's officers and directors to the fullest extent permitted by law.

(c) The Guarantor maintains insurance on behalf of its directors, officers, employees and other agents against any liability which may be asserted against or expense which may be incurred by such person in connection with the activities of the Guarantor.

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ITEM 16. EXHIBITS

(a) Exhibits

| EXHIBIT NUMBER | DESCRIPTION  |
|----------------|--|
| 3(a)           | -- Certificate of Incorporation of the Company   |
| 3(b)           | -- Bylaws of the Company   |
| 4(a)           | -- Form of Indenture between the Company and Bankers Trust Company, as trustee (the 'Indenture').  |
| 4(b)           | -- Conformed copy of Rights Agreement dated as of July 14, 1988 between the Guarantor and Centerre Trust Company of St. Louis, filed on August 9, 1993 as Exhibit 4(c) to the Guarantor's Registration Statement on Form S-8 (File No. 33-67170), is incorporated herein by reference. |
| 4(c)           | -- Copy of Amendment to Rights Agreement dated as of May 9, 1990 between the Guarantor and Boatmen's Trust Company, filed as Exhibit 4(b) to the Guarantor's annual report on Form 10-K for the fiscal year ended April 30, 1995, is incorporated by reference.                        |
| 4(d)           | -- Copy of Second Amendment to Rights Agreement dated September 11, 1991 between the Guarantor and Boatmen's Trust Company, filed as Exhibit 4(c) to the Guarantor's annual report on Form 10-K for the fiscal year ended April 30, 1995, is incorporated by reference.                |
| 4(e)           | -- Copy of Third Amendment to Rights Agreement dated May 10, 1995 between the Guarantor and Boatmen's Trust Company, filed as Exhibit 4(d) to the Guarantor's annual report on Form 10-K for the fiscal year ended April 30, 1995, is incorporated by reference.                       |
| 4(f)           | -- Form of Certificate of Designation, Preferences and Rights of Participating Preferred Stock of H & R Block, Inc., filed as Exhibit 4(e) to the Guarantor's annual report on Form 10-K for the fiscal year ended April 30, 1995, is incorporated by reference.                       |
| 4(g)           | -- Form of Certificate of Designation, Preferences and Rights of Delayed Convertible Preferred Stock of H & R Block, Inc., filed as Exhibit 4(f) to the Guarantor's annual report on Form 10-K for the fiscal year ended April 30, 1995, is incorporated by reference.                 |
| 5(a) *         | -- Opinion of Bryan Cave LLP for the Company.  |
| 5(b) *         | -- Opinion of Bryan Cave LLP for the Guarantor.  |
| 10(a)          | -- Credit Agreement dated as of December 10, 1996 among the Company, the lenders party thereto from time to time, and Mellon Bank, N.A., as agent (the 'Credit Agreement').  |
| 10(b)          | -- First Amendment to Credit Agreement dated as of April 10, 1997 among the Company, the lenders party to the Credit Agreement, and Mellon Bank, N.A., as agent.   |
| 10(c)          | -- Second Amendment to Credit Agreement dated as of June 6, 1997 among the Company, the lenders party to the Credit Agreement, and Mellon Bank, N.A., as agent.  |
| 10(d)          | -- Amended and Restated Loan Purchase Agreement dated as of December 19, 1995 among Companion Mortgage Corporation, National Consumer Services Corp., L.L.C. and National Consumer Services Corp. II, L.L.C.   |
| 10(e)          | -- Credit Agreement dated as of December 19, 1995 between the Company and National Consumer Services Corp., L.L.C.   |
| 10(f)          | -- First Amendment to Credit Agreement dated as of January 1, 1996 among the Company, National Consumer Services Corp., L.L.C. and National Consumer Services Corp. II, L.L.C.   |

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EXHIBIT  
NUMBER DESCRIPTION

|         |    |   |
|---------|----|---|
| 10(g)   | -- | Second Amendment to Credit Agreement dated as of November 30, 1996 among the Company, National Consumer Services Corp., L.L.C. and National Consumer Services Corp. II, L.L.C.  |
| 10(h)   | -- | Third Amendment to Credit Agreement dated as of March 30, 1997 by and among the Company, National Consumer Services Corp., L.L.C. and National Consumer Services Corp. II, L.L.C.   |
| 10(i) * | -- | Refund Anticipation Loan Participation Agreement dated as of July 19, 1996 among the Company, Beneficial National Bank and Beneficial Tax Masters, Inc.   |
| 10(j) * | -- | Affinity Card Agreement dated as of March 1, 1993 between the Company and Columbus Bank and Trust Company.  |
| 10(k) * | -- | Amendment No. 1 to Affinity Card Agreement dated as of December 29, 1995 between the Company and Columbus Bank and Trust Company.   |
| 10(l)   | -- | Stock Purchase Agreement dated April 14, 1997 among Fleet Financial Group, Inc., Fleet Holding Corp., the Guarantor and the Company, filed as Exhibit 2.1 to the Guarantor's Current Report on Form 8-K dated July 2, 1997, is incorporated by reference. |
| 12(a)   | -- | Computation of ratio of earnings to fixed charges of the Company.   |
| 12(b)   | -- | Computation of ratio of earnings to fixed charges of the Guarantor.   |
| 23(a)   | -- | Consent of Deloitte & Touche LLP.   |
| 23(b)   | -- | Consent of KPMG Peat Marwick LLP.   |
| 23(c) * | -- | The consent of Bryan Cave LLP is included in Exhibits 5(a) and 5(b).  |
| 24(a)   | -- | Power of Attorney for the Company is included on the signature page contained in this filing.   |
| 24(b)   | -- | Power of Attorney for the Guarantor is included on the signature page contained in this filing.   |
| 25(a)   | -- | Statement of Eligibility of Trustee on Form T-1 of Bankers Trust Company, as trustee with respect to the Indenture.   |

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\* To be filed by amendment.

The form or forms of Debt Securities with respect to each particular offering of securities registered hereunder will be filed as an exhibit to a Report on Form 8-K and incorporated herein by reference.

ITEM 17. UNDERTAKINGS

(a) The undersigned Registrants hereby undertake:

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

(i) To include any prospectus required by section 10(a) (3) of the Securities Act of 1933;

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

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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 (a) (1) (i) and (a) (1) (ii) 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 Commission by the Registrants pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities

Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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

(b) The undersigned Registrants hereby undertake that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrants' 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 Registrants pursuant to the foregoing provisions, or otherwise, the Registrants have 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 Registrants of expenses incurred or paid by a director, officer or controlling person of the Registrants 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 Registrants 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.

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

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

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BLOCK FINANCIAL CORPORATION SIGNATURES

PURSUANT TO THE REQUIREMENTS OF THE SECURITIES ACT OF 1933, AS AMENDED, BLOCK FINANCIAL CORPORATION CERTIFIES THAT IT HAS REASONABLE GROUNDS TO BELIEVE THAT IT MEETS ALL OF THE REQUIREMENTS FOR FILING A 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 KANSAS CITY, MISSOURI ON THE 14TH DAY OF AUGUST, 1997.

BLOCK FINANCIAL CORPORATION

By: /s/ FRANK L. SALIZZONI

-----  
Frank L. Salizzoni

President

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Frank L. Salizzoni, Bret G. Wilson and James H. Ingraham, and each of them, any of whom may act without the joinder of the other, as his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities to sign any or all amendments (including post-effective amendments) to this Registration Statement or any Registration Statement for the same offering that is to be effective upon filing pursuant to 462(b) under the Securities Act, 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 said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, and each of them, or the substitute or substitutes of any or all of them, 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<br>-----                                    | TITLE<br>-----  | DATE<br>-----   |
|---|---|-----------------|
| /s/ FRANK L. SALIZZONI<br>-----<br>Frank L. Salizzoni | President and sole director<br>(principal executive officer and sole director)        | August 14, 1997 |
| /s/ OZZIE WENICH<br>-----<br>Ozzie Wenich             | Senior Vice President and Chief Financial<br>Officer<br>(principal financial officer) | August 14, 1997 |
| /s/ PATRICK D. PETRIE<br>-----<br>Patrick D. Petrie   | Treasurer<br>(principal accounting officer)   | August 14, 1997 |

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H & R BLOCK, INC. SIGNATURES

PURSUANT TO THE REQUIREMENTS OF THE SECURITIES ACT OF 1933, AS AMENDED, H&R BLOCK, INC. 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 KANSAS CITY, STATE OF MISSOURI, ON THE 14TH DAY OF AUGUST, 1997.

H & R BLOCK, INC.

By: /s/ FRANK L. SALIZZONI

-----  
Frank L. Salizzoni  
President and Chief Executive  
Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Frank L. Salizzoni, Bret G. Wilson and James H. Ingraham, and each of them, any of whom may act without the joinder of the other, as his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities to sign any or all amendments (including post-effective amendments) to this Registration Statement or any Registration Statement for the same offering that is to be effective upon filing pursuant to 462(b) under the

Securities Act, 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 said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, and each of them, or the substitute or substitutes of any or all of them, 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<br>-----                                    | TITLE<br>-----   | DATE<br>-----   |
|---|--|-----------------|
| /s/ FRANK L. SALIZZONI<br>-----<br>Frank L. Salizzoni | President, Chief Executive Officer and<br>Director<br>(principal executive officer)              | August 14, 1997 |
| /s/ OZZIE WENICH<br>-----<br>Ozzie Wenich             | Senior Vice President, Chief Financial<br>Officer and Treasurer<br>(principal financial officer) | August 14, 1997 |
| /s/ PATRICK D. PETRIE<br>-----<br>Patrick D. Petrie   | Vice President and Corporate Controller<br>(principal accounting officer)                        | August 14, 1997 |

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| SIGNATURE<br>-----                              | TITLE<br>----- | DATE<br>-----   |
|---|----------------|-----------------|
| /s/ G. KENNETH BAUM<br>-----<br>G. Kenneth Baum | Director       | August 14, 1997 |
| /s/ HENRY W. BLOCH<br>-----<br>Henry W. Bloch   | Director       | August 14, 1997 |
| /s/ ROBERT E. DAVIS<br>-----<br>Robert E. Davis | Director       | August 14, 1997 |
| /s/ DONNA R. ECTON<br>-----<br>Donna R. Ecton   | Director       | August 14, 1997 |
| /s/ HENRY F. FRIGON<br>-----<br>Henry F. Frigon | Director       | August 14, 1997 |
| /s/ ROGER W. HALE<br>-----<br>Roger W. Hale     | Director       | August 14, 1997 |
| /s/ MARVIN L. RICH<br>-----<br>Marvin L. Rich   | Director       | August 14, 1997 |
| -----<br>Morton I. Sosland                      | Director       | August 1997     |

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EXHIBIT INDEX

| EXHIBIT<br>NUMBER | DESCRIPTION  | PAGE |
|-------------------|--|------|
| -----             | -----  | ---- |
| 3(a)              | -- Certificate of Incorporation of the Company   |      |
| 3(b)              | -- Bylaws of the Company   |      |
| 4(a)              | -- Form of Indenture between the Company and Bankers Trust Company, as trustee (the 'Indenture').  |      |
| 4(b)              | -- Conformed copy of Rights Agreement dated as of July 14, 1988 between the Guarantor and Centerre Trust Company of St. Louis, filed on August 9, 1993 as Exhibit 4(c) to the Guarantor's Registration Statement on Form S-8 (File No. 33-67170), is incorporated herein by reference. |      |
| 4(c)              | -- Copy of Amendment to Rights Agreement dated as of May 9, 1990 between the Guarantor and Boatmen's Trust Company, filed as Exhibit 4(b) to the Guarantor's annual report on Form 10-K for the fiscal year ended April 30, 1995, is incorporated by reference.                        |      |
| 4(d)              | -- Copy of Second Amendment to Rights Agreement dated September 11, 1991 between the Guarantor and Boatmen's Trust Company, filed as Exhibit 4(c) to the Guarantor's annual report on Form 10-K for the fiscal year ended April 30, 1995, is incorporated by reference.                |      |
| 4(e)              | -- Copy of Third Amendment to Rights Agreement dated May 10, 1995 between the Guarantor and Boatmen's Trust Company, filed as Exhibit 4(d) to the Guarantor's annual report on Form 10-K for the fiscal year ended April 30, 1995, is incorporated by reference.                       |      |
| 4(f)              | -- Form of Certificate of Designation, Preferences and Rights of Participating Preferred Stock of H & R Block, Inc., filed as Exhibit 4(e) to the Guarantor's annual report on Form 10-K for the fiscal year ended April 30, 1995, is incorporated by reference.                       |      |
| 4(g)              | -- Form of Certificate of Designation, Preferences and Rights of Delayed Convertible Preferred Stock of H & R Block, Inc., filed as Exhibit 4(f) to the Guarantor's annual report on Form 10-K for the fiscal year ended April 30, 1995, is incorporated by reference.                 |      |
| 5(a) *            | -- Opinion of Bryan Cave LLP for the Company.  |      |
| 5(b) *            | -- Opinion of Bryan Cave LLP for the Guarantor.  |      |
| 10(a)             | -- Credit Agreement dated as of December 10, 1996 among the Company, the lenders party thereto from time to time, and Mellon Bank, N.A., as agent (the 'Credit Agreement').  |      |
| 10(b)             | -- First Amendment to Credit Agreement dated as of April 10, 1997 among the Company, the lenders party to the Credit Agreement, and Mellon Bank, N.A., as agent.   |      |
| 10(c)             | -- Second Amendment to Credit Agreement dated as of June 6, 1997 among the Company, the lenders party to the Credit Agreement, and Mellon Bank, N.A., as agent.  |      |
| 10(d)             | -- Amended and Restated Loan Purchase Agreement dated as of December 19, 1995 among Companion Mortgage Corporation, National Consumer Services Corp., L.L.C. and National Consumer Services Corp. II, L.L.C.   |      |
| 10(e)             | -- Credit Agreement dated as of December 19, 1995 between the Company and National Consumer Services Corp., L.L.C.   |      |
| 10(f)             | -- First Amendment to Credit Agreement dated as of January 1, 1996 among the Company, National Consumer Services Corp., L.L.C. and National Consumer Services Corp. II, L.L.C.   |      |

| EXHIBIT<br>NUMBER | DESCRIPTION  | PAGE |
|-------------------|--|------|
| -----             | -----  | ---- |
| 10(g)             | -- Second Amendment to Credit Agreement dated as of November 30, 1996 among the Company, National Consumer Services Corp., L.L.C. and National Consumer Services Corp. II, L.L.C.  |      |
| 10(h)             | -- Third Amendment to Credit Agreement dated as of March 30, 1997 by and among the Company, National Consumer Services Corp., L.L.C. and National Consumer Services Corp. II, L.L.C.   |      |
| 10(i) *           | -- Refund Anticipation Loan Participation Agreement dated as of July 19, 1996 among the Company, Beneficial National Bank and Beneficial Tax Masters, Inc.   |      |
| 10(j) *           | -- Affinity Card Agreement dated as of March 1, 1993 between the Company and Columbus Bank and Trust Company.  |      |
| 10(k) *           | -- Amendment No. 1 to Affinity Card Agreement dated as of December 29, 1995 between the Company and Columbus Bank and Trust Company.   |      |
| 10(l)             | -- Stock Purchase Agreement dated April 14, 1997 among Fleet Financial Group, Inc., Fleet Holding Corp., the Guarantor and the Company, filed as Exhibit 2.1 to the Guarantor's Current Report on Form 8-K dated July 2, 1997, is incorporated by reference. |      |
| 12(a)             | -- Computation of ratio of earnings to fixed charges of the Company.   |      |
| 12(b)             | -- Computation of ratio of earnings to fixed charges of the Guarantor.   |      |
| 23(a)             | -- Consent of Deloitte & Touche LLP.   |      |
| 23(b)             | -- Consent of KPMG Peat Marwick LLP.   |      |
| 23(c) *           | -- The consent of Bryan Cave LLP is included in Exhibits 5(a) and 5(b).  |      |
| 24(a)             | -- Power of Attorney for the Company is included on the signature page contained in this filing.   |      |
| 24(b)             | -- Power of Attorney for the Guarantor is included on the signature page contained in this filing.   |      |
| 25(a)             | -- Statement of Eligibility of Trustee on Form T-1 of Bankers Trust Company, as trustee with respect to the Indenture.   |      |

\* To be filed by amendment.

The form or forms of Debt Securities with respect to each particular offering of securities registered hereunder will be filed as an exhibit to a Report on Form 8-K and incorporated herein by reference.



CERTIFICATE OF INCORPORATION

OF

BLOCK FINANCIAL CORPORATION

The undersigned, for the purpose of incorporating and organizing a corporation under the General Corporation Law of the State of Delaware, hereby adopts the following Articles of Incorporation:

FIRST: The name of the corporation is

BLOCK FINANCIAL CORPORATION

SECOND: The address of the corporation's initial registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of Newcastle, Delaware 19801. The name of the corporation's initial registered agent at such address is The Corporation Trust Company.

THIRD: The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, including (but not limited to) the issuance of commercial paper and the purchase of participations in refund anticipation loans and asset-backed securities backed by cash flows generated by refund anticipation loans.

FOURTH: The corporation shall have authority to issue 10,000 shares of Common Stock having a par value of \$1.00 per share.

FIFTH: The name and mailing address of the incorporator are Bret G. Wilson, 6520 Walmer, Overland Park, Kansas 66202.

SIXTH: The name of the persons who are to serve as the directors until the first annual meeting of stockholders, or until their successors are elected and shall qualify, are Henry W. Bloch, Thomas M. Bloch and William P. Anderson, each of whose mailing address is c/o H & R Block, Inc., 4408 Main Street, Kansas City, Missouri 64111.

SEVENTH: The duration of the corporation is perpetual.

EIGHTH: 1. Elimination of Certain Liability of Directors. A director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of the State of Delaware, or (iv) for any transaction

from which the director derived an improper personal benefit. If the General

Corporation Law of the State of Delaware is amended subsequent to the date hereof to authorize corporate action further limiting or eliminating the personal liability of directors, then the liability of a director of the corporation shall be limited or eliminated to the fullest extent permitted by the General Corporation Law of the State of Delaware, as so amended. Any repeal or modification of the foregoing paragraph by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the corporation existing at the time of such repeal or modification.

2. Indemnification and Insurance.

(a) Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director or officer, of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or of a partnership,



joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the corporation to the fullest extent authorized by the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than said law permitted the corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in paragraph (b) hereof, the corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the board of directors of the corporation. The right to indemnification conferred in this Section shall be a contract right and shall include the right to be paid by the corporation the expenses incurred in defending any such proceeding in advance of its final disposition: provided, however, that, if the General Corporation Law of the State of Delaware requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Section or otherwise. The corporation may, by action of its Board of Directors, provide indemnification to employees and agents of the corporation with the same scope and effect as the foregoing indemnification of directors and officers.

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(b) Right of Claimant to Bring Suit. If a claim under paragraph (a) of this Section is not paid in full by the corporation within thirty days after a written claim has been received by the corporation, the claimant may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the corporation) that the claimant has not met the standards of conduct which make it permissible under the General Corporation Law of the State of Delaware to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the corporation. Neither the failure of the corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the General Corporation Law of the State of Delaware, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(c) Non-Exclusivity of Rights. The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Section shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision or the Certificate of Incorporation, by-law, agreement, vote of stockholders or disinterested directors or otherwise.

(d) Insurance. The corporation may at its option maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the corporation or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the corporation would have the power to indemnify such person against

such expense, liability or loss under the General Corporation Law of the State of Delaware.

NINTH: The Board of Directors of the corporation is authorized and empowered to make, alter, amend or repeal any or all of the Bylaws of the corporation, subject to the power of the stockholders of the corporation to make, alter, amend or repeal any or all of the Bylaws of the corporation.

TENTH: The Corporation reserves the right at any time and from time to time to amend, alter, change, or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by law; and all rights conferred upon stockholders, directors, or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to this reservation.

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IN WITNESS WHEREOF, the undersigned has hereunto set my hand this 18th day of May, 1992.

Bret G. Wilson, Incorporator

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BYLAWS  
OF  
BLOCK FINANCIAL CORPORATION

Offices

1. Registered Office and Registered Agent. The location of the registered office and the name of the registered agent of the corporation in the State of Delaware shall be such as shall be determined from time to time by the board of directors and on file in the appropriate public offices of the State of Delaware pursuant to applicable provisions of law.

2. Corporate Offices. The corporation may have such other corporate offices and places of business anywhere within or without the State of Delaware as the board of directors may from time to time designate or the business of the corporation may require.

Seal

3. Corporate Seal. The corporate seal shall have inscribed thereon the name of the corporation and the words "Corporate Seal, Delaware". The corporate seal may be used by causing it or a facsimile thereof to be impressed, affixed, reproduced or otherwise.

Meeting of Stockholders

4. Place of Meetings. All meetings of the stockholders shall be held at the offices of the corporation or at such other place either within or without the State of Delaware as shall be designated from time to time by the board of directors and stated in the notice of the meeting or in a duly executed waiver of notice thereof.

5. Annual Meeting. An annual meeting of the stockholders of the corporation shall be held on June 1st of each year, commencing in 1992, if not a legal holiday, and if a legal holiday, then on the next secular day following, at 10:00 a.m., or at such other date and time as shall be determined from time to time by the board of directors and stated in the notice of the meeting. At the annual meeting the stockholders shall elect directors to serve until the next annual meeting of the stockholders and until their successors are elected and qualified, or until their earlier resignation or removal, and shall transact such other business as may properly be brought before the meeting. The stockholders may transact such other business as may be desired, whether or not the same was specified in the notice of the meeting, unless the consideration of such other business without its having been specified in the notice of the meeting as one of the purposes thereof is prohibited by law.

6. Special Meetings. Special meetings of the stockholders may be held for any purpose or purposes, unless otherwise prescribed by statute or by the certificate of incorporation, and may be called by any officer, by the board of directors, or by the holders of, or by any officer or stockholder upon the written request of the holders of, not less than 25 percent of the

outstanding stock entitled to vote at such meeting, and shall be called by any officer directed to do so by the board of directors or requested to do so in writing by a majority of the

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board of directors. Any such written request shall state the purpose or purposes of the proposed meeting. The "call" and the "notice" of any such meeting shall be deemed to be synonymous.

7. Voting. At all meetings of stockholders, every stockholder having the right to vote shall be entitled to vote in person, or by proxy appointed by an instrument in writing subscribed by such stockholder and bearing a date not more than three years prior to said meeting, unless said instrument shall provide for a longer period. Unless otherwise provided by the certificate of incorporation, each stockholder shall have one vote for each share of stock

entitled to vote at such meeting registered in his name on the books of the corporation. At all meetings of stockholders, the voting may be by voice vote, except that, unless otherwise provided by the certificate of incorporation, any qualified voter may demand a vote by ballot on any matter, in which event such vote shall be taken by ballot.

8. Quorum. The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of any business, except as otherwise provided by law, by the certificate of incorporation or by these bylaws. Every decision of a majority in the amount of stock of such quorum shall be valid as a corporate act, except in those specific instances in which a larger vote is required by law or by the certificate of incorporation or by these bylaws.

At any meeting at which a quorum shall not be present, the holders of a majority of the stock present in person or by proxy at such meeting shall have power successively to adjourn the meeting from time to time to a specified time and place, without notice to anyone other than announcement at the meeting, until a quorum shall be present in person or by proxy. At such adjourned meeting at which a quorum shall be present in person or by proxy, any business may be transacted which might have been transacted at the original meeting which was adjourned. If the adjournment is for more than 30 days, or if after adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

9. Stock Ledger. The original or duplicate stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list required under Section 10 of these bylaws or the books of the corporation, or to vote in person or by proxy at any meeting of the stockholders.

10. Stockholders List. The secretary or assistant secretary, who shall have charge of the stock ledger, shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting during ordinary business hours for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

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11. Notice. Written or printed notice of each meeting of the stockholders, whether annual or special, stating the place, date, and hour of the meeting, and, in the case of a special meeting, the purpose or purposes thereof, shall be given, either personally or by mail, to each stockholder of record of the corporation entitled to vote at such meeting not less than 10 days nor more than 60 days prior to the meeting. The board of directors may fix in advance a date, which shall not be more than 60 nor less than 10 days preceding the date of any meeting of the stockholders, as a record date for the determination of the stockholders entitled to notice of, and to vote at, any such meeting and any adjournment thereof; provided, however, that the board of directors may fix a new record date for any adjourned meeting.

12. Action by Stockholders Without Meeting. Any action required by law to be taken at any annual or special meeting of stockholders of the corporation, or any other action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice, and without a vote, if a consent in writing setting forth the action so taken shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of any taking of corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

13. Powers; Number; Term; Qualification. The management of all the affairs, property, and business of the corporation shall be vested in a board of directors. Unless required by the certificate of incorporation, directors need not be stockholders. In addition to the powers and authorities these bylaws and the certificate of incorporation have expressly conferred upon it, the board of directors may exercise all such powers of the corporation, and do all such lawful acts and things as are not by statute or by the certificate of incorporation or by these bylaws directed or required to be exercised or done by the stockholders. The number of directors shall be as provided from time to time by resolution duly adopted by the holders of a majority of the outstanding shares entitled to vote thereon or by a majority of the whole board of directors. Each director shall hold office until his successor shall have been elected and qualified or until his earlier resignation and removal. Each director, upon his election, shall be deemed to have qualified by filing with the corporation his written acceptance of such office, which shall be placed in

the minute book, or by his attendance at, or consent to action in lieu of, any regular or special meeting of directors. Any director may resign at any time by filing a written resignation with the secretary of the corporation and, unless a later date is fixed by its terms, said resignation shall be effective from the filing thereof.

14. Vacancies. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, unless it is otherwise provided in the certificate of incorporation or bylaws, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and qualified, unless sooner displaced. If there are no directors in office, then an election of directors may be held in the manner provided by statute.

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15. Meetings of the Newly Elected Board. The first meeting of the members of each newly elected board of directors shall be held (i) at such time and place either within or without the State of Delaware as shall be suggested or provided by resolution of the stockholders at the meeting at which such newly elected board was elected, and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present; or (ii) if not so suggested or provided for by resolution of the stockholders or if a quorum shall not be present, at such time and place as shall be consented to in writing by a majority of the newly elected board of directors, provided that written or printed notice of such meeting shall be given to each of the other directors in the same manner as provided in Section 17 of these bylaws with respect to the giving of notice for special meetings of the board, except that it shall not be necessary to state the purpose of the meeting in such notice; or (iii) regardless of whether the time and place of such meeting shall be suggested or provided for by resolution of the stockholders, at such time and place as shall be consented to in writing by all of the newly elected directors.

16. Regular Meeting. Regular meetings of the board of directors may be held without notice at such times and places either within or without the State of Delaware as shall from time to time be fixed by resolution adopted by the full board of directors. Any business may be transacted at a regular meeting.

17. Special Meeting. Special meetings of the board of directors may be called at any time by the president, any vice president, or the secretary, or by any two or more of the directors. The place may be within or without the State of Delaware as designated in the notice.

18. Notice of Special Meeting. Written or printed notice of each special meeting of the board of directors, stating the place, day, and hour of the meeting and the purpose or purposes thereof, shall be mailed to each director addressed to him at his residence or usual place of business at least two days before the day on which the meeting is to be held, or shall be sent to him by telegram, or delivered personally, at least one day before the day on

which the meeting is to be held. The notice may be given by any officer having authority to call the meeting. "Notice" and "call" with respect to such meetings shall be deemed to be synonymous. Any meeting of the board of directors shall be

a legal meeting without any notice thereof having been given if all directors shall be present thereat.

19. Quorum. Unless otherwise required by law, the certificate of incorporation or these bylaws, a majority of the total number of directors shall be necessary at all meetings to constitute a quorum for the transaction of business, and except as may be otherwise provided by law, the certificate of incorporation or these bylaws, the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board of directors.

If at least one-third of the whole board of directors is present at any meeting at which a quorum is not present, a majority of the directors present at such meeting shall have power successively to adjourn the meeting from time to time to a subsequent date, without notice to any director other than announcement at the meeting. At such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the original meeting which was adjourned.

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20. Attendance by Telephone. Unless otherwise restricted by the certificate of incorporation, members of the board of directors, or any committee designated by the board of directors, may participate in a meeting of such board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this provision shall constitute presence in person at such meeting.

21. Committees. The board of directors may, by resolution or resolutions passed by a majority of the whole board, designate one or more committees, each committee to consist of one or more directors of the corporation. The board of directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in said resolution or resolutions or in these bylaws, shall have and may exercise all of the powers of the board of directors in the management of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; provided, however, that in the absence or disqualification of any member of such committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether he or they constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the board of directors. All committees so appointed shall, unless otherwise provided by the board of directors, keep regular minutes of the transactions of their meetings and shall cause them to be recorded in books kept for that purpose in the office of the corporation and shall report the same to the board of directors at its next meeting. The secretary or an assistant secretary of the corporation may act as secretary of the committee if the committee so requests.

22. Compensation. The board of directors may, by resolution, fix a sum to be paid directors for serving as directors of this corporation and may, by resolution, fix a sum which shall be allowed and paid for attendance at each meeting of the board of directors and in each case may provide for reimbursement of expenses incurred by directors in attending each meeting; provided that nothing herein contained shall be construed to preclude any director from serving this corporation in any other capacity and receiving his regular compensation therefor, Members of special or standing committees may be allowed like compensation for attending committee meetings.

23. Resignation. Any director may resign at any time by giving a written notice to the chairman of the board of directors, the president, or the secretary of the corporation. Such resignation shall take effect at the time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

24. Indemnification of Directors and Officers. Each person who is or was a director or officer of the corporation or is or was serving at the request of the corporation as a director or officer of another corporation (including the heirs, successors, executors or administrators, or estate of such

persons) shall be indemnified by the corporation as of right to the full extent permitted or authorized by the laws of the State of Delaware, as now in effect and as hereafter amended, against any liability, judgment, fine, amount paid in settlement, cost, and expense (including attorneys' fees) asserted or threatened against and incurred by such person in his capacity as or arising out of his status as a director or officer of the corporation or, if serving

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at the request of the corporation, as a director or officer of another corporation. The indemnification provided by this bylaw provision shall not be exclusive of any other rights to which those indemnified may be entitled under any other bylaws or under any agreement, vote of stockholders or disinterested directors or otherwise, and shall not limit in any way any right which the corporation may have to make different or further indemnification with respect to the same or different persons or classes of persons.

25. Action by Directors without Meeting. Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the board of directors or any committee thereof may be taken without a meeting if all members of the board of directors or of such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board or committee.

#### Officers

26. Officers - Who Shall Constitute. The officers of the corporation shall consist of a chairman of the board of directors, a president, a secretary, and a treasurer, each of whom shall be elected by the board of directors at their first meeting after the annual meeting of the stockholders. The board of directors may also designate additional assistant secretaries and assistant treasurers. In the discretion of the board of directors, the office of chairman of the board of directors may remain unfilled. The chairman of the board of directors (if any) shall at all times be, and other officers may be, members of the board of directors. Any number of offices may be held by the same person.

An officer shall be deemed qualified when he enters upon the duties of the office to which he has been elected or appointed and furnishes any bond required by the board; but the board may also require of such person his written acceptance and promise faithfully to discharge the duties of such office.

(a) Term. Each officer of the corporation shall hold his office at the pleasure of the board of directors or for such other period as the board may specify at the time of his election or appointment, or until his death, resignation, or removal by the board, whichever first occurs. In any event, each officer of the corporation who is not re-elected or re-appointed at the annual meeting of the board of directors next succeeding his election or appointment and at which any officer of the corporation is elected or appointed shall be deemed to have been removed by the board, unless the board provides otherwise at the time of his election or appointment.

(b) Other Officers and Agents. The board of directors from time to time may also appoint such other officers and agents for the corporation as it shall deem necessary or advisable, each of whom shall serve at the pleasure of the board or for such period as the board may specify, and shall exercise such powers, have such titles, and perform such duties as shall be determined from time to time by the board or by an officer empowered by the board to make such determinations.

27. President. The president shall be the chief executive officer of the corporation with such general executive powers and duties of supervision and management as are usually vested in the office of the chief executive officer of a corporation and he shall carry into

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effect all directions and resolutions of the board of directors. The president

shall preside at all meetings of the stockholders and directors.

The president may execute all bonds, notes, debentures, mortgages, and other instruments for and in the name of the corporation, and may cause the corporate seal to be affixed thereto.

Unless the board of directors otherwise provides, the president, or any person designated in writing by him, shall have full power and authority on behalf of this corporation (i) to attend and to vote or take action at any meeting of the holders of securities of corporations in which this corporation may hold securities, and at such meetings shall possess and may exercise any and

all rights and powers incident to being a holder of such securities and which as the holder thereof this corporation may have possessed and exercised if present, and (ii) to execute and deliver waivers of notice and proxies for and in the name of the corporation with respect to any such securities held by this corporation.

He shall, unless the board of directors otherwise provides, be ex officio a member of all standing committees.

He shall have such other or further duties and authority as may be prescribed elsewhere in these bylaws or from time to time by the board of directors.

28. Secretary and Assistant Secretaries. The secretary may attend all sessions of the board of directors and all meetings of the stockholders, and shall record or cause to be recorded all votes taken and the minutes of all proceedings in a minute book of the corporation to be kept for that purpose. He shall perform like duties for committees when requested to do so by the board of directors or any such committee.

It shall be the principal responsibility of the secretary to give, or cause to be given, notice of all meetings of the stockholders and of the board of directors, but this shall not lessen the authority of others to give such notice as is authorized elsewhere in these bylaws.

The secretary shall see that all books, records, lists, and information, or duplicates, required to be maintained in the State of Delaware or elsewhere, are so maintained.

The secretary shall keep in safe custody the seal of the corporation and shall have the authority to affix the seal to any instrument requiring it, and when so affixed, he shall attest the seal by his signature. The board of directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his signature.

The secretary shall perform such other duties and have such other authority as may be prescribed elsewhere in these bylaws or from time to time by the board of directors or the chief executive officer of the corporation, under whose direct supervision he shall be.

In the absence of the secretary or in the event of his disability, inability, or refusal to act, the assistant secretary (or in the event there be more than one assistant secretary, the assistant secretaries in the order designated by the board of directors, or in the absence of any designation, then in the order of their election) may perform the duties and exercise the powers of the

secretary, and shall perform such other duties as the board of directors may from time to time prescribe.

29. Treasurer and Assistant Treasurers. The treasurer shall have responsibility for the safekeeping of the funds and securities of the corporation, shall keep or cause to be kept full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall keep, or cause to be kept, all other books of account and accounting records of the corporation. He shall deposit or cause to be deposited all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the board of directors or by any officer of



the corporation to whom such authority has been granted by the board of directors.

He shall disburse, or permit to be disbursed, the funds of the corporation as may be ordered, or authorized generally, by the board of directors, and shall render to the chief executive officer of the corporation and the directors whenever they may require it, an account of all his transactions as treasurer and of those under his jurisdiction, and of the financial condition of the corporation.

He shall perform such other duties and shall have such other responsibility and authority as may be prescribed elsewhere in these bylaws or from time to time by the board of directors.

He shall have the general duties, powers, and responsibilities of a treasurer of a corporation.

If required by the board of directors, he shall give the corporation a bond in a sum and with one or more sureties satisfactory to the board, for the faithful performance of the duties of his office, and for the restoration to the corporation, in the case of his death, resignation, retirement, or removal from office, of all books, papers, vouchers, money, and other property of whatever kind in his possession or under his control which belong to the corporation.

In the absence of the treasurer or in the event of his disability, inability, or refusal to act, the assistant treasurer (or in the event there be more than one assistant treasurer, the assistant treasurers in the order designated by the board of directors, or in the absence of any designation, then in the order of their election) may perform the duties and exercise the powers of the treasurer, and shall perform such other duties and have such other authority as the board of directors may from time to time prescribe.

30. Duties of Officers May be Delegated. If any officer of the corporation be absent or unable to act, or for any other reason that the board of directors may deem sufficient, the board may delegate for the time being some or all of the functions, duties, powers, and responsibilities of any officer to any other officer, or to any other agent or employee of the corporation or other responsible person, provided a majority of the whole board of directors concurs therein.

31. Removal. Any officer or agent elected or appointed by the board of directors, and any employee, may be removed or discharged, with or without cause, at any time by the affirmative vote of a majority of the board of directors, but such removal or discharge shall be without prejudice to the contract rights, if any, of the person so removed or discharged.

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32. Salaries. Salaries and other compensation of all elected officers of the corporation shall be fixed, increased or decreased by the board of directors, but this power, except as to the salary or compensation of the president, may, unless prohibited by law, be delegated by the board to the president, or may be delegated to a committee. Salaries and compensation of all other appointed officers, agents, and employees of the corporation may be fixed, increased or decreased by the board of directors, but until action is taken with respect thereto by the board of directors, the same may be fixed, increased or decreased by the president or such other officer or officers as may be designated by the board of directors to do so.

33. Delegation of Authority. The board of directors from time to time may delegate to the president or other officer or executive employee of the corporation, authority to hire, discharge, fix, and modify the duties, salary, or other compensation of employees of the corporation under their jurisdiction, and the board may delegate to such officer or executive employee similar authority with respect to obtaining and retaining for the corporation the services of attorneys, accountants, and other experts.

Stock

34. Certificates. Certificates of stock shall be issued in numerical order, and each stockholder shall be entitled to a certificate signed

by the president or a vice president, and by the treasurer or an assistant treasurer or the secretary or an assistant secretary, certifying to the number of shares owned by the stockholder. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, such certificate may nevertheless be issued by the corporation with the same effect as if such officer, transfer agent, or registrar who signed such certificate, or whose facsimile signature shall have been placed thereon, had not ceased to be such officer, transfer agent, or registrar of the corporation.

35. Transfer. Transfers of stock shall be made only upon the transfer books of the corporation, kept at the office of the corporation or respective transfer agents designated to transfer the several classes of stock, and before a new certificate is issued the old certificate shall be surrendered for cancellation. Until and unless the board of directors appoints some other person, firm, or corporation as its transfer agent or transfer clerk (and upon the revocation of any such appointment, thereafter until a new appointment is similarly made) the secretary of the corporation shall be the transfer agent or transfer clerk of the corporation without the necessity of any formal action of the board, and the secretary, or any person designated by him, shall perform all of the duties thereof.

36. Registered Stockholders. Registered stockholders only shall be entitled to be treated by the corporation as the holders and owners in fact of the shares standing in their respective names and the corporation shall not be bound to recognize any equitable or other claim to or interest in such shares on the part of any other person, whether or not it shall have express or other notice thereof, except as expressly provided by the laws of the State of Delaware.

37. Lost Certificates. The board of directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the

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corporation, alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate or certificates to be lost, stolen, or destroyed. When authorizing such issue of a new certificate or certificates, the board of directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen, or destroyed certificate or certificates, or his legal representative, to give the corporation and its transfer agents and registrars, if any, a bond in such sum as it may direct to indemnify it against any claim that may be made against it with respect to the certificate or certificates alleged to have been lost, stolen, or destroyed.

38. Regulations. The board of directors shall have power and authority to make all such rules and regulations as it may deem expedient concerning the issue, transfer, conversion, and registration of certificates for shares of the capital stock of the corporation, not inconsistent with the laws of the State of Delaware, the certificate of incorporation of the corporation and these bylaws.

39. Fixing Record Date. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion, or exchange of stock or for the purpose of any other lawful action, the board of directors may fix, in advance, a record date, which shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting except that the board of directors may fix a new record date for the adjourned meeting.

40. Dividends. Dividends upon the outstanding shares of the corporation, subject to the provisions of the certificate of incorporation and of any applicable law and of these bylaws, may be declared by the board of directors at any meeting. Subject to such provisions, dividends may be paid in cash, in property, or in shares of the capital stock of the corporation.

41. Moneys. The moneys of the corporation shall be deposited in the name of the corporation in such bank or banks or trust company or trust companies as the board of directors shall designate, and shall be drawn out only by check signed by persons designated by resolution adopted by the board of directors, except that the board of directors may delegate said powers in the manner hereinafter provided in this Section 42 of these bylaws. The board of directors may by resolution authorize an officer or officers of the corporation to designate any bank or banks or trust company or trust companies in which moneys of the corporation may be deposited, and to designate the person or persons who may sign checks drawn on any particular bank account or bank accounts of the corporation, whether created by direct designation of the board of directors or by an authorized officer or officers as aforesaid.

42. Fiscal Year. The board of directors shall have power to fix and from time to time change the fiscal year of the corporation. In the absence of action by the board of directors, however, the fiscal year of the corporation shall end each year on the date which the

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corporation treated as the close of its first fiscal year, until such time, if any, as the fiscal year shall be changed by the board of directors.

#### Books and Records

43. Books, Accounts, and Records. The books, accounts, and records of the corporation, except as may be otherwise required by the laws of the State of Delaware, may be kept outside the State of Delaware, at such place or places as the board of directors from time to time determine. The board of directors shall determine whether, to what extent and the conditions upon which the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or document of the corporation, except as conferred by law or by resolution of the stockholders.

#### Notice

44. Provisions. Whenever the provisions of the statutes of the State of Delaware, the certificate of incorporation or these bylaws require notice to be given to any director, officer, or stockholder, they shall not be construed to required actual personal notice. Notice by mail may be given in writing by depositing the same in a post office or letter box, in a post paid, sealed wrapper, addressed to such director, officer, or stockholder at his or her address as the same appears in the books of the corporation, and the time when the same shall be mailed shall be deemed to be the time of the giving of such notice. If notice be given by telegraph, such notice shall be deemed to be given when the same is delivered to the telegraph company.

45. Waiver. Whenever any notice is required to be given under the provisions of the statutes of the State of Delaware or of the certificate of incorporation or of these bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice whether before or after the time

stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting need be specified in any written waiver of notice unless so required by the certificate of incorporation or the bylaws.

#### Amendments

46. Amendments. These bylaws may be altered, amended or repealed by the affirmative vote of a majority of the shares of stock issued and

outstanding and entitled to vote thereon, or, if the certificate of incorporation so provides, by the board of directors at any meeting thereof.

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INDENTURE DATED AS OF  
AUGUST , 1997  
among  
H&R BLOCK, INC  
as Guarantor  
BLOCK FINANCIAL CORPORATION  
as Issuer  
and  
BANKERS TRUST COMPANY  
as Trustee

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INDENTURE dated as of , 1997, among H&R BLOCK, INC., a corporation duly organized and existing under the laws of the State of Missouri (hereinafter sometimes called the "Company", and with respect to Debt Securities issued by BFC, the "Guarantor"), Block Financial Corporation, a corporation duly organized and existing under the laws of Delaware ("BFC"), and BANKERS TRUST COMPANY, a New York banking corporation (hereinafter sometimes called the "Trustee"). BFC in its capacity as issuer of Debt Securities and the Company as issuer of the Guarantees of Debt Securities issued by BFC are herein referred to individually as an "Issuer" and collectively as the "Issuers".

RECITALS

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

The Guarantor has duly authorized the execution and delivery of this Indenture to provide for the Guarantees of the Debt Securities provided for herein.

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

NOW, THEREFORE, THIS INDENTURE WITNESSETH

That in order to declare the terms and conditions upon which the Debt Securities are authenticated, issued and delivered, and in consideration of the premises, and of the purchase and acceptance of the Debt Securities by the holders thereof, the Company, BFC and the Trustee covenant and agree with each other, for the benefit of the respective Holders from time to time of the Debt Securities or any series thereof, as follows:

## ARTICLE I

## Definitions

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

"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 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.

"Authorized Newspaper" means a newspaper in an official language of the country of publication customarily published at least once a day, and customarily published for at least five days in each calendar week, and of general circulation in such city or cities specified pursuant to Section 2.03 with respect to the Debt Securities of any series. Where successive publications are required to be made in Authorized Newspapers, the successive publications may be made in the same or in different newspapers in the same city meeting the foregoing requirements and in each case on any business day in such city.

"Bank Indebtedness" means any and all amounts payable under or in respect of (i) the Credit Agreement, as supplemented, amended, modified, refinanced or replaced at any time from time to time, and (ii) any lines of credit and letters of credit of the Company, in each case, including principal, premium (if any), interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company or BFC whether or not a claim for post-filing interest is allowed in such proceedings), fees, charges, expenses,

reimbursement obligations, guarantees and all other amounts payable thereunder or in respect thereof.

"Banks" has the meaning specified in the Credit Agreement.

"BFC" means Block Financial Corporation, a Delaware corporation, and, subject to the provisions of Article X, shall also include its successors and assigns.

"Board of Directors" means either the Board of Directors of the Company or BFC, as applicable, or any duly authorized committee or subcommittee of such Board, except as the context may otherwise require.

"business day" means, when used with respect to any Place of Payment specified pursuant to Section 2.03, any day that is not a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies in such Place of Payment are authorized or obligated by law to close, except as otherwise specified pursuant to Section 2.03.

"Capitalized Lease Obligation" means an obligation that is required to be classified and accounted for as a capitalized lease for financial reporting purposes in accordance with GAAP; and the amount of Indebtedness represented by such obligation shall be the capitalized amount of such obligation determined in accordance with GAAP; and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty.

"Capital Stock" of any Person means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests (including partnership interests) in (however designated) equity of such Person, including any Preferred Stock, but excluding any debt securities convertible into such equity.

"Commodity Price Protection Agreement" means, in respect of any Person, any forward contract, commodity swap agreement, commodity option agreement or other similar agreement or arrangement designed to protect such Person against fluctuations in commodity prices.

"Common Stock" means the common shares, without par value, of the Company, which stock is currently listed on the New York Stock Exchange.

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"Company" means H&R Block, Inc., a Missouri corporation, and, subject to the provisions of Article X, shall also include its successors and assigns.

"corporate trust office of the Trustee" or other similar term means the principal office of the Trustee at which at any particular time its corporate trust business shall be administered which office at the date of the execution of the Indenture is located at the address stated in Section 14.03 or at any other time at such other address as the Trustee may designate from time to time by notice to the Holders, the Company or BPC.

"Credit Agreement" means the Credit Agreement dated as of December 10, 1996, between BFC as a Borrower, the Guarantor as guarantor, and the Banks party thereto from time to time, as supplemented, amended, modified, refinanced or replaced at any time from time to time.

"Currency" means Dollars or Foreign Currency.

"Currency Exchange Protection Agreement" means, in respect of any Person, any foreign exchange contract, currency swap agreement, currency option or other similar agreement or arrangement designed to protect such Person against fluctuations in currency exchange rates.

"Debt Security" or "Debt Securities" has the meaning stated in the first recital of this Indenture and more particularly means any debt security or debt securities, as the case may be, of any series authenticated and delivered under this Indenture, and with respect to Debt Securities issued by BFC, includes the Guarantee of such Debt Securities issued by the Guarantor.

"Default" means any event which is, or after notice or passage of time or both would be, an Event of Default.

"Depository" means, unless otherwise specified by the Company pursuant to either Section 2.03 or 2.15, with respect to registered Debt Securities of any series issuable or issued in whole or in part in the form of one or more Global Securities, The Depository Trust Company, New York, New York, or any successor thereto registered as a clearing agency under the Exchange Act or other applicable statute or regulations.

"Designated Senior Indebtedness" means (i) the Bank Indebtedness and (ii) any other Senior Indebtedness of the Company.

"Disqualified Stock" of a Person means Redeemable Stock of such Person as to which the maturity, mandatory redemption, conversion or exchange or redemption at the option of the holder thereof occurs, or may occur, on or prior to the first anniversary of the Stated Maturity of the Debt Securities.

"Dollar" or "\$" means such currency of the United States as at the time of payment is legal tender for the payment of public and private debts.

"Dollar Equivalent" means, with respect to any monetary amount in a Foreign Currency, at any time for the determination thereof, the amount of Dollars obtained by converting such Foreign Currency involved in such computation into Dollars at the spot rate for the purchase of Dollars with the applicable Foreign Currency as quoted by Citibank, N.A. (unless another

comparable financial institution is designated by the Company) in New York, New York at approximately 11:00 a.m. (New York time) on the date two business days prior to such determination.

"European Currency Units" has the meaning assigned to it from time to time by the Council of the European Communities.

"European Communities" means the European Economic Community, the European Coal and Steel Community and the European Atomic Energy Community.

"Event of Default" has the meaning specified in Section 6.01.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Floating Rate Security" means a Debt Security that provides for the payment of interest at a variable rate determined periodically by reference to an interest rate index specified pursuant to Section 2.03.

"Foreign Currency" means a currency issued by the government of any country other than the United States or a composite currency the value of which is determined by reference to the values of the currencies of any group of countries.

"GAAP" means generally accepted accounting principles in the United States as in effect as of the date on which the Debt Securities of the applicable series are issued, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession. All ratios and computations based on GAAP contained in this Indenture shall be computed in conformity with GAAP consistently applied.

"Global Security" means with respect to any series of Debt Securities issued hereunder, a Debt Security which is executed by the Issuer and authenticated and delivered by the Trustee to the Depositary or pursuant to the Depositary's instruction, all in accordance with this Indenture and any Indentures supplemental hereto, or resolution of the Board of Directors and set forth in an Officers' Certificate, which shall be registered in the name of the Depositary or its nominee and which shall represent, and shall be denominated in

an amount equal to the aggregate principal amount of, all the Outstanding Debt Securities of such series or any portion thereof, in either case having the same terms, including, without limitation, the same original issue date, date or

dates on which principal is due and interest rate or method of determining interest.

"Government Contract Lien" means any Lien required by any contract, statute, regulation or order in order to permit the Company or any of its Subsidiaries to perform any contract or subcontract made by it with or at the request of the United States or any State thereof or any department, agency or instrumentality of either or to secure partial, progress, advance or other payments by the Company or any of its Subsidiaries to the United States or any State thereof or any department agency or instrumentality of either pursuant to the provisions of any contract, statute, regulation or order.

"Guarantee" means: (i) with respect to Debt Securities issued by BFC, the irrevocable and unconditional guarantee by the Guarantor endorsed on such Debt Security or otherwise applicable pursuant to Article XIII; and (ii) any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness or other obligation of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person (x) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation of such

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other Person or (y) entered into for purposes of assuring in any other manner the obligee of such Indebtedness or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); provided, however, that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business, or any Guarantee given or made by the Guarantor or any of its Subsidiaries as a representation and warranty, indemnity or assurance of the payment or performance of any Indebtedness, obligation or liability of another Person arising in connection with securitization transactions, whole-loan sales, sales of credit card receivables or mortgage licensing requirements. The term "Guarantee" used as a verb has a corresponding meaning.

"Guarantor" means, with respect to Debt Securities issued by BFC, the Company.

"Hedging Obligations" of any Person means the obligations of such Person pursuant to any Interest Rate Protection Agreement, Currency Exchange Protection Agreement or Commodity Price Protection Agreement or other similar agreement.

"Holder," "Holder of Debt Securities" or other similar terms mean, with respect to a Registered Security, the Registered Holder.

"Incur" means issue, assume, Guarantee, incur or otherwise become liable for; provided, however, that any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be incurred by such Subsidiary at the time it becomes a Subsidiary. The terms "Incurred", "Incurrence" and "Incurring" shall each have a correlative meaning.

"Indebtedness" means, with respect to any Person on any date of determination (without duplication),

(i) the principal of Indebtedness of such Person for borrowed money;

(ii) the principal of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;

(iii) all Capitalized Lease Obligations of such Person;

(iv) all obligations of such Person to pay the deferred and unpaid purchase price of property or services (except Trade Payables);

(v) all obligations of such Person in respect of letters of credit, banker's acceptances or other similar instruments or credit transactions (including

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reimbursement obligations with respect thereto), other than obligations with respect to letters of credit securing obligations (other than obligations described in (i) through (iv) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the third business day following receipt by such Person of a demand for reimbursement following payment on the letter of credit;

(vi) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock (but excluding, in each case, any accrued dividends);

(vii) all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; provided, however, that the amount of such Indebtedness shall be the lesser of (A) the fair market value of such asset at such date of determination and (B) the amount of such Indebtedness of such other Persons; and

(viii) all Indebtedness of other Persons to the extent Guaranteed by such Person.

For purposes of this definition, the maximum fixed redemption, repayment or repurchase price of any Disqualified Stock or Preferred Stock that does not have

a fixed redemption, repayment or repurchase price shall be calculated in accordance with the terms of such Stock as if such Stock were redeemed, repaid or repurchased on any date on which Indebtedness shall be required to be determined pursuant to this Indenture; provided, however, that if such Stock is not then permitted to be redeemed, repaid or repurchased, the redemption, repayment or repurchase price shall be the book value of such Stock as reflected in the most recent financial statements of such Person. The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligation, of any contingent obligations at such date.

"Indenture" means this instrument as originally executed, or, if amended or supplemented as herein provided, as so amended or supplemented and shall include the form and terms of particular series of Debt Securities as contemplated hereunder, whether or not a supplemental Indenture is entered into with respect thereto.

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"Interest Rate Protection Agreement" means, in respect of any Person, any interest rate swap agreement, interest rate option agreement, interest rate cap agreement, interest rate collar agreement, interest rate floor agreement or other similar agreement or arrangement designed to protect such Person against fluctuations in interest rates.



"Issuer Order" means a written order of the Issuer, signed by its Chairman of the Board, President or any Vice President and by its Treasurer, Secretary, any Assistant Treasurer or any Assistant Secretary.

"Lien" means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

"Net Amount of Rent" as to any lease for any period means the aggregate amount of rent payable by the lessee with respect to such period after excluding amounts required to be paid on account of maintenance and repairs, insurance, taxes, assessments, water rates and similar charges. In the case of any lease that is terminable by the lessee upon the payment of a penalty, such net amount shall also include the amount of such penalty, but no rent shall be considered as payable under such lease subsequent to the first date upon which it may be so terminated.

"Officers' Certificate" means a certificate signed by the Chairman of the Board, the President or any Vice President and by the Treasurer, chief accounting officer, the Secretary or any Assistant Treasurer or Assistant Secretary of the Company or BFC, as applicable. Each such certificate shall include the statements provided for in Section 14.05, if applicable.

"Opinion of Counsel" means an opinion in writing signed by legal counsel for the Company or BFC, as applicable (which counsel may be an employee of the Company or BFC), or outside counsel for the Company or BFC. Each such opinion shall include the statements provided for in Section 14.05, if applicable.

"Original Issue Discount Debt Security" means any Debt Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration or acceleration of the maturity thereof pursuant to Section 6.01.

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

(i) Debt Securities of that series theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(ii) Debt Securities of that series for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any paying agent (other than the Company or BFC) in trust or set aside and segregated in trust by the Company or BFC (if the Company or BFC shall act as paying agent) for the holders of such Debt Securities; provided, that, if such Debt Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(iii) Debt Securities of that series which have been paid pursuant to Section 2.09 or in exchange for or in lieu of which other Debt Securities have been authenticated and delivered pursuant to this Indenture, other than any such Debt Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Debt Securities are held by a bona fide purchaser in whose hands such Debt Securities are valid obligations of the Issuer;

provided, however, that in determining whether the Holders of the requisite principal amount of the Outstanding Debt Securities of any series have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Debt Securities owned by the Company or BFC or any other obligor upon the Debt Securities or any Affiliate of the Company or BFC or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand,

authorization, direction, notice, consent or waiver, only Debt Securities which a responsible officer of the Trustee actually knows to be so owned shall be so disregarded. Debt 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 so to act with respect to such Debt Securities and that the pledgee is not the Company, BFC or any other obligor upon the Debt Securities or an Affiliate of the Company, BFC or of such other obligor. In determining whether the Holders of the requisite principal

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amount of outstanding Debt Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, the principal amount of an original Issue Discount Debt Security that shall be deemed to be Outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the maturity thereof pursuant to Section 6.01. In determining whether the Holders of the requisite principal amount of the Outstanding Debt Securities of any series have given any request, demand, authorization, direction, notice, consent or waiver hereunder, the principal amount of a Debt Security denominated in one or more foreign currencies or currency units that shall be deemed to be Outstanding for such purposes shall be the Dollar Equivalent, determined in the manner provided as contemplated by Section 2.03 on the date of original issuance of such Debt Security, of the principal amount (or, in the case of any Original Issue Discount Security, the Dollar Equivalent on the date of original issuance of such Security of the amount determined as provided in the preceding sentence above) of such Debt Security.

"pari passu", as applied to the ranking of any Indebtedness of a Person in relation to other Indebtedness of such Person, means that each such Indebtedness either (i) is not subordinate in right of payment to any Indebtedness or (ii) is subordinate in right of payment to the same Indebtedness as is the other, and is so subordinate to the same extent, and is not subordinate in right of payment to each other or to any Indebtedness as to which the other is not so subordinate.

"Permitted Liens" means, with respect to any Person, (a) pledges or deposits by such Person under worker's compensation laws, unemployment insurance laws, social security laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or bonds to secure performance, surety or appeal bonds to which such Person is a party or which are otherwise required of such Person, or deposits as security for contested taxes or import duties or for the payment of rent or other obligations of like nature, in each case Incurred in the ordinary course of business; (b) Liens imposed by law, such as carriers', warehousemen's, laborers', materialmen's, landlords', vendors', workmen's, operators', factors and mechanics liens, in each case for sums not yet due or being

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contested in good faith by appropriate proceedings; (c) Liens for taxes, assessments and other governmental charges or levies not yet delinquent or which are being contested in good faith by appropriate proceedings; (d) survey exceptions, encumbrances, easements or reservations of or with respect to, or rights of others for or with respect to, licenses, rights-of-way, sewers, electric and other utility lines and usages, telegraph and telephone lines, pipelines, surface use, operation of equipment, permits, servitudes and other similar matters, or zoning or other restrictions as to the use of real property or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Indebtedness and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person; (e) Liens existing on or provided for under the terms of agreements existing on the Issue Date (including, without limitation, under

the Credit Agreement); (f) Liens on property at the time the Company or any of its Subsidiaries acquired the property or the entity owning such property, including any acquisition by means of a merger or consolidation with or into the Company; provided, however, that any such Lien may not extend to any other property owned by the Company or any of its Subsidiaries' (g) Liens on any Principal Property, or any shares of stock or Indebtedness of any Subsidiary, acquired (including by way of merger or consolidation) after the date of the Indenture by the Company or any Subsidiary which are created contemporaneously with such acquisition, or within 24 months thereafter, to secure or provide for the payment or financing of any part of the purchase price thereof; (h) Liens on any property of CompuServe Corporation or any of its Subsidiaries, including any shares of stock or Indebtedness of any such Subsidiaries; (i) Liens arising in connection with the securitization of any mortgage loans owned by the Company or any of its Subsidiaries; (j) Liens arising in connection with the sale of any credit card receivables owned by the Company or any of its Subsidiaries; (k) Liens securing a Hedging Obligation so long as such Hedging Obligation is of the type customarily entered into for the purpose of limiting risk; (l) Purchase Money Liens; (m) Liens securing only Indebtedness of a Subsidiary of the Company to the Company or one or more wholly owned Subsidiaries of the Company; (n) Liens on any property to secure Indebtedness incurred in connection with the construction, installation or financing of pollution control or abatement facilities or other forms of industrial revenue bond financing or Indebtedness issued or Guaranteed by the United States, any state or any department, agency or instrumentality thereof; (o) Government Contract Liens; (p) Liens securing Indebtedness of joint ventures in which the Company or a Subsidiary has an interest to the extent such Liens are on property or assets of, such joint ventures; (q) Liens resulting from the deposit of funds or evidences of Indebtedness in trust for the purpose of defeasing Indebtedness of the Company or any of its Subsidiaries; (r) legal or equitable encumbrances deemed to exist by reason of negative pledges or the existence of any litigation or other legal proceeding and any related lis pendens filing (excluding any attachment prior to judgment lien or attachment lien in aid of execution on a judgment); (s) any attachment Lien being contested in good faith and by proceedings promptly initiated and diligently conducted, unless the attachment giving rise thereto will not, within

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sixty days after the entry thereof, have been discharged or fully bonded or will not have been discharged within sixty days after the termination of any such bond; (t) any judgment Lien, unless the judgment it secures will not, within

sixty days after the entry thereof, have been discharged or execution thereof stayed pending appeal, or will not have been discharged within sixty days after the expiration of any such stay; (u) Liens to banks arising from the issuance of letters of credit issued by such banks ("issuing banks") on the following: (i) any and all shipping documents, warehouse receipts, policies or certificates of insurance and other document accompanying or relative to drafts drawn under any credit, and any draft drawn thereunder (whether or not such documents, goods or other property be released to or upon the order of the Company or any Subsidiary under a security agreement or trust or bailee receipt or otherwise), and the proceeds of each and all of the foregoing; (ii) the balance of every deposit account, now or at the time hereafter existing, of the Company or any Subsidiary with the issuing banks, and any other claims of the Company or any Subsidiary against the issuing banks; and all property claims and demands and all rights and interests therein of the Company or any Subsidiary and all evidences thereof and all proceeds thereof which have been or at any time will be delivered to or otherwise come into the issuing bank's possession, custody or control, or into the possession, custody or control of any bailee for the issuing bank or of any of its agents or correspondents for the account of the issuing bank, for any purpose, whether or not the express purpose of being used by the issuing bank as collateral security or for the safekeeping or for any other or different purpose, the issuing bank being deemed to have possession or control of all of such property actually in transit to or from or set apart for the issuing bank, any bailee for the issuing bank or any of its correspondents for other acting in its behalf, it being understood that the receipt at any time by the issuing bank, or any of its bailees, agents or correspondents, or other security, of whatever nature, including cash, will not be deemed a waiver of any of the issuing bank's rights or power hereunder; (iii) all property shipped under or pursuant to or in connection with any credit or drafts drawn thereunder or in any way related thereto, and all proceeds thereof; (iv) all additions to and substitutions for any of the property enumerated above in this subsection; (v) rights of a common owner of any interest in property held by such Person; (w) any defects, irregularities or deficiencies in title to easements, rights-of-way

or other properties which do not in the aggregate materially adversely affect the value of such properties or materially impair their use in the operation of the business of such Person; and (x) Liens to secure any

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refinancing, refunding, extension, renewal or replacement (or successive refinancings, refundings, extensions, renewals or replacements), as a whole, or in part, of any indebtedness secured by any Lien referred to in the foregoing clauses (e) through (p); provided, however, that (i) such new Lien shall be limited to all or part of the same property that secured the original Lien (plus improvements on such property) and (ii) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (A) the outstanding principal amount or, if greater, committed amount of the indebtedness described under clauses (e) through (l) at the time the original Lien became a Permitted Lien under this Indenture and (B) an amount necessary to pay any fees and expenses, including premiums, related to such refinancing,

refunding, extension, renewal or replacement.

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

"Place of Payment" means, when used with respect to the Debt Securities of any series, the place or places where the principal of, and premium, if any, and interest on, the Debt Securities of that series are payable as specified pursuant to Section 2.03.

"Preferred Stock" as applied to the Capital Stock of any corporation, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such corporation, over shares of Capital Stock of any other class of such corporation.

"Principal Property" means, as of any date of determination, any property or assets owned by the Company or any Subsidiary other than any such property which, in the good faith opinion of the Board of Directors of the Company, is not of material importance to the business conducted by the Company and its Subsidiaries taken as a whole.

"Purchase Money Lien" means a Lien on property securing Indebtedness Incurred by the Company or any of its Subsidiaries to provide funds for all or any portion of the cost of acquiring, constructing, altering, expanding, improving or repairing such property or assets used in connection with such property.

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"Redeemable Stock" means, with respect to any Person, any Capital Stock which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event (i) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise, (ii) is convertible or exchangeable for Indebtedness (other than Preferred Stock) or Disqualified Stock or (iii) is redeemable at the option of the holder thereof, in whole or in part.

"Registered Holder" means the Person in whose name a Registered Security is registered in the Debt Security Register (as defined in Section 2.07(a)).

"Registered Security" means any Debt Security registered as to principal and interest in the Debt Security Register (as defined in Section

2.07(a)).

"Registrar" has the meaning set forth in Section 2.07(a).

"Representative" means the trustee, agent or representative (if any) for an issue of Indebtedness.

"responsible officer" when used with respect to the Trustee, means any Managing Director, Vice President, or any other officer of the Trustee performing functions similar to those performed by the persons who at the time shall be such officers, and any other officer of the Trustee to whom corporate trust matters are referred because of his knowledge of and familiarity with the particular subject.

"Restricted Subsidiary" means a Subsidiary of the Company which shall at the time, directly or indirectly, through one or more Subsidiaries or in combination with one or more Subsidiaries or the Company, own or lease a Principal Property.

"Secured Indebtedness" means any Indebtedness of the Company secured by a Lien.

"Securities Act" means the Securities Act of 1933, as amended.

"Senior Indebtedness" means, as to any series of Debt Securities subordinated pursuant to the provisions of Article XII, the Indebtedness of the Issuer identified as Senior Indebtedness in the resolution of the Board of Directors and accompanying Officers' Certificate or

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supplemental Indenture setting forth the terms, including as to subordination, of such series.

"Stated Maturity" means, with respect to any security, the date specified in such security as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the happening of any contingency beyond the control of the issuer unless such contingency has occurred).

"Subsidiary" of any Person means any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person, (ii) such Person and one or more Subsidiaries of such Person or (iii) one or more Subsidiaries of such Person.

"Temporary Cash Investments" means any of the following: (i) investments in U.S. Government Obligations maturing within 90 days of the date of acquisition thereof, (ii) investments in time deposit accounts, certificates of deposit and money market deposits maturing within 90 days of the date of acquisition thereof issued by a bank or trust company which is organized under the laws of the United States, any State thereof or any foreign country recognized by the United States having capital, surplus and undivided profits aggregating in excess of \$500,000 (or the Dollar Equivalent thereof) and whose long-term debt is rated "A" or higher according to Moody's Investors Service, Inc. (or such similar equivalent rating by at least one "nationally recognized statistical rating organization" (as defined in Rule 436 under the Securities Act)), (iii) repurchase obligations with a term of not more than 7 days for underlying securities of the types described in clause (i) above entered into with a bank meeting the qualifications described in clause (ii) above and (iv) investments in commercial paper, maturing not more than 90 days after the date of acquisition, issued by a corporation (other than an Affiliate of the Company or BFC) organized and in existence under the laws of the United States or any foreign country recognized by the United States with a rating at

the time as of which any investment therein is made of "P-1" (or higher) according to Moody's Investors Service, Inc. or "A-1" (or higher) according to Standard and Poor's Ratings Service, a division of the McGraw-Hill Companies, Inc.

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

"Trustee" initially means Bankers Trust Company and any other Person or Persons appointed as such from time to time pursuant to Section 7.08, and, subject to the provisions of Article VII, includes its or their successors and assigns. If at any time there is more than one such Person, "Trustee" as used with respect to the Debt Securities of any series shall mean the Trustee with respect to the Debt Securities of that series.

"Trust Indenture Act" (except as herein otherwise expressly provided) means the Trust Indenture Act of 1939 as in force at the date of this indenture as originally executed and, to the extent required by law, as amended.

"United States" means the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction.

"U.S. Government Obligations" means securities that are (x) direct obligations of the United States for the payment of which its full faith and credit is pledged or (y) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States, which, in either case, are not callable or redeemable at the option of the issuer thereof.

"Yield to Maturity" means the yield to maturity calculated at the time of issuance of a series of Debt Securities, or, if applicable, at the most recent redetermination of interest on such series and calculated in accordance with accepted financial practice.

SECTION 1.02. Incorporation by Reference of Trust Indenture Act. This Indenture is subject to the mandatory provisions of the Trust Indenture Act which are incorporated by reference in and made a part of this indenture. The following Trust Indenture Act terms have the following meanings:

"indenture securities" means the Debt Securities.

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"indenture security holder" means a Holder.

"indenture to be qualified" means this Indenture.

"indenture trustee" or "institutional trustee" means the Trustee.

"obligor" on the indenture securities means the Company and any other obligor on the Debt Securities.

All other Trust Indenture Act terms used in this Indenture that are defined by the Trust Indenture Act, reference to another statute or defined by rules of the Securities and Exchange Commission have the meanings assigned to them by such definitions.

SECTION 1.03. Rules of Construction. Unless the context otherwise requires:

- (1) a term has the meaning assigned to it;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (3) "or" is not exclusive;
- (4) "including" means including without limitation;
- (5) words in the singular include the plural and words in the plural include the singular;
- (6) if the applicable series of Debt Securities are subordinated pursuant to Article XII, unsecured indebtedness shall not be deemed to be subordinate or junior to Secured Indebtedness merely by virtue of its nature as unsecured indebtedness;
- (7) the principal amount of any noninterest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the issuer dated such date prepared in accordance with GAAP; and
- (8) the principal amount of any Preferred Stock shall be the greater of (i) the maximum liquidation value of such Preferred Stock or (ii) the maximum mandatory redemption or mandatory repurchase price with respect to such Preferred Stock.

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## ARTICLE II

### Debt Securities

SECTION 2.01. Forms Generally. The Debt Securities of each series shall be in substantially the form established without the approval of any Holder by or pursuant to a resolution of the Board of Directors of the Issuer 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 such letters, numbers or other marks of identification and such legends or endorsements placed thereon as the Issuer may deem appropriate (and, if not contained in a supplemental Indenture entered into in accordance with Article IX, as are not prohibited by the provisions of this Indenture) or as may be required or appropriate to comply with any law or with any rules made pursuant thereto or with any rules of any securities exchange on which such series of Debt Securities may be listed, or to conform to general usage, or as may, consistently herewith, be determined by the officers executing such Debt Securities as evidenced by their execution of the Debt Securities.

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

SECTION 2.02. Form of Trustee's Certificate of Authentication. The Trustee's Certificate of Authentication on all Debt Securities authenticated by the Trustee shall be in substantially the following form:

#### TRUSTEE'S CERTIFICATE OF AUTHENTICATION

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

-----  
As Trustee

By  
-----

Authorized Signature

SECTION 2.03. Principal Amount; Issuable in Series. The aggregate principal amount of Debt Securities

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which may be issued, executed, authenticated, delivered and outstanding under this Indenture is unlimited.

The Debt Securities may be issued in one or more series. There shall be established, without the approval of any Holders, in or pursuant to a resolution of the Board of Directors of the Issuer and set forth in an Officers' Certificate, or established in one or more Indentures supplemental hereto, prior to the issuance of Debt Securities of any series by the Issuer any or all of the following:

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

(2) any limit upon the aggregate principal amount of the Debt Securities of the series which may be authenticated and delivered under this Indenture (except for Debt Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Debt Securities of the series pursuant to this Article II);

(3) the date or dates on which the principal and premium, if any, of the Debt Securities of the series are payable;

(4) the rate or rates (which may be fixed or variable) at which the Debt Securities of the series shall bear interest, if any, or the method of determining such rate or rates, the date or dates from which such interest shall accrue, the interest payment dates on which such interest shall be payable, or the method by which such date will be determined, in the case of Registered Securities, the record dates for the determination of Holders thereof to whom such interest is payable, and the basis upon which interest will be calculated if other than that of a 360-day year of twelve thirty-day months;

(5) the Place or Places of Payment, if any, in addition to or instead of the corporate trust office of the Trustee where the principal of, premium, if any, and interest on, Debt Securities of the series shall be payable;

(6) the price or prices at which, the period or periods within which and the terms and conditions upon which Debt Securities of the series may be redeemed, in

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whole or in part, at the option of the Issuer or otherwise;

(7) the obligation, if any, of the Issuer to redeem, purchase or repay Debt Securities of the series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof, and the price or prices at which and the period or periods within which and the terms and conditions upon which Debt Securities of the series shall be



redeemed, purchased or repaid, in whole or in part, pursuant to such obligations;

(8) the terms, if any, upon which the Debt Securities of the series may be convertible into or exchanged for Common Stock, Preferred Stock (which may be represented by depositary shares), other Debt Securities or warrants for Common Stock, Preferred Stock or Indebtedness or other securities of any kind of the Company, BFC or any other obligor and the terms and conditions upon which such conversion or exchange shall be effected, including the initial conversion or exchange price or rate, the conversion or exchange period and any other provision in addition to or in lieu of those described herein;

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

(10) if the amount of principal of or any premium or interest on Debt Securities of the series may be determined with reference to an index or pursuant to a formula, the manner in which such amounts will be determined;

(11) if the principal amount payable at the Stated Maturity of Debt Securities of the series will not be determinable as of any one or more dates prior to such Stated Maturity, the amount which will be deemed to be such principal amount as of any such date for any purpose, including the principal amount thereof which will be due and payable upon any maturity other than the Stated Maturity or which will be deemed to be Outstanding as of any such date (or, in any such case, the manner in which such deemed principal amount is to be determined); and the manner of determining the equivalent thereof in the currency of the

United States of America for purposes of the definition of Dollar Equivalent;

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(12) any changes or additions to Article XI, including the addition of additional covenants that may be subject to the covenant defeasance option pursuant to Section 11.02(b)(ii);

(13) if other than such coin or Currency of the United States as at the time of payment is legal tender for payment of public and private debts, the coin or Currency or Currencies or units of two or more Currencies in which payment of the principal of and premium, if any, and interest on, Debt Securities of the series shall be payable;

(14) if other than the principal amount thereof, the portion of the principal amount of Debt Securities of the series which shall be payable upon declaration of acceleration of the maturity thereof pursuant to Section 6.01 or provable in bankruptcy pursuant to Section 6.02;

(15) the terms, if any, of the transfer, mortgage, pledge or assignment as security for the Debt Securities of the series of any properties, assets, moneys, proceeds, securities or other collateral, including whether certain provisions of the Trust Indenture Act are applicable and any corresponding changes to provisions of this Indenture as currently in effect;

(16) any addition to or change in the Events of Default with respect to the Debt Securities of the series and any change in the right of the Trustee or the Holders to declare the principal of and interest on, such Debt Securities due and payable;

(17) if the Debt Securities of the series shall be issued in whole or in part in the form of a Global Security or Securities, the terms and conditions, if any, upon which such Global Security or Securities may be exchanged in whole or in part for other individual Debt Securities in definitive registered form; and the Depositary for

such Global Security or Securities and the form of any legend or legends to be borne by any such Global Security or Securities in addition to or in lieu of the legend referred to in Section 2.15;

(18) any trustees, authenticating or paying agents, transfer agents or registrars;

(19) the applicability of, and any addition to or change in the covenants and definitions currently set

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forth in this Indenture or in the terms currently set forth in Article X, including conditioning any merger, conveyance, transfer or lease permitted by Article X upon the satisfaction of an Indebtedness coverage standard by the Company and Successor Company (as defined in Article X);

(20) the terms, if any, of any Guarantee of the payment of principal of, and premium, if any, and interest on, Debt Securities of the series, other than the Guarantee by the Guarantor of Debt Securities issued by BFC, and any corresponding changes to the provisions of this Indenture as currently in effect;

(21) the subordination, if any, of the Debt Securities of the series pursuant to Article XII and any changes or additions to Article XII;

(22) with regard to Debt Securities of the series that do not bear interest, the dates for certain required reports to the Trustee; and

(23) any other terms of the Debt Securities of the series (which terms shall not be prohibited by the provisions of this Indenture).

All Debt Securities of any one series appertaining thereto shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to such resolution of the Board of Directors of the Issuer and as set forth in such Officers' Certificate of the Issuer or in any such Indenture supplemental hereto.

SECTION 2.04. Execution of Debt Securities. The Debt Securities shall be signed on behalf of the Issuer by its Chairman of the Board, its Vice Chairman, its President or a Vice President and by its Secretary, an Assistant Secretary, a Treasurer or an Assistant Treasurer. Such signatures upon the Debt Securities may be the manual or facsimile signatures of the present or any future such authorized officers and may be imprinted or otherwise reproduced on the Debt Securities. The seal of the Issuer, if any, may be in the form of a facsimile thereof and may be impressed, affixed, imprinted or otherwise reproduced on the Debt Securities.

Only such Debt Securities as shall bear thereon a certificate of authentication substantially in the form hereinbefore recited, signed manually by the Trustee, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee

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upon any Debt Security executed by the Issuer shall be conclusive evidence that the Debt Security so authenticated has been duly authenticated and delivered hereunder.

In case any officer of the Issuer who shall have signed any of the Debt Securities shall cease to be such officer before the Debt Securities so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Issuer, such Debt Securities nevertheless may be authenticated and delivered or disposed of as though the Person who signed such Debt Securities had not ceased to be such officer of the Issuer; and any Debt Security may be signed on behalf of the Issuer by such Persons as, at the actual date of the execution of such Debt Security, shall be the proper officers of the Issuer, although at the date of such Debt Security or of the execution of this Indenture any such Person was not such officer.

SECTION 2.05. Authentication and Delivery of Debt Securities. At any time and from time to time after the execution and delivery of this Indenture, the Issuer may deliver Debt Securities of any series executed by the Issuer to the Trustee for authentication, and the Trustee shall thereupon authenticate and deliver said Debt Securities to or upon an Issuer Order. In authenticating such Debt Securities and accepting the additional responsibilities under this Indenture in relation to such Debt Securities, the Trustee shall be entitled to receive, and (subject to Section 7.01.) shall be fully protected in relying upon:

- (1) a copy of any resolution or resolutions of the Board of Directors of the Issuer, certified by the Secretary or Assistant Secretary of the Issuer, authorizing the terms of issuance of any series of Debt Securities;
- (2) an executed supplemental Indenture, if any;
- (3) an Officer's Certificate; and
- (4) an Opinion of Counsel prepared in accordance with Section 14.05 which shall also state:

(a) that the form of such Debt Securities has been established by or pursuant to a resolution of the Board of Directors of the Issuer or by a supplemental Indenture as permitted by Section 2.01 in conformity with the provisions of this Indenture;

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(b) that the terms of such Debt Securities have been established by or pursuant to a resolution of the Board of Directors of the Issuer or by a supplemental Indenture as permitted by Section 2.03 in conformity with the provisions of this Indenture;

(c) that such Debt Securities, when authenticated and delivered by the Trustee and issued by the Issuer in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and legally binding obligations of the Issuer, enforceable in accordance with their terms except as (i) the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally and other qualifications as do not materially affect the rights of Holders of Debt Securities and (ii) rights of acceleration and the availability of equitable remedies may be limited by equitable principles of general applicability;

(d) that the Issuer has the corporate power to issue such Debt Securities and has duly taken all necessary corporate action with respect to such issuance;

(e) that the issuance of such Debt Securities will not contravene the charter or by-laws of the Issuer or result in any material violation of any of the terms or provisions of any law or regulation or of any indenture, mortgage or other agreement known to such counsel by which the Issuer is bound;

(f) that authentication and delivery of such Debt Securities and the execution and delivery of any supplemental Indenture will not violate the terms of this Indenture; and

(g) such other matters as the Trustee may reasonably request.

Such Opinion of Counsel need express no opinion as to whether a court in the United States would render a money judgment in a currency other than that of the United States.

The Trustee shall have the right to decline to authenticate and deliver any Debt Securities under this Section 2.05 if the Trustee, being advised by counsel,

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determines that such action may not lawfully be taken or if the Trustee in good faith by its board of directors or trustees, executive committee or a trust committee of directors, trustees or vice presidents shall determine that such action would expose the Trustee to personal liability to existing Holders.

The Trustee may appoint an authenticating agent reasonably acceptable to the Issuer to authenticate Debt Securities of any series. Unless limited by the terms of such appointment, an authenticating agent may authenticate Debt Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as any Registrar, paying agent or agent for service of notices and demands.

Unless otherwise provided in the form of Debt Security for any series, each Debt Security shall be dated the date of its authentication.

SECTION 2.06. Denomination of Debt Securities. Unless otherwise provided in the form of Debt Security for any series, the Debt Securities of each series shall be issuable only as Registered Securities in such denominations as shall be specified or contemplated by Section 2.03. In the absence of any such specification with respect to the Debt Securities of any series, the Debt Securities of such series shall be issuable in denominations of \$1,000 and any integral multiple thereof.

SECTION 2.07. Registration of Transfer and Exchange. (a) BFC shall keep or cause to be kept a register for each series of Registered Securities issued hereunder (hereinafter collectively referred to as the "Debt Security Register"), in which, subject to such reasonable regulations as it may prescribe, BFC shall provide for the registration of Registered Securities and the transfer of Registered Securities as in this Article II provided. At all reasonable times the Debt Security Register shall be open for inspection by the Trustee. Subject to Section 2.15, upon due presentment for registration of transfer of any Registered Security at any office or agency to be maintained by each Issuer in accordance with the provisions of Section 4.02, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Registered Security or Registered Securities of authorized denominations for a like aggregate principal amount.

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Unless and until otherwise determined by the Issuer by resolution of its Board of Directors, the register of each Issuer for the purpose of registration, exchange or registration of transfer of the Registered Securities shall be kept at the corporate trust office of the Trustee and, for this purpose, the Trustee shall be designated "Registrar".

Registered Securities of any series (other than a Global Security) may be exchanged for a like aggregate principal amount of Registered Securities of the same series of other authorized denominations. Subject to Section 2.15, Registered Securities to be exchanged shall be surrendered at the office or agency to be maintained by the Issuer as provided in Section 4.02, and the Issuer shall execute and the Trustee shall authenticate and deliver in

exchange therefor the Registered Security or Registered Securities which the Holder making the exchange shall be entitled to receive.

(b) All Registered Securities presented or surrendered for registration of transfer, exchange or payment shall (if so required by the Issuer, the Trustee or the Registrar) be duly endorsed or be accompanied by a written instrument or instruments of transfer, in form satisfactory to the Issuer, the Trustee and the Registrar, duly executed by the Registered Holder or his attorney duly authorized in writing.

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

No service charge shall be made for any exchange or registration of transfer of Debt Securities (except as provided by Section 2.09), but the Issuer may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto, other than those expressly provided in this Indenture to be made at the Issuer's own expense or without expense or without charge to the Holders.

The Issuer shall not be required (a) to issue, register the transfer of or exchange any Debt Securities for a period of 15 days next preceding any mailing of notice of redemption of Debt Securities of such series or (b) to register the transfer of or exchange any Debt Securities selected, called or being called for redemption.

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Prior to the due presentation for registration of transfer of any Debt Security, the Issuer, the Trustee, any paying agent or any Registrar may deem and treat the Person in whose name a Debt Security is registered as the absolute owner of such Debt Security for the purpose of receiving payment of principal of, and premium, if any, and interest on, such Debt Security and for all other purposes whatsoever, whether or not such Debt Security is overdue, and none of the Issuer, the Trustee, any paying agent or Registrar shall be affected by notice to the contrary.

None of the Issuer, the Trustee, any agent of the Trustee, any paying agent or any 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 Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

SECTION 2.08. Temporary Debt Securities. Pending the preparation of definitive Debt Securities of any series, the Issuer may execute and the Trustee shall authenticate and deliver temporary Debt Securities (printed, lithographed, photocopied, typewritten or otherwise produced) of any authorized denomination, and substantially in the form of the definitive Debt Securities in lieu of which they are issued, in registered form and with such omissions, insertions and variations as may be appropriate for temporary Debt Securities, all as may be determined by the Issuer with the concurrence of the Trustee. Temporary Debt Securities may contain such reference to any provisions of this Indenture as may be appropriate. Every temporary Debt Security shall be executed by the Issuer and be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with like effect, as the definitive Debt Securities.

If temporary Debt Securities of any series are issued, the Issuer will cause definitive Debt Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Debt Securities

of such series, the temporary Debt Securities of such series shall be exchangeable for definitive Debt Securities of such series upon surrender of the temporary Debt Securities of such series at the office or agency of the Issuer at a Place of Payment for such series, without charge to the Holder thereof, except as provided in Section 2.07 in connection with a transfer, and upon surrender for cancellation of any one or more temporary Debt Securities of any series, the Issuer shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of

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definitive Debt Securities of the same series of authorized denominations and of like tenor. Until so exchanged, temporary Debt Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Debt Securities of such series, except as otherwise specified as contemplated by Section 2.03(17) with respect to the payment of interest on Global Securities in temporary form.

Upon any exchange of a portion of a temporary Global Security for a definitive Global Security or for the individual Debt Securities represented thereby pursuant to Section 2.07 or this Section 2.08, the temporary Global Security shall be endorsed by the Trustee to reflect the reduction of the principal amount evidenced thereby, whereupon the principal amount of such temporary Global Security shall be reduced for all purposes by the amount so exchanged and endorsed.

SECTION 2.09. Mutilated, Destroyed, Lost or Stolen Debt Securities. If (i) any mutilated Debt Security is surrendered to the Trustee at its corporate trust office (in the case of Registered Securities) or (ii) the Issuer and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Debt Security, and there is delivered to the Issuer and the Trustee such security or indemnity as may be required by them to save each of them and any paying agent harmless, and neither the Issuer nor the Trustee receives notice that such Debt Security has been acquired by a bona fide purchaser, then the Issuer shall execute and, upon an Issuer Order, the Trustee shall authenticate and deliver, in exchange for or in lieu of any such

mutilated, destroyed, lost or stolen Debt Security, a new Debt Security of the same series of like tenor, form, terms and principal amount, bearing a number not contemporaneously Outstanding. Upon the issuance of any substituted Debt Security, the Issuer 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 connected therewith. In case any Debt Security which has matured or is about to mature or which has been called for redemption shall become mutilated or be destroyed, lost or stolen, the Issuer may, instead of issuing a substituted Debt Security, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Debt Security) if the applicant for such payment shall furnish the Issuer and the Trustee with such security or indemnity as either may require to save it harmless from all risk, however remote, and, in case of destruction, loss or theft, evidence to the satisfaction of

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the Issuer and the Trustee of the destruction, loss or theft of such Debt Security and of the ownership thereof.

Every substituted Debt Security of any series issued pursuant to the provisions of this Section 2.09 by virtue of the fact that any Debt Security is destroyed, lost or stolen shall constitute an original additional contractual obligation of the Issuer, whether or not the destroyed, lost or stolen Debt Security shall be found at any time, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Debt Securities of that series duly issued hereunder. All Debt Securities shall be held and owned upon the express condition that the foregoing provisions

are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Debt Securities, and shall preclude any and all other rights or remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

SECTION 2.10. Cancellation of Surrendered Debt Securities. All Debt Securities surrendered for payment, redemption, registration of transfer or exchange shall, if surrendered to the Issuer or any paying agent or a Registrar, be delivered to the Trustee for cancellation by it, or if surrendered to the Trustee, shall be canceled by it, and no Debt Securities shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. All canceled Debt Securities held by the Trustee shall be destroyed (subject to the record retention requirements of the Exchange Act) and certification of their destruction delivered to the Issuer, unless otherwise directed. On request of the Issuer, the Trustee shall deliver to the Issuer canceled Debt Securities held by the Trustee. If the Issuer shall acquire any of the Debt Securities, however, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented thereby unless and until the same are delivered or surrendered to the Trustee for cancellation. The Issuer may not issue new Debt Securities to replace Debt Securities it has redeemed, paid or delivered to the Trustee for cancellation.

SECTION 2.11. Provisions of the Indenture and Debt Securities for the Sole Benefit of the Parties and the Holders. Nothing in this Indenture or in the Debt Securities, expressed or implied, shall give or be construed to give to any Person, other than the parties hereto, the Holders or any Registrar or paying agent, any legal or

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equitable right, remedy or claim under or in respect of this Indenture, or under any covenant, condition or provision herein contained; all its covenants, conditions and provisions being for the sole benefit of the parties hereto, the Holders and any Registrar and paying agents.

SECTION 2.12. Payment of Interest; Rights Preserved. (a) Interest on any Registered Security that is payable and is punctually paid or duly provided for on any interest payment date shall be paid to the Person in whose name such Registered Security is registered at the close of business on the regular record date for such interest notwithstanding the cancellation of such Registered Security upon any transfer or exchange subsequent to the regular record date. Payment of interest on Registered Securities shall be made at the corporate trust office of the Trustee (except as otherwise specified pursuant to Section 2.03), or at the option of the Issuer, by check mailed to the address of the Person entitled thereto as such address shall appear in the Debt Security Register or, if provided pursuant to Section 2.03 and in accordance with arrangements satisfactory to the Trustee, at the option of the Registered Holder by wire transfer to an account designated by the Registered Holder.

(b) Subject to the foregoing provisions of this Section 2.12 and Section 2.17, each Debt Security of a particular series delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Debt Security of the same series shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Debt Security.

SECTION 2.13. Securities Denominated in Foreign Currencies. (a) Except as otherwise specified pursuant to Section 2.03 for Registered Securities of any series, payment of the principal of, and premium, if any, and interest on, Registered Securities of such series will be made in Dollars.

(b) For the purposes of calculating the principal amount of Debt Securities of any series denominated in a Foreign Currency or in units of two or more Foreign Currencies (including European Currency Units) for any purpose under this Indenture, the principal amount of such Debt Securities at any time Outstanding shall be deemed to be the Dollar Equivalent of such principal amount as of the date of any such calculation.

In the event any Foreign Currency or Currencies or units of two or more Currencies in which any payment with

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respect to any series of Debt Securities may be made ceases to be a freely convertible Currency on United States Currency markets, for any date thereafter on which payment of principal of, or premium, if any, or interest on, the Debt Securities of a series is due, the Issuer shall select the Currency of payment for use on such date, all as provided in the Debt Securities of such series. In such event, the Issuer shall, as provided in the Debt Securities of such series, notify the Trustee of the Currency which it has selected to constitute the funds necessary to meet the Issuer's obligations on such payment date and of the amount of such Currency to be paid. Such amount shall be determined as provided in the Debt Securities of such series. The payment to the Trustee with respect to such payment date shall be made by the Issuer solely in the Currency so selected.

SECTION 2.14. Wire Transfers. Notwithstanding any other provision to the contrary in this Indenture, the Issuer may make any payment of monies required to be deposited with the Trustee on account of principal of, or premium, if any, or interest on, the Debt Securities (whether pursuant to optional or mandatory redemption payments, interest payments or otherwise) by wire transfer of immediately available funds to an account designated by the Trustee on or before the date such moneys are to be paid to the Holders of the Debt Securities in accordance with the terms hereof.

SECTION 2.15. Securities Issuable in the Form of a Global Security. (a) If the Issuer shall establish pursuant to Sections 2.01 and 2.03 that the Debt Securities of a particular series are to be issued in whole or in part in the form of one or more Global Securities, then the Issuer shall execute and the Trustee or its agent shall, in accordance with Section 2.05, authenticate and deliver, such Global Security or Securities, which (i) shall represent, and shall be denominated in an amount equal to the aggregate principal amount of, the Outstanding Debt Securities of such series to be represented by such Global Security or Securities, or such portion thereof as the Issuer shall specify in an Officers' Certificate, (ii) shall be registered in the name of the Depository for such Global Security or securities or its nominee, (iii) shall be delivered by the Trustee or its agent to the Depository or pursuant to the Depository's instruction and (iv) shall bear a legend substantially to the following effect: "Unless and until it is exchanged in whole or in part for the individual Debt Securities represented hereby, this Global Security may not be transferred except as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository

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to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository", or such other legend as may then be required by the Depository for such Global Security or Securities.

(b) Notwithstanding any other provision of this Section 2.15 or of Section 2.07 to the contrary, and subject to the provisions of paragraph (c) below, unless the terms of a Global Security expressly permit such Global Security to be exchanged in whole or in part for definitive Debt Securities in registered form, a Global Security may be transferred, in whole but not in part and in the manner provided in Section 2.07, only by the Depository to a nominee of the Depository for such Global Security, or by a nominee of the Depository to the Depository or another nominee of the Depository, or by the Depository or a nominee of the Depository to a successor Depository for such Global Security selected or approved by the Issuer, or to a nominee of such successor Depository.



(c) (i) If at any time the Depository for a Global Security or Securities notifies the Issuer that it is unwilling or unable to continue as Depository for such Global Security or Securities or if at any time the Depository for the Debt Securities for such series shall no longer be eligible or in good standing under the Exchange Act or other applicable statute, rule or regulation, the Issuer shall appoint a successor Depository with respect to such Global Security or Securities. If a successor Depository for such Global Security or Securities is not appointed by the Issuer within 90 days after the Issuer receives such notice or becomes aware of such ineligibility, the Issuer shall execute, and the Trustee or its agent, upon receipt of an Issuer Order for the authentication and delivery of such individual Debt Securities of such series in exchange for such Global Security, will authenticate and deliver, individual Debt Securities of such series of like tenor and terms in definitive form in an aggregate principal amount equal to the principal amount of the Global Security in exchange for such Global Security or securities.

(ii) The Issuer may at any time and in its sole discretion determine that the Debt Securities of any series or portion thereof issued or issuable in the form of one or more Global Securities shall no longer be represented by such Global Security or Securities. In such event the Issuer will execute, and the Trustee, upon receipt of an Issuer Order for the authentication and delivery of individual Debt Securities of such series in exchange in whole or in part for such Global Security, will authenticate

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and deliver individual Debt Securities of such series of like tenor and terms in definitive form in an aggregate principal amount equal to the principal amount of such series or portion thereof in exchange for such Global Security or Securities.

(iii) If specified by the Issuer pursuant to Sections 2.01 and 2.03 with respect to Debt Securities issued or issuable in the form of a Global Security, the Depository for such Global Security may surrender such Global Security in exchange in whole or in part for individual Debt Securities of such series of like tenor and terms in definitive form on such terms as are acceptable to the Issuer, the Trustee and such Depository. Thereupon the Issuer shall execute, and the Trustee or its agent upon receipt of an Issuer Order for the authentication and delivery of definitive Debt Securities of such series shall authenticate and deliver, without service charge, (1) to each Person specified by such Depository a new Debt Security or Securities of the same series of like tenor and terms and of any authorized denomination as requested by such Person in aggregate principal amount equal to and in exchange for such Persons beneficial interest in the Global Security; and (2) to such Depository a new Global Security of like tenor and terms and in an authorized denomination equal to the difference, if any, between the principal amount of the surrendered Global Security and the aggregate principal amount of Debt Securities delivered to Holders thereof.

(iv) In any exchange provided for in any of the preceding three paragraphs, the Issuer will execute and the Trustee or its agent will authenticate and deliver individual Debt Securities. Upon the exchange of the entire principal amount of a Global Security for individual Debt Securities, such Global Security shall be canceled by the Trustee or its agent. Except as provided in the preceding paragraph, Registered Securities issued in exchange for a Global Security pursuant to this Section 2.15 shall be registered in such names and in such authorized denominations as the Depository for such Global Security, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee or the Registrar. The Trustee or the Registrar shall deliver such Registered Securities to the Persons in whose names such Registered Securities are so registered.

(v) Payments in respect of the principal of and interest on any Debt Securities registered in the name of the Depository or its nominee will be payable to the Depository or such nominee in its capacity as the registered owner of such Global Security. The Issuer and the Trustee

may treat the Person in whose name the Debt Securities, including the Global Security, are registered as the owner thereof for the purpose of receiving such payments and for any and all other purposes whatsoever. None of the Issuer, the Trustee, any Registrar, the paying agent or any agent of the Company or the Trustee will have any responsibility or liability for (a) any aspect of the records relating to or payments made on account of the beneficial ownership interests of the Global Security by the Depository or its nominee or any of the Depository's direct or indirect participants, or for maintaining, supervising or reviewing any records of the Depository, its nominee or any of its direct or

indirect participants relating to the beneficial ownership interests of the Global Security, (b) the payments to the beneficial owners of the Global Security of amounts paid to the Depository or its nominee, or (c) any other matter relating to the actions and practices of the Depository, its nominee or any of its direct or indirect participants. None of the Issuer, the Trustee or any such agent will be liable for any delay by the Depository, its nominee, or any of its direct or indirect participants in identifying the beneficial owners of the Debt Securities, and the Issuer and the Trustee may conclusively rely on, and will be fully protected in relying on, instructions from the Depository or its nominee for all purposes (including with respect to the registration and delivery, and the respective principal amounts, of the Debt Securities to be issued).

SECTION 2.16. Medium Term Securities. Notwithstanding any contrary provision herein, if all Debt Securities of a series are not to be originally issued at one time, it shall not be necessary for the Issuer to deliver to the Trustee an Officers' Certificate, resolutions of its Board of Directors, supplemental Indenture, Opinion of Counsel or written order or any other document otherwise required pursuant to Section 2.01, 2.03, 2.05 or 14.05 at or prior to the time of authentication of each Debt Security of such series if such documents are delivered to the Trustee or its agent at or prior to the authentication upon original issuance of the first such Debt Security of such series to be issued; provided, that any subsequent request by the Issuer to the Trustee to authenticate Debt Securities of such series upon original issuance shall constitute a representation and warranty by the Issuer that, as of the date of such request, the statements made in the Officers' Certificate delivered pursuant to Section 2.05 or 14.05 shall be true and correct as if made on such date and that the Opinion of Counsel delivered at or prior to such time of authentication of an original issuance of Debt Securities shall specifically state that it shall relate to all subsequent issuances of Debt Securities of such series that

are identical to the Debt Securities issued in the first issuance of Debt Securities of such series.

An Issuer Order delivered by the Issuer to the Trustee in the circumstances set forth in the preceding paragraph, may provide that Debt Securities which are the subject thereof will be authenticated and delivered by the Trustee or its agent on original issue from time to time upon the telephonic or written order of Persons designated in such written order (any such telephonic instructions to be promptly confirmed in writing by such Person) and that such Persons are authorized to determine, consistent with the Officers' Certificate, supplemental Indenture or resolution of the Board of Directors relating to such written order, such terms and conditions of such Debt Securities as are specified in such Officers' Certificate, supplemental Indenture or resolution.

SECTION 2.17. Defaulted Interest. Any interest on any Debt Security of a particular series which is payable, but is not punctually paid or duly provided for, on the dates and in the manner provided in the Debt

Securities of such series and in this Indenture (herein called "Defaulted Interest") shall forthwith cease to be payable to the Registered Holder thereof on the relevant record date by virtue of having been such Registered Holder, and such Defaulted Interest may be paid by the Issuer, at its election in each case, as provided in clause (i) or (ii) below:

(i) The Issuer may elect to make payment of any Defaulted Interest to the Persons in whose names the Registered Securities of such series 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 Issuer shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each such Registered Security of such series and the date of the proposed payment, and at the same time the Issuer 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 days and not less than 10 days prior to the date of the proposed

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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 Issuer of such special record date and, in the name and at the expense of the Issuer, 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 each Holder thereof at its 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 so mailed, such Defaulted interest shall be paid to the Persons in whose names the Registered Securities of such series are registered at the close of business on such special record date.

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

SECTION 2.18. Judgments. The Issuer may provide pursuant to Section 2.03 for Debt Securities of any series that (a) the obligation, if any, of the Issuer to pay the principal of, and premium, if any, and interest on, the Debt Securities of any series in a Foreign Currency or Dollars (the "Designated Currency") as may be specified pursuant to Section 2.03 is of the essence and agrees that, to the fullest extent possible under applicable law, judgments in respect of Debt Securities of such series shall be given in the Designated Currency; (b) the obligation of the Issuer to make payments in the Designated Currency of the principal of, and premium, if any, and interest on, such Debt Securities shall, notwithstanding any payment in any other Currency (whether pursuant to a judgment or otherwise), be discharged only to the extent of the amount in the Designated Currency that the Holder receiving such payment may, in accordance with normal banking procedures, purchase with the sum paid in such other Currency (after any premium and cost exchange) on the business day in the country of issue of the Designated Currency or in the international banking community (in the case of a composite Currency) immediately following the day on which such Holder receives such payment; (c) if the amount in the Designated Currency

that may be so purchased for any reason falls short of the amount originally due, the Company shall pay such additional amounts as may be necessary to compensate for such shortfall; and (d) any obligation of the Issuer not discharged by such payment shall be due as a separate and independent obligation and, until discharged as provided herein, shall continue in full force and effect.

SECTION 2.19. Form of Notation of Guarantees. H&R Block, Inc., a Missouri corporation (the "Guarantor", which term includes any successor under the Indenture (the "Indenture") referred to in the Debt Security on which this notation is endorsed) has unconditionally guaranteed, pursuant to the terms of the Guarantees contained in Article XIII of the Indenture, the due and punctual payment of the principal of and any premium and interest on this Debt Security, when and as the same shall become due and payable, whether at the Stated Maturity, by declaration of acceleration, call for redemption or otherwise, in accordance with the terms of this Debt Security and the Indenture.

The obligations of the Guarantor to the Holders of the Securities and to the Trustee pursuant to the Guarantees and the Indenture are expressly set forth in Article XIII of the Indenture, and reference is hereby made to such Article and Indenture for the precise terms of the Guarantees.

The Guarantees shall not be valid or obligatory for any purpose until the certificate of authentication on the Debt Security upon which this notation of the Guarantees is endorsed shall have been executed by the Trustee under the Indenture by the manual signature of one of its authorized signatories.

### ARTICLE III

#### Redemption of Debt Securities

SECTION 3.01. Applicability of Article. The provisions of this Article shall be applicable to the Debt Securities of any series which are redeemable before their Stated Maturity except as otherwise specified as contemplated by Section 2.03 for Debt Securities of such series.

SECTION 3.02. Notice of Redemption; Selection of Debt Securities. In case the Issuer shall desire to exercise the right to redeem all or, as the case may be, any part of the Debt Securities of any series in accordance with

their terms, a resolution of the Board of Directors of the Issuer or a supplemental Indenture, the Issuer shall fix a date for redemption and shall give notice of such redemption at least 30 and not more than 60 days prior to the date fixed for redemption to the Holders of Debt Securities of such series so to be redeemed as a whole or in part, in the manner provided in Section 14.03. The notice if given in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, failure to give such notice or any defect in the notice to the Holder of any Debt Security of a series designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Debt Security of such series.

Each such notice of redemption shall specify the date fixed for redemption, the redemption price at which Debt Securities of such series are to be redeemed, the Place or Places of Payment that payment will be made upon presentation and surrender of such Debt Securities, that any interest accrued to the date fixed for redemption will be paid as specified in said notice, that the redemption is for a sinking fund payment (if applicable), that, if BFC defaults on making such redemption payment or if the Debt Securities of that series are subordinated pursuant to the terms of Article XII the paying agent is prohibited from making such payment pursuant to the terms of this Indenture, that on and

after said date any interest thereon or on the portions thereof to be redeemed will cease to accrue, that in the case of Original Issue Discount Securities original issue discount accrued after the date fixed for redemption will cease to accrue, the terms of the Debt Securities of that series pursuant to which the Debt Securities of that series are being redeemed and that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Debt Securities of that series. If less than all the Debt Securities of a series are to be redeemed, the notice of redemption shall specify the CUSIP numbers of the Debt Securities of that series to be redeemed. In case any Debt Security of a series is to be redeemed in part only, the notice of redemption shall state the portion of the principal amount thereof

to be redeemed and shall state that on and after the date fixed for redemption, upon surrender of such Debt Security, a new Debt Security or Debt Securities of that series in principal amount equal to the unredeemed portion thereof.

At least 60 days before the redemption date unless the Trustee consents to a shorter period, the Issuer shall give notice to the Trustee of the redemption date, the

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principal amount of Debt Securities to be redeemed and the series and terms of the Debt Securities pursuant to which such redemption will occur. Such notice shall be accompanied by an Officers' Certificate and an Opinion of Counsel from the Issuer to the effect that such redemption will comply with the conditions herein. If fewer than all the Debt Securities of a series are to be redeemed, the record date relating to such redemption shall be selected by the Issuer and given to the Trustee, which record date shall be not less than 15 days after the date of notice to the Trustee.

On or prior to the redemption date for any Registered Securities, the Issuer shall deposit with the Trustee or with a paying agent (or, if the Company or BFC is acting as paying agent, segregate and hold in trust) an amount of money in the Currency in which such Debt Securities are denominated (except as provided pursuant to Section 2.03) sufficient to pay the redemption price of such Registered Securities or any portions thereof that are to be redeemed on that date.

If less than all the Debt Securities of like tenor and terms of a series are to be redeemed (other than pursuant to mandatory sinking fund redemptions) the Trustee shall select, in such manner as in its sole discretion it shall deem appropriate and fair, the Debt Securities of that series or portions thereof (in multiples of \$1,000) to be redeemed. In any case where more than one Registered Security of such series is registered in the same name, the Trustee in its discretion may treat the aggregate principal amount so registered as if it were represented by one Registered Security of such series. The Trustee shall promptly notify the Issuer in writing of the Debt Securities selected for redemption and, in the case of any Debt Securities selected for partial redemption, the principal amount thereof to be redeemed. If any Debt Security called for redemption shall not be so paid upon surrender thereof on such redemption date, the principal, premium, if any, and interest shall bear interest until paid from the redemption date at the rate borne by the Debt Securities of that series. If less than all the Debt Securities of unlike tenor and terms of a series are to be redeemed, the particular Debt Securities to be redeemed shall be selected by the Issuer. Provisions of this Indenture that apply to Debt Securities called for redemption also apply to portions of Debt Securities called for redemption.

SECTION 3.03. Payment of Debt Securities Called for Redemption. If notice of redemption has been given as provided in Section 3.02, the Debt Securities or portions of

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Debt Securities of the series with respect to which such notice has been given shall become due and payable on the date and at the Place or Places of Payment stated in such notice at the applicable redemption price, together with any interest accrued to the date fixed for redemption, and on and after said date (unless the Issuer shall default in the payment of such Debt Securities at the applicable redemption price, together with any interest accrued to said date) any interest on the Debt Securities or portions of Debt Securities of any series so called for redemption shall cease to accrue and any original issue discount in the case of Original Issue Discount Securities shall cease to accrue. On presentation and surrender of such Debt Securities at the Place or Places of Payment in said notice specified, the said Debt Securities or the specified portions thereof shall be paid and redeemed by the Issuer at the applicable redemption price, together with any interest accrued thereon to the date fixed for redemption.

Any Debt Security that is to be redeemed only in part shall be surrendered at the corporate trust office or such other office or agency of the Issuer as is specified pursuant to Section 2.03 by, with, if the Issuer, the Registrar or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Issuer, the Registrar and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing, and the Issuer shall execute, and the Trustee shall authenticate and deliver to the Holder of such Debt Security without service charge, a new Debt Security or Debt Securities of the same series, of like tenor and form, of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Debt Security so surrendered; except that if a Global Security is so surrendered, the Issuer shall execute, and the Trustee shall authenticate and deliver to the Depository for such Global Security, without service charge, a new Global Security in a denomination equal to and in exchange for the unredeemed portion of the principal of the Global Security so surrendered. In the case of a Debt Security providing appropriate space for such notation, at the option of the Holder thereof, the Trustee, in lieu of delivering a new Debt Security or Debt Securities as aforesaid, may make a notation on such Debt Security of the payment of the redeemed portion thereof.

SECTION 3.04. Mandatory and Optional Sinking Funds. The minimum amount of any sinking fund payment provided for by the terms of Debt Securities of any series, resolution of the Board of Directors or a supplemental

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Indenture is herein referred to as a "mandatory sinking fund payment", and any payment in excess of such minimum amount provided for by the terms of Debt Securities of any series, resolution of the Board of Directors or a supplemental Indenture is herein referred to as an "optional sinking fund payment".

In lieu of making all or any part of any mandatory sinking fund payment with respect to any Debt Securities of a series in cash, the Issuer may at its option (a) deliver to the Trustee Debt Securities of that series theretofore purchased or otherwise acquired by the Issuer or (b) receive credit for the principal amount of Debt Securities of that series which have been redeemed either at the election of the Issuer pursuant to the terms of such Debt Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Debt Securities, resolution or supplemental Indenture; provided, however, that such Debt Securities have not been previously so credited. Such Debt Securities shall be received and credited for such purpose by the Trustee at the redemption price specified in such Debt Securities, resolution or supplemental Indenture for redemption through operation of the sinking fund and the amount of such mandatory sinking fund payment shall be reduced accordingly.

SECTION 3.05. Redemption of Debt Securities for Sinking Fund. Not less than 60 days prior to each sinking fund payment date for any series of Debt Securities, the Issuer will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms of that series, any resolution or supplemental Indenture, the portion thereof, if any, which is to be satisfied by payment of cash in the

Currency in which the Debt Securities of such series are denominated (except as provided pursuant to Section 2.03) and the portion thereof, if any, which is to be satisfied by delivering and crediting Debt Securities of that series pursuant to this Section 3.05 (which Debt Securities, if not previously redeemed, will accompany such certificate) and whether the Issuer intends to exercise its right to make any permitted optional sinking fund payment with respect to such series. Such certificate shall also state that no Event of Default has occurred and is continuing with respect to such series. Such certificate shall be irrevocable and upon its delivery the Issuer shall be obligated to make the cash payment or payments therein referred to, if any, on or before the next succeeding sinking fund payment date. Failure of the Issuer to deliver such certificate (or to deliver the Debt Securities specified in this paragraph) shall not constitute a Default,

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but such failure shall require that the sinking fund payment due on the next succeeding sinking fund payment date for that series shall be paid entirely in cash and shall be sufficient to redeem the principal amount of such Debt Securities subject to a mandatory sinking fund payment without the option to deliver or credit Debt Securities as provided in this Section 3.05 and without

the right to make any optional sinking fund payment, if any, with respect to such series.

Any sinking fund payment or payments (mandatory or optional) made in cash plus any unused balance of any preceding sinking fund payments made in cash which shall equal or exceed \$100,000 (or a lesser sum if the Issuer shall so request) with respect to the Debt Securities of any particular series shall be applied by the Trustee on the sinking fund payment date on which such payment is made (or, if such payment is made before a sinking fund payment date, on the sinking fund payment date following the date of such payment) to the redemption of such Debt Securities at the Redemption Price specified in such Debt Securities, resolution or supplemental Indenture for operation of the sinking fund together with any accrued interest to the date fixed for redemption. Any sinking fund moneys not so applied or allocated by the Trustee to the redemption of Debt Securities shall be added to the next cash sinking fund payment received by the Trustee for such series and, together with such payment, shall be applied in accordance with the provisions of this Section 3.05. Any and all sinking fund moneys with respect to the Debt Securities of any particular series held by the Trustee on the last sinking fund payment date with respect to Debt Securities of such series and not held for the payment or redemption of particular Debt Securities 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 Debt Securities of that series at its Stated Maturity.

The Trustee shall select the Debt Securities to be redeemed upon such sinking fund payment date in the manner specified in the last paragraph of Section 3.02 and the Issuer shall cause notice of the redemption thereof to be given in the manner provided in Section 3.02 except that the notice of redemption shall also state that the Debt Securities are being redeemed by operation of the sinking fund. Such notice having been duly given, the redemption of such Debt Securities shall be made upon the terms and in the manner stated in Section 3.03.

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At least one business day before each sinking fund payment date, the Issuer shall pay to the Trustee (or, if the Company or BFC is acting as paying agent, the Issuer shall segregate and hold in trust) in cash a sum in the Currency in which the Debt Securities of such series are denominated (except as provided pursuant to Section 2.03) equal to any interest accrued to the date fixed for redemption of Debt Securities or portions thereof to be redeemed on such sinking fund payment date pursuant to this Section 3.05.

The Trustee shall not redeem any Debt Securities of a series with sinking fund moneys or mail any notice of redemption of such Debt Securities by operation of the sinking fund for such series during the continuance of a Default in payment of interest on such Debt Securities or of any Event of Default (other than an Event of Default occurring as a consequence

of this paragraph) with respect to such Debt Securities, except that if the notice of redemption of any such Debt Securities shall theretofore have been mailed in accordance with the provisions hereof, the Trustee shall redeem such Debt Securities if cash sufficient for that purpose shall be deposited with the Trustee for that purpose in accordance with the terms of this Article III. Except as aforesaid, any moneys in the sinking fund for such series at the time when any such Default or Event of Default shall occur and any moneys thereafter paid into such sinking fund shall, during the continuance of such Default or Event of Default, be held as security for the payment of such Debt Securities; provided, however, that in case such Event of Default or Default shall have been cured or waived as provided herein, such moneys shall thereafter be applied on the next sinking fund payment date for such Debt Securities on which such moneys may be applied pursuant to the provisions of this Section 3.05.

#### ARTICLE IV

##### Particular Covenants of the Company and BFC

SECTION 4.01. Payment of Principal of, and Premium, If Any, and Interest on, Debt Securities. The Issuer, for the benefit of each series of Debt Securities, will duly and punctually pay or cause to be paid the principal of, and premium, if any, and interest on, each of the Debt Securities at the place, at the respective times and in the manner provided herein and in the Debt Securities. Each installment of interest on the Debt Securities may at the Issuer's option be paid by mailing checks for such interest payable to the Person entitled

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thereto to the address of such Person as it appears on the Debt Security Register maintained pursuant to

Section 2.07(a).

Principal, premium and interest of Debt Securities of any series shall be considered paid on the date due if on such date the Trustee or any paying agent holds in accordance with this Indenture money sufficient to pay in the Currency in which the Debt Securities of such series are denominated (except as provided pursuant to Section 2.03) all principal, premium and interest then due and, in the case of Debt Securities subordinated pursuant to the terms of Article XII, the Trustee or such paying agent, as the case may be, is not prohibited from paying such money to the Holders on that date pursuant to the terms of this Indenture.

The Issuer shall pay interest on overdue principal at the rate specified therefor in the Debt Securities and it shall pay interest on overdue installments of interest at the same rate to the extent lawful.

##### SECTION 4.02. Maintenance of Offices or Agencies for

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



The Issuer may also from time to time designate different or additional offices or agencies to be maintained for such purposes (in or outside of such Place of Payment), and may from time to time rescind any such designation; provided, however, that no such designation or rescission shall in any manner relieve the Issuer of its obligations described in the preceding paragraph. The Issuer will give prompt written notice to the Trustee of any such additional designation or rescission of designation and any change in

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the location of any such different or additional office or agency.

SECTION 4.03. Appointment to Fill a Vacancy in the Office of Trustee. The Issuer, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 7.08, a Trustee, so that there shall at all times be a Trustee hereunder with respect to each series of Debt Securities.

SECTION 4.04. Duties of Paying Agents, etc. (a) The Issuer shall cause each paying agent, if any, other than the Trustee, to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.04,

(i) that it will hold all sums held by it as such agent for the payment of the principal of, and premium, if any, or interest on, the Debt Securities of any series (whether such sums have been paid to it by the Issuer or by any other obligor on the Debt Securities of such series) in trust for the benefit of the Holders of the Debt Securities of such series;

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

due and payable; and

(iii) that it will at any time during the continuance of an Event of Default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held by it as such agent.

(b) If the Company or BFC shall act as paying agent, it will, on or before each due date of the principal of, and premium, if any, or interest on, the Debt Securities if any, of any series, set aside, segregate and hold in trust for the benefit of the Holders of the Debt Securities of such series a sum sufficient to pay such principal, premium, if any, or interest so becoming due. The Issuer will promptly notify the Trustee of any failure by the Company or BFC to take such action or the failure by any other obligor on such Debt Securities to make any payment of the principal of, and premium, if any, or interest on, such Debt Securities when the same shall be due and payable.

(c) Anything in this Section 4.04 to the contrary notwithstanding, the Issuer may, at any time, for the

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purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by it or any paying agent, as required by this Section 4.04, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or BFC or such paying agent.

(d) Whenever the Issuer shall have one or more paying agents

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

(e) Anything in this Section 4.04 to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section 4.04 is subject to the provisions of Section 11.05.

SECTION 4.05. Statement by Officers as to Default. The Issuer will deliver to the Trustee, on or before a date not more than 120 days after the end of each fiscal year of the Issuer ending after the date hereof, an Officers' Certificate stating, as to each officer signing such certificate, that (i) in the course of his performance of his duties as an officer of the Issuer he would normally have knowledge of any Default, (ii) whether or not to the best of his knowledge any Default occurred during such year and (iii) if to the best of his knowledge the Issuer is in Default, specifying all such Defaults and what action the Issuer is taking or

proposes to take with respect thereto. The Issuer also shall comply with Section 314(a)(4) of the Trust Indenture Act.

SECTION 4.06. Further Instruments and Acts. BFC will, upon request of the Trustee, execute and deliver such further instruments and do such further acts as may reasonably be necessary or proper to carry out more effectually the purposes of this Indenture.

SECTION 4.07. Existence. Subject to Article X, each of BFC and the Company will do or cause to be done all, things necessary to preserve and keep in full force and effect its existence and rights (charter and statutory); provided, however, that neither shall be required to

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preserve any such right or franchise if it shall determine that the preservation thereof is no longer desirable in the conduct of its business and that the loss thereof is not disadvantageous in any material respect to the Holders.

SECTION 4.08. Maintenance of Properties. The Company will cause all properties used or useful in the conduct of its business or the business of any Subsidiary to be maintained and kept in good condition, repair and working order in all material respects and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Company may be necessary so that the business carried on by the Company and its Subsidiaries may be properly and advantageously conducted at all times; provided, however, that nothing in this Section shall prevent the Company or a Subsidiary from discontinuing the operation or maintenance of any of such properties if such discontinuance is, in the judgment of the Company, not materially detrimental to the conduct of the business of the Company and its Subsidiaries, taken as a whole, and not disadvantageous in any material respect to the Holders.

SECTION 4.09. Payment of Taxes and Other Claims. The Company will pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (1) all taxes, assessments and governmental charges levied or imposed upon the Company or any Subsidiary or upon the income, profits or property of the Company or any Subsidiary, and (2) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a Lien upon the property of the Company or any Subsidiary, provided, however, that the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings.

SECTION 4.10. Limitation on Liens. Unless the Company contemporaneously secures the Debt Securities equally and ratably with (or prior to) such obligation, the Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create or permit to exist any Lien on

any Principal Property, or any shares of stock or any Indebtedness of any

Restricted Subsidiary whether owned on the Issue Date or thereafter acquired, securing any obligation except for:

(i) Permitted Liens; or

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(ii) Liens other than those referred to in Section 4.10(i) above securing Indebtedness if, after giving pro forma effect to the Incurrence of such Indebtedness (and the receipt and application of the proceeds thereof) or the securing of outstanding Indebtedness, the sum of (without duplication) (A) all Indebtedness of the Company and its Subsidiaries secured by Liens on Principal Property (other than Permitted Liens) and (B) all Attributable Indebtedness in respect of Sale/Leaseback Transactions with respect to any Principal Property, at the time of determination does not exceed 10% of the total consolidated stockholders, equity of the Company as shown on the audited consolidated balance sheet contained in the latest annual report to stockholders of the Company.

SECTION 4.11. Ownership of BFC. So long as any of the Debt Securities are outstanding and subject to the rights of the Company and BFC under Article X, the Company will continue to own, directly or indirectly, all of the outstanding voting shares of BFC.

#### ARTICLE V

##### Holder's Lists and Reports

by the Issuer and the Trustee

SECTION 5.01. Issuer to Furnish Trustee Information as to Names and Addresses of Holders; Preservation of Information. The Issuer covenants and agrees that it will furnish or cause to be furnished to the Trustee with respect to the Registered Securities of each series:

(a) not more than 15 days after each record date with respect to the payment of interest, if any, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Registered Holders as of such record date, and

(b) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Issuer of any such request, a list as of a date not more than 15 days prior to the time such list is furnished;

provided, however, that so long as the Trustee shall be the Registrar, such lists shall not be required to be furnished.

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The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders (1) contained in the most recent list furnished to it as provided in this Section 5.01 or (2) received by it in the capacity of paying agent or Registrar (if so acting) hereunder.

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

SECTION 5.02. Communications to Holders. Holders may communicate pursuant to Section 312(b) of the Trust Indenture Act with other

Holders with respect to their rights under this Indenture or the Debt Securities. The Company, BFC, the Trustee, the Registrar and anyone else shall have the protection of Section 312(c) of the Trust Indenture Act.

SECTION 5.03. Reports by Issuer. (a) BFC covenants and agrees, and any obligor hereunder shall covenant and agree, to file with the Trustee, within 15 days after the Issuer or such obligor, as the case may be, is required to file the same with the Securities and Exchange 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 said Commission may from time to time by rules and regulations prescribe) which BFC or such obligor, as the case may be, may be required to file with said Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if BFC or such obligor, as the case may be, is not required to file information, documents or reports pursuant to either of such Sections, then to file with the Trustee and said Commission, in accordance with rules and regulations prescribed from time to time by said Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations.

(b) BFC covenants and agrees, and any obligor hereunder shall covenant and agree, to file with the Trustee and the Securities and Exchange Commission, in accordance with the rules and regulations prescribed from time to time by said Commission, such additional information, documents, and reports with respect to compliance by the Company, BFC or such obligor, as the case may be, with the conditions and covenants provided for in this Indenture as may be required from time to time by such rules and regulations.

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SECTION 5.04. Reports by Trustee. 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 time and in the manner provided pursuant thereto.

Reports pursuant to this Section 5.04 shall be transmitted by mail:

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

(2) except in the cases of reports under Section 313(b)(2) of the Trust Indenture Act, to each holder of a Debt Security of any series whose name and address appear in the information preserved at the time by the Trustee in accordance with Section 5.02.

A copy of each report at the time of its mailing to Holders shall be filed with the Securities and Exchange Commission and each stock exchange (if any) on which the Debt Securities of any series are listed. The Issuer agrees to notify promptly the Trustee whenever the Debt Securities of any series become listed on any stock exchange and of any delisting thereof.

SECTION 5.05. Record Dates for Action by Holders. If the Issuer shall solicit from the Holders of Debt Securities of any series any action (including the making of any demand or request, the giving of any direction, notice, consent or waiver or the taking of any other action), the Issuer may, at its option, by resolution of its Board of Directors, fix in advance a record date for the determination of Holders of Debt Securities entitled to take such action, but the Issuer shall have no obligation to do so. Any such record date shall be fixed at the Issuer's discretion. If such a record date is fixed, such action may be sought or given before or after the record date, but only the Holders of Debt Securities of record at the close of business on such record date shall be deemed to be Holders of Debt Securities for the purpose of determining whether Holders of the requisite proportion of Debt Securities of such series Outstanding have authorized or agreed or consented to such action, and for that purpose the Debt Securities of such series Outstanding shall be computed as of such record date.

## ARTICLE VI

## Remedies of the Trustee and Holders in Event of Default

SECTION 6.01. Events of Default. If any one or more of the following shall have occurred and be continuing with respect to Debt Securities of any series (each of the following, an "Event of Default"):

(a) Default in the payment of any installment of interest upon any Debt Securities of that series as and when the same shall become due and payable, whether or not such payment shall be prohibited by Article XII, if applicable, and continuance of such default for a period of 30 days; or

(b) default in the payment of the principal of or premium, if any, on any Debt Securities of that series as and when the same shall become due and payable, whether at maturity, upon redemption, by declaration, upon required repurchase or otherwise, whether or not such payment shall be prohibited by Article XII, if applicable; or

(c) default in the payment of any sinking fund payment with respect to any Debt Securities of that series as and when the same shall become due and payable; or

(d) failure on the part of the Company to comply with Article X; or

(e) failure on the part of the Company or BFC duly to observe or perform any other of the covenants or agreements on the part of the Company or BFC in the Debt Securities of that series, in any resolution of the Board of Directors authorizing the issuance of that series of Debt Securities, in this Indenture with respect to such series or in any supplemental Indenture with respect to such series (other than a covenant a default in the performance of which is elsewhere in this Section specifically dealt with), continuing for a period of 60 days after the date on which written notice specifying such failure and requiring the Company or BFC to remedy the same shall have been given, by registered or certified mail, to the Company or BFC by the Trustee or to the Company or BFC and the Trustee by the Holders of at least 25% in aggregate principal amount of the Debt Securities of that series at the time Outstanding; or

(f) Indebtedness of the Company or any Subsidiary of the Company is not paid within any applicable grace period after final maturity or is accelerated by the holders thereof because of a default, the total amount of such Indebtedness unpaid or accelerated exceeds \$100,000,000 or its Dollar Equivalent at the time and such default remains uncured or such acceleration is not rescinded for 10 days after the date on which written notice specifying such failure and requiring the Company to remedy the same shall have been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the Debt Securities of that series at the time Outstanding; or

(g) BFC, the Company or any of its Restricted Subsidiaries shall (i) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code or any other

Federal or State bankruptcy, insolvency or similar law, (ii) consent to the institution of, or fail to controvert within the time and in the manner prescribed by law, any such proceeding or the filing of any such petition, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator or similar official for BFC, the Company or any such Restricted Subsidiary or for a substantial part of its property, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, (vi) admit in writing its inability or fail generally to pay its debts as they become due, (vii) take corporate action for the purpose of effecting any of the foregoing, or (viii) take any comparable action under any foreign laws relating to insolvency; or

(h) the entry of an order or decree by a court having competent jurisdiction in the premises for (i) relief in respect of BFC, the Company or any of its Restricted Subsidiaries or a substantial part of any of their property under Title 11 or the United States Code or any other Federal or State bankruptcy, insolvency or similar law, (ii) the appointment of a receiver, trustee, custodian, sequestrator or similar official for BFC, the Company or any such Restricted Subsidiary or for a substantial part of any of their property (except any decree or order appointing such official of any Restricted Subsidiary pursuant to a plan under which the assets and operations of such Restricted

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Subsidiary are transferred to or combined with another Subsidiary or Subsidiaries of the Company or to the Company) or (iii) the winding-up or liquidation of BFC, the Company or any such Restricted Subsidiary (except any decree or order approving or ordering the winding up or liquidation of the affairs of a Restricted Subsidiary pursuant to a plan under which the assets and operations of such Restricted Subsidiary are transferred to or combined with another Subsidiary or Subsidiaries of the Company or to the Company); and such order or decree shall continue unstayed and in effect for 60 consecutive days; or any similar relief is granted under any foreign laws and the order or decree stays in effect for 60 consecutive days; or

(i) any other Event of Default provided under the terms of the Debt Securities of that series;

then and in each and every case that an Event of Default with respect to Debt Securities of that series at the time outstanding occurs and is continuing, unless the principal of and interest on all the Debt Securities of that series shall have already become due and payable, either the Trustee or the Holders of

not less than 25% in aggregate principal amount of the Debt Securities of that series then Outstanding hereunder, by notice in writing to the Issuer (and to the Trustee if given by Holders), may declare the principal of (or, if the Debt Securities of that series are original issue Discount Debt Securities, such portion of the principal amount as may be specified in the terms of that series) and interest on all the Debt Securities of that series to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Debt Securities of that series contained to the contrary notwithstanding.

The Holders of a majority in principal amount of the Debt Securities of a particular series by notice to the Trustee may rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree already rendered and if all existing Events of Default have been cured or waived except nonpayment of principal or interest that has become due solely because of acceleration. Upon any such rescission, the parties hereto shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the parties hereto shall continue as though no proceeding had been taken.

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

The foregoing Events of Default shall constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is 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.

The Issuer shall deliver to the Trustee, within 30 days after the occurrence thereof, written notice in the form of an Officers' Certificate of any event which with the giving of notice and the lapse of time would become an Event of Default under clause (c), (d), (e), (f), (g), (h) or (i), its status and what action the Company or BFC is taking or proposes to take with respect thereto.

SECTION 6.02. Collection of Indebtedness by Trustee, etc. If an Event of Default occurs and is continuing, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the sums so due and unpaid or enforce the performance of any provision of the Debt Securities of

the affected series or this Indenture, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against BFC or any other obligor upon the Debt Securities of such series (and collect in the manner provided by law out of the property of the Company or BFC or any other obligor upon the Debt Securities of such series wherever situated the moneys adjudged or decreed to be payable).

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or BFC or any other obligor upon the Debt Securities of any series under Title 11 of the United States Code or any other Federal or State bankruptcy, insolvency or similar law, or in case a receiver, trustee or other similar official shall have been appointed for its property, or in case of any other similar judicial proceedings relative to the Company or BFC or any other obligor upon the Debt Securities of any

series, its creditors or its property, the Trustee, irrespective of whether the principal of Debt Securities of any series 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 pursuant to the provisions of this Section 6.02, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal, premium, if any, and interest (or, if the Debt Securities of such series are Original Issue Discount Debt Securities, such portion of the principal amount as may be specified in the terms of such series) owing and unpaid in respect of the Debt Securities of such series, and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities Incurred, and all advances made, by the Trustee except as a result of its negligence or bad faith) and of the Holders thereof allowed in any such judicial proceedings relative to the Company, BFC or any other obligor upon the Debt Securities of such series, its creditors or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of such Holders and of the Trustee on their behalf, and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of such

Holders to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to such Holders, to pay to the Trustee such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other reasonable expenses and liabilities Incurred, and all advances made, by the Trustee except as a result of its negligence or bad faith.

All rights of action and of asserting claims under this Indenture, or under any of the Debt Securities, of any series, may be enforced by the Trustee without the possession of any such Debt Securities or the production thereof in any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment (except for any amounts payable to the Trustee pursuant to Section 7.06) shall be for the ratable benefit of the Holders of all the Debt Securities in respect of which such action was taken.

In case of an Event of Default hereunder the Trustee may in its discretion proceed to protect and enforce

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

SECTION 6.03. Application of Moneys Collected by Trustee. Any moneys or other property collected by the Trustee pursuant to Section 6.02 with respect to Debt Securities of any series shall be applied, after giving effect to the provisions of Article XII, if applicable, in the order following, at the date or dates fixed by the Trustee for the distribution of such moneys or other property, upon presentation of the several Debt Securities of such series in respect of which moneys or other property have been collected, and the notation thereon of the payment, if only partially paid, and upon surrender thereof if fully paid:

First: To the payment of all money due the Trustee pursuant to Section 7.06;

Second: In case the principal of the Outstanding Debt Securities in respect of which such moneys have been collected shall not have become due, to the payment of interest on the Debt Securities of such series in the order of the maturity of the installments of such interest, with interest (to the extent that such interest has been collected by the Trustee) upon the overdue installments of interest at the rate or Yield to Maturity (in the case of Original Issue Discount Debt Securities) borne by the Debt Securities of such series, such payments to be made ratably to the Persons entitled thereto, without discrimination or preference;

Third: In case the principal of the Outstanding Debt Securities in respect of which such moneys have been collected shall have become due, by declaration or otherwise, to the payment of the whole amount then owing and unpaid upon the Debt Securities of such series for principal and premium, if any, and interest, with interest on the overdue principal and premium, if any, and (to the extent that such interest has been collected by the Trustee) upon overdue installments of interest at the rate or Yield to Maturity (in the case of Original Issue Discount Debt Securities) borne by



the Debt Securities of such series; and, in case such moneys shall be insufficient to pay in full the whole amount so due and unpaid upon the Debt Securities of such series, then to the payment of such principal and premium, if any, and interest, without preference or priority of principal and premium, if any, over interest, or of interest over principal and premium, if any, or of any installment of interest over any other installment of interest, or of any Debt Security of such series over any Debt Security of such series, ratably to the aggregate of such principal and premium, if any, and interest; and

Fourth: The remainder, if any, shall be paid to the Issuer, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.03. At least 15 days before such record date, the Issuer shall mail to each Holder and the Trustee a notice that states the record date, the payment date and amount to be paid.

SECTION 6.04. Limitation on Suits by Holders. No Holder of any Debt Security of any series shall have any right by virtue or by availing of any provision of this Indenture to institute any action or proceeding at law or in equity or in bankruptcy or otherwise, upon or under or with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless such Holder previously shall have given to the Trustee written notice of an Event of Default with respect to Debt Securities of that same series and of the continuance thereof and unless the Holders of not less than 25% in aggregate principal amount of the Outstanding Debt Securities of that series shall have made written request upon the Trustee to institute such action or proceedings in respect of such Event of Default in its own name as Trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be Incurred therein or thereby, and the Trustee, for 60 days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such action or proceedings and no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 6.06; it being understood and intended, and being expressly covenanted by the Holder of every Debt Security with every other Holder and the Trustee, that no one or more Holders shall have any right in any manner whatever by virtue or by availing of any

provision of this Indenture to affect, disturb or prejudice the rights of any Holders, or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all such Holders. For the protection and enforcement of the provisions of this Section 6.04, each and every Holder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision in this Indenture, however, the right of any Holder of any Debt Security to receive payment of the principal of, and premium, if any, and (subject to Section 2.12) interest on, such Debt Security on or after the respective due dates expressed in such Debt Security, and to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or effected without the consent of such Holder.

SECTION 6.05. Remedies Cumulative; Delay or Omission in Exercise of Rights Not a Waiver of Default. All powers and remedies given by this Article VI to the Trustee or to the Holders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the Holders, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission

of the Trustee or of any Holder to exercise any right or power accruing upon any Default occurring and continuing as aforesaid, shall impair any such right or power, or shall be construed to be a waiver of any such Default or an acquiescence therein; and, subject to the provisions of Section 6.04, every power and remedy given by this Article VI or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders.

SECTION 6.06. Rights of Holders of Majority in Principal Amount of Debt Securities to Direct Trustee and to Waive Default. The Holders of a majority in aggregate principal amount of the Debt Securities of any series at the time Outstanding shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Debt Securities of such series; provided, however, that such direction shall not be otherwise than in accordance with law and the provisions of this Indenture, and that subject to the provisions of Section 7.01, the Trustee shall have the

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right to decline to follow any such direction if the Trustee being advised by counsel shall determine that the action so directed may not lawfully be taken, or if the Trustee shall by a responsible officer or officers determine that the action so directed would involve it in personal liability or would be unjustly prejudicial to Holders of Debt Securities of such series not taking part in such direction; and provided further, however, that nothing contained in this Indenture contained shall impair the right of the Trustee to take any action deemed proper by the Trustee and which is not inconsistent with such direction by such Holders. Prior to the acceleration of the maturity of the Debt Securities of any series, as provided in Section 6.01, the Holders of a majority in aggregate principal amount of the Debt Securities of that series at the time Outstanding may on behalf of the Holders of all the Debt Securities of that series waive any past Default or Event of Default and its consequences for that series specified in the terms thereof as contemplated by Section 2.03, except (i) a Default in the payment of the principal of, and premium, if any, or interest on, any of the Debt Securities and (ii) a Default in respect of a provision that under Section 9.02 cannot be amended without the consent of each Holder affected thereby. In case of any such waiver, such Default shall cease to exist, any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture, and the Issuer, the Trustee and the Holders of the Debt Securities of that series shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

SECTION 6.07. Trustee to Give Notice of Defaults Known to It, but May Withhold Such Notice in Certain Circumstances. The Trustee shall, within 90 days after the occurrence of a Default known to it with respect to a series of Debt Securities give to the Holders thereof, in the manner provided in Section 14.03, notice of all Defaults with respect to such series known to the Trustee, unless such Defaults shall have been cured or waived before the giving of such notice; provided, however, that, except in the case of Default in the payment of the principal of, or premium, if any, or interest on, any of the Debt Securities of such series or in the making of any sinking fund payment with respect to the Debt Securities of such series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a committee of directors or responsible officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Holders thereof.

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SECTION 6.08. Requirement of an Undertaking To Pay Costs in Certain Suits under the Indenture or Against the Trustee. All parties to this Indenture agree, and each Holder of any Debt Security by his acceptance thereof

shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken 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 in the manner and to the extent provided in the Trust Indenture Act, 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 6.08 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 ten percent in principal amount of the Outstanding Debt Securities of that series or to any suit instituted by any Holder for the enforcement of the payment of the principal of, or premium, if any, or interest on, any Debt Security on or after the due date for such payment expressed in such Debt Security.

## ARTICLE VII

### Concerning the Trustee

SECTION 7.01. Certain Duties and Responsibilities. The Trustee, prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

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 wilful misconduct, except that:

(a) this subsection shall not be construed to limit the effect of the first paragraph of this Section 7.01;

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

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

(2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely and shall be fully protected in its reliance, as to the truth of

the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture;

(c) the Trustee shall not be liable for an 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; and

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

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None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any personal financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if there shall be reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

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 7.02. Certain Rights of Trustee. Except as otherwise provided in Section 7.01:

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

(b) any request, direction, order or demand of the Company or BFC mentioned herein shall be sufficiently evidenced by an Issuer Order (unless other evidence in respect thereof be herein specifically prescribed); and any resolution of the Board of Directors of an Issuer may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company or BFC, as applicable;

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

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

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

(f) prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, 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, approval or other paper or document, unless requested in writing to do so by the Holders of a majority in aggregate principal amount of the then outstanding Debt Securities of a series affected by such matter; provided, however, that if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be Incurred by it in the making of such investigation is not, in the opinion of the Trustee, reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require indemnity reasonably satisfactory to it against such costs, expenses or liabilities as a condition to so proceeding. The reasonable expense of every such investigation shall be paid by the Issuer or, if paid by the Trustee, shall be repaid by the Issuer upon demand;

(g) the Trustee may execute any of the trusts or powers

hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, attorney, custodian or nominee appointed by it with due care hereunder; and

(h) if any property other than cash shall at any time be subject to a Lien in favor of the Holders, the Trustee, if and to the extent authorized by a receivership or bankruptcy court of competent jurisdiction or by the supplemental instrument subjecting such property to such Lien, shall be entitled to make advances for the purpose of preserving such property or of discharging tax Liens or other prior Liens or encumbrances thereon.

SECTION 7.03. Trustee Not Liable for Recitals in Indenture or in Debt Securities. The recitals contained herein and in the Debt Securities (except the Trustee's certificate of authentication) shall be taken as the statements of the Company or BFC, and the Trustee assumes no

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responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Debt Securities of any series, except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Debt Securities and perform its obligations hereunder, and that the statements made by it or to be made by it in a Statement of Eligibility on Form T-1 supplied to the Company are true and accurate. The Trustee shall not be accountable for the use or application by the Company or BFC of any of the Debt Securities or of the proceeds thereof.

SECTION 7.04. Trustee, Paying Agent or Registrar May Own Debt Securities. The Trustee or any paying agent or Registrar, in its individual or any other capacity, may become the owner or pledgee of Debt Securities and subject to the provisions of the Trust Indenture Act relating to conflicts of interest and preferential claims may otherwise deal with the Company or BFC with the same rights it would have if it were not Trustee, paying agent or Registrar.

SECTION 7.05. Moneys Received by Trustee to Be Held in Trust. Subject to the provisions of Section 11.05, all moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any moneys received by it hereunder. So long as no Event of Default shall have occurred and be continuing, all interest allowed on any such moneys shall be paid from time to time to the Company or BFC upon an Issuer Order.

SECTION 7.06. Compensation and Reimbursement. The Company

covenants and agrees to pay in Dollars to the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation for all services rendered by it hereunder (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), and, except as otherwise expressly provided herein, the Company will pay or reimburse in Dollars the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents, attorneys and counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advances as may arise from its negligence or bad faith. The Company also covenants to indemnify in Dollars the Trustee for, and to hold it harmless against,

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any loss, liability or expense Incurred without negligence, wilful misconduct or bad faith on the part of the Trustee, its officers, directors, employees and agents, arising out of or in connection with the acceptance or administration of this trust or trusts hereunder, including the reasonable costs and expenses of defending itself against any claim of liability in connection with the exercise or performance of any of its powers or duties hereunder. The obligations of the Company under this Section 7.06 to compensate and indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture. The Company and the Holders agree that such additional indebtedness shall be secured by a Lien prior to that of the Debt Securities upon all property and funds held or collected by the Trustee, as such, except funds held in trust for the payment of principal of, and premium, if any, or interest on, particular Debt Securities.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(g) or (h) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency, reorganization or other similar law.

SECTION 7.07. Right of Trustee to Rely on an Officers' Certificate Where No Other Evidence Specifically Prescribed. Except as otherwise provided in Section 7.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee and such certificate, in the absence of negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture upon the faith thereof.

SECTION 7.08. Separate Trustee; Replacement of Trustee. BFC may, but need not, appoint a separate Trustee for any one or more series of Debt Securities. The Trustee may resign with respect to one or more or all series of Debt Securities at any time by giving notice to the Company and BFC. The Holders of a majority in principal amount of the Debt Securities of a particular series may remove the Trustee for such series and only such series by so notifying

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the Trustee and may appoint a successor Trustee. BFC shall remove the Trustee if:

- (1) the Trustee fails to comply with Section 7.10;

- (2) the Trustee is adjudged bankrupt or insolvent;
- (3) a receiver or other public officer takes charge of the Trustee or its property; or
- (4) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns, is removed by the Issuers or by the Holders of a majority in principal amount of the Debt Securities of a particular series and such Holders do not reasonably promptly appoint a successor Trustee, or if a vacancy exists in the office of Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Issuers shall promptly appoint a successor Trustee. No resignation or removal of the Trustee and no appointment of a successor Trustee shall become effective until the full payment of any and all amounts due and owing to the Trustee and the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of this Section 7.08.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company and BFC. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. In no event shall the retiring trustee be liable for the acts of any successor Trustee. The successor Trustee shall mail a notice of its succession to Holders of Debt Securities of each applicable series. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the Lien provided for in Section 7.06.

If a successor Trustee does not take office within 60 days after the retiring Trustee gives notice of resignation or is removed, the retiring Trustee or the Holders of 25% in principal amount of the Debt Securities of any applicable series may petition any court of competent jurisdiction for the appointment of a successor Trustee for the Debt Securities of such series.

If the Trustee fails to comply with Section 7.10, any Holder of Debt Securities of any applicable series may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee for the Debt Securities of such series.

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Notwithstanding the replacement of the Trustee pursuant to this Section 7.08, BFC's obligations under Section 7.06 shall continue for the benefit of the retiring Trustee.

In the case of the appointment hereunder of a separate or successor trustee with respect to the Debt Securities of one or more series, the Issuer, any retiring Trustee and each successor or separate Trustee with respect to the Debt Securities of any applicable series shall execute and deliver an Indenture supplemental hereto (1) which shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of any retiring Trustee with respect to the Debt Securities of any series as to which any such retiring Trustee is not retiring shall continue to be vested in such retiring Trustee and (2) that 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 separate, retiring or successor 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.

SECTION 7.09. Successor Trustee by Merger. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation or banking association without any further act shall be the successor Trustee.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trusts created by this Indenture any of the Debt Securities shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Debt Securities so authenticated; and in case at that time any of the Debt Securities shall not have been authenticated, any successor to the Trustee may authenticate such Debt Securities either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Debt Securities or in this Indenture provided that the certificate of the Trustee shall have.

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SECTION 7.10. Eligibility; Disqualification. The Trustee shall at all times satisfy the requirements of Section 310(a) of the Trust Indenture Act. The Trustee shall have a combined capital and surplus of at least \$50,000,000, as set forth in its most recent published annual report of condition. No obligor upon the Debt Securities of a particular series or Person directly or indirectly controlling, controlled by or under common control with such obligor shall serve as Trustee upon the Debt Securities of such series. The Trustee shall comply with Section 310(b) of the Trust Indenture Act; provided, however, that there shall be excluded from the operation of Section 310(b)(1) of the Trust Indenture Act this Indenture or any indenture or indentures under which other securities or certificates of interest or participation in other securities of the Company or BFC are outstanding if the requirements for such exclusion set forth in Section 310(b)(1) of the Trust Indenture Act are met.

SECTION 7.11. Preferential Collection of Claims. The Trustee shall comply with Section 311(a) of the Trust Indenture Act, excluding any creditor relationship listed in Section 311(b) of the Trust Indenture Act. A Trustee who had resigned or been removed shall be subject to Section 311(a) of the Trust Indenture Act to the extent indicated therein.

SECTION 7.12. Compliance with Tax Laws. The Trustee hereby agrees to comply with all U.S. Federal income tax information reporting and withholding requirements applicable to it with respect to payments of premium (if any) and interest on the Debt Securities, whether acting as Trustee, Security Registrar, paying agent or otherwise with respect to the Debt Securities.

## ARTICLE VIII

### Concerning the Holders

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

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the record of the Holders voting in favor thereof at any meeting of Holders duly called and held in accordance with the provisions of Section 5.02 or (c) by a combination of such instrument or instruments and any such record of such a meeting of Holders.



SECTION 8.02. Proof of Execution of Instruments and of Holding of Debt Securities. Subject to the provisions of Sections 7.01, 7.02 and 14.09, proof of the execution of any instrument by a Holder or his agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee.

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

The Trustee may require such additional proof of any matter referred to in this Section 8.02 as it shall deem necessary.

SECTION 8.03. Who May Be Deemed Owner of Debt Securities. Prior to due presentment for registration of transfer of any Registered Security, the Issuer, the Trustee, any paying agent and any Registrar may deem and treat the Person in whose name any Registered Security shall be registered upon the books of the Issuer as the absolute owner of such Registered Security (whether or not such Registered Security shall be overdue and notwithstanding any notation of ownership or other writing thereon) for the purpose of receiving payment of or on account of the principal of and premium, if any, and (subject to Section 2.03) interest on such Registered Security and for all other purposes, and neither the Issuer nor the Trustee nor any paying agent nor any Registrar shall be affected by any notice to the contrary; and all such payments so made to any such Holder for the time being, or upon his order, shall be valid and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for moneys payable upon any such Registered Security.

None of the Issuer, the Trustee, any paying agent or the Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in a Global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

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SECTION 8.04. Instruments Executed by Holders Bind Future Holders. At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the Holders of the percentage in aggregate principal amount of the Debt Securities of any series specified in this Indenture in connection with such action and subject to the following paragraph, any Holder of a Debt Security which is shown by the evidence to be included in the Debt Securities the Holders of which have consented to such action may, by filing written notice with the Trustee at its corporate trust office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Debt Security. Except as aforesaid any such action taken by the Holder of any Debt Security shall be conclusive and

binding upon such Holder and upon all future Holders and owners of such Debt Security and of any Debt Security issued upon transfer thereof or in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon such Debt Security or such other Debt Securities. Any action taken by the Holders of the percentage in aggregate principal amount of the Debt Securities of any series specified in this Indenture in connection with such action shall be conclusively binding upon the Issuer, the Trustee and the Holders of all the Debt Securities of such series.

The Issuer may, but shall not be obligated to, fix a record date for the purpose of determining the Holders of Registered Securities entitled to give their consent or take any other action required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Holders of Registered Securities at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders of Registered Securities after such record date. No such consent shall be valid or effective for more than 120 days after such record date unless the consent of the Holders of the percentage in

aggregate principal amount of the Debt Securities of such series specified in this Indenture shall have been received within such 120-day period.

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## ARTICLE IX

### Supplemental Indentures

SECTION 9.01. Purposes for Which Supplemental Indenture May Be Entered into Without Consent of Holders. Either Issuer, when authorized by a resolution of its Board of Directors, and the Trustee may from time to time and at any time, without the consent of Holders, enter into an Indenture or Indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as in force at the date of the execution thereof) for one or more of the following purposes:

(a) to evidence the succession pursuant to Article X of another Person to BFC or to the Company, or successive successions, and the assumption by the Successor Company (as defined in Section 10.01) of the covenants, agreements and obligations of the Company or BFC in this Indenture and in the Debt Securities;

(b) to surrender any right or power herein conferred upon the Company or BFC, to add to the covenants of the Company or BFC such further covenants, restrictions, conditions or provisions for the protection of the Holders of all or any series of Debt Securities (and if such covenants are to be for the benefit of less than all series of Debt Securities, stating that such covenants are expressly being

included solely for the benefit of such series) as BFC's Board of Directors shall consider to be for the protection of the Holders of such Debt Securities, and to make the occurrence, or the occurrence and continuance, of a Default in any of such additional covenants, restrictions, conditions or provisions a Default or an Event of Default permitting the enforcement of all or any of the several remedies provided in this Indenture; provided, that in respect of any such additional covenant, restriction, condition or provision such supplemental Indenture may provide for a particular period of grace after Default (which period may be shorter or longer than that allowed in the case of other Defaults) or may provide for an immediate enforcement upon such Default or may limit the remedies available to the Trustee upon such Default or may limit the right of the Holders of a majority in aggregate principal amount of any or all series of Debt Securities to waive such default;

(c) to cure any ambiguity or to correct or supplement any provision contained herein, in any

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supplemental Indenture or in any Debt Securities of any series that may be defective or inconsistent with any other provision contained herein, in any supplemental Indenture or in the Debt Securities of such series; to convey, transfer, assign, mortgage or pledge any property to or with the Trustee, or to make such other provisions in regard to matters or questions arising under this Indenture as shall not adversely affect the interests of any Holders of Debt Securities of any series;

(d) to modify or amend this Indenture in such a manner as to permit the qualification of this Indenture or any Indenture supplemental hereto under the Trust Indenture Act as then in effect, except that nothing herein contained shall permit or authorize the inclusion in any Indenture supplemental hereto of the provisions referred to in Section 316(a)(2) of the Trust Indenture Act;

(e) to add to or change any of the provisions of this Indenture to change or eliminate any restrictions on the payment of principal of, or premium, if any, or interest on, Registered Securities; provided, that any such action shall not adversely affect the interests of the Holders of Debt Securities of any series in any material respect or permit or facilitate the issuance of Debt Securities of any series in uncertificated form;

(f) to comply with Article X;

(g) in the case of any Debt Securities, if any, subordinated pursuant to Article XII, to make any change in Article XII that would limit or terminate the benefits applicable to any holder of Senior

Indebtedness (or Representatives therefor) under Article XII;

(h) to add Guarantees with respect to the Debt Securities or to secure the Debt Securities;

(i) to add to, change or eliminate any of the provisions of this Indenture in respect of one or more series of Debt Securities; provided, however, that any such addition, change or elimination not otherwise permitted under this Section 9.01 shall (i) neither (A) apply to any Debt Security of any series created prior to the execution of such supplemental Indenture and entitled to the benefit of such provision nor (B) modify the rights of the Holder of any such Debt

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Security with respect to such provision or (ii) shall become effective only when there is no such Debt Security outstanding;

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

(k) to establish the form or terms of Debt Securities of any series as permitted by Sections 2.01 and 2.03.

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

Any supplemental Indenture authorized by the provisions of this Section 9.01 may be executed by the Issuers and the Trustee without the consent of the Holders of any of the Debt Securities at the time outstanding, notwithstanding any of the provisions of Section 9.02.

In the case of any Debt Securities subordinated pursuant to Article XII, an amendment under this Section 9.01 may not make any change that adversely affects the rights under Article XII of any holder of such Senior Indebtedness then Outstanding unless the holders of such Senior Indebtedness (or any group or Representative thereof authorized to give a consent) consent to such change.

After an amendment under this Section 9.01 becomes effective, the Issuer shall mail to Holders of Debt Securities of each series affected thereby a notice briefly describing such amendment. The failure to give such notice to all such Holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.01.

SECTION 9.02. Modification of Indenture with Consent of Holders of Debt Securities. Without notice to any Holder but with the consent (evidenced as provided in

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Section 8.01) of the Holders of not less than a majority in aggregate principal amount of the outstanding Debt Securities of each series affected by such supplemental Indenture, the Company or BFC, when authorized by a resolution of its Board of Directors, and the Trustee may from time to time and at any time enter into an Indenture or Indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act as in force at the date of execution thereof) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental Indenture or of modifying in any manner the rights of the Holders of the Debt Securities of such series; provided, that no such supplemental Indenture, without the consent of the Holders of each Debt Security so affected, shall (i) reduce the percentage in principal amount of Debt Securities of any series whose Holders must consent to an amendment; (ii) reduce the rate of or extend the time for payment of interest on any Debt Security; (iii) reduce the principal of or extend the Stated Maturity of any Debt Security; (iv) reduce the premium payable upon the redemption of any Debt Security or change the time at which any Debt Security may or shall be redeemed in accordance with Article III; (v) make any Debt Security payable in Currency other than that stated in the Debt Security; (vi) in the case of any Debt Security subordinated pursuant to Article XII, make any change in Article XII that adversely affects the rights of any Holder under Article XII; (vii) release any security that may have been granted in respect of the Debt Securities; or (viii) make any change in Section 6.06 or this Section 9.02.

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

Upon the request of the Company or BFC, accompanied by a copy of a resolution of its Board of Directors authorizing the execution of any such supplemental Indenture, and upon the filing with the Trustee of evidence of the consent of Holders as aforesaid, the Trustee shall join with the Company or BFC in the execution of such supplemental Indenture unless such supplemental Indenture affects the Trustee's own rights, duties or immunities under this

Indenture or otherwise, in which case the Trustee may

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in its discretion but shall not be obligated to enter into such supplemental Indenture.

It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed supplemental Indenture, but it shall be sufficient if such consent shall approve the substance thereof.

In the case of any Debt Securities subordinated pursuant to Article XII, an amendment under this Section 9.02 may not make any change that adversely affects the rights under Article XII of any holder of such Senior Indebtedness then Outstanding unless the holders of such Senior Indebtedness (or any group or Representative thereof authorized to give a consent) consent to such change.

After an amendment under this Section 9.02 becomes effective,

the Issuer shall mail to Holders of Debt Securities of each series affected thereby a notice briefly describing such amendment. The failure to give such notice to all such Holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.02.

SECTION 9.03. Effect of Supplemental Indentures. Upon the execution of any supplemental Indenture pursuant to the provisions of this Article IX, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company, BFC and the Holders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such supplemental Indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

The Trustee is entitled to rely upon an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such supplemental Indenture complies with the provisions of this Article IX.

SECTION 9.04. Debt Securities May Bear Notation of Changes by Supplemental Indentures. Debt Securities of any series authenticated and delivered after the execution of any supplemental Indenture pursuant to the provisions of this Article IX may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any

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matter provided for in such supplemental Indenture. New Debt Securities of any series so modified as to conform, in the opinion of the Trustee and the Board of Directors of the Issuer, to any modification of this Indenture contained in any such supplemental Indenture may be prepared and executed by the Issuer, authenticated by the Trustee and delivered in exchange for the Debt Securities of such series then Outstanding. Failure to make the appropriate notation or to issue a new Debt Security of such series shall not affect the validity of such amendment.

SECTION 9.05. Payment for Consent. Neither BFC, the Company nor any Affiliate of the Company shall, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Debt Securities unless such consideration is offered to be paid to all Holders that so consent, waive or agree to amend in the time frame set forth in solicitation documents relating to such consent, waiver or agreement.

## ARTICLE X

### Consolidation, Merger, Sale or Conveyance

SECTION 10.01. Consolidations and Mergers of the Company. Neither BFC nor the Company shall consolidate with or merge with or into any Person, or convey, transfer or lease all or substantially all its assets, unless: (i) either (a) the Company shall be the continuing Person in the case of a merger or (b) the resulting, surviving or transferee Person if other than the Company (the "Successor Company") shall be a corporation organized and existing under the laws of the United States, any State thereof or the District of Columbia and the Successor Company shall expressly assume, by an Indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, all the obligations of BFC and the Company under the Debt Securities according to their tenor, and this Indenture; (ii) immediately after giving effect to such transaction (and treating any Indebtedness which becomes an obligation of the Successor Company or any Subsidiary of the Company as a result of such transaction as having been Incurred by the Successor Company or such Subsidiary at the time of such transaction), no Default or Event of Default would occur or be continuing; and (iii) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental Indenture (if any)

comply with this Indenture. A deposition by the Company of its ownership

interest in CompuServe Corporation shall not be deemed a transfer or conveyance of substantially all of the Company's assets.

SECTION 10.02. Rights and Duties of Successor Corporation. In case of any consolidation or merger, or conveyance or transfer of the assets of the Company or BFC as an entirety or virtually as an entirety in accordance with Section 10.01, the Successor Company shall succeed to and be substituted for the Issuers, with the same effect as if it had been named herein as the party of the first part, and the predecessor corporation shall be relieved of any further obligation under the Indenture and the Debt Securities. The Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company or BFC, any or all the Debt Securities issuable hereunder which theretofore shall not have been signed by the Company or BFC and delivered to the Trustee; and, upon the order of the Successor Company, instead of the Company or BFC, and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Debt Securities which previously shall have been signed and delivered by the officers of the Company or BFC to the Trustee for authentication, and any Debt Securities which the Successor Company thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Debt Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Debt Securities theretofore or thereafter issued in accordance with the terms of this Indenture as though all such Debt 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 Debt Securities appertaining thereto thereafter to be issued as may be appropriate.

#### ARTICLE XI

##### Satisfaction and Discharge of Indenture; Defeasance; Unclaimed Moneys

SECTION 11.01. Applicability of Article. If, pursuant to Section 2.03, provision is made for the defeasance of Debt Securities of a series, then the provisions of this Article XI relating to defeasance of Debt Securities shall be applicable except as otherwise specified pursuant to Section 2.03 for Debt Securities of such series.

SECTION 11.02. Satisfaction and Discharge of Indenture: Defeasance. (a) If at any time (i) the Issuer shall have delivered to the Trustee for cancellation all Debt Securities of any series theretofore authenticated and delivered (other than (1) any Debt Securities of such series which shall have been destroyed, lost or stolen and which shall have been replaced or paid as provided in Section 2.09 and (2) Debt Securities for whose payment money has theretofore been deposited in trust and thereafter repaid to the Issuer as provided in Section 11.05) or (ii) all Debt Securities of such series not theretofore delivered to the Trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, and the Issuer shall deposit with the Trustee as trust funds the entire amount in the Currency in which such Debt Securities are denominated (except as otherwise provided pursuant to Section 2.03) sufficient to pay at maturity or upon redemption all Debt Securities of such series not theretofore delivered to the Trustee for cancellation, including principal and premium, if any, and interest

due or to become due on such date of maturity or redemption date, as the case may be, and if in either case the Issuer shall also pay or cause to be paid all other sums payable hereunder by the Issuer, then this Indenture shall cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of such Debt Securities herein expressly provided for and rights to receive payments of principal of, and premium, if any, and interest on, such Debt Securities) with respect to the Debt Securities of such series, and the Trustee, on demand of the Issuer accompanied by an Officers' Certificate and an Opinion of Counsel and at the cost and expense of the Issuer, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture.

(b) Subject to Sections 11.02(c), 11.03 and 11.07, the Issuer at any time may terminate, with respect to Debt Securities of a particular series, (i) all its obligations under the Debt Securities of such series and this Indenture with respect to the Debt Securities of such series ("legal defeasance option") or (ii) its obligations with respect to the Debt Securities of such series under clause (ii) of Section 10.01 and the related operation of Section 6.01(d) and the operation of Sections 6.01(e), (f) and (i) ("covenant defeasance option"). The Issuer may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option.

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If the Issuer exercises its legal defeasance option, payment of the Debt Securities of the defeased series may not be accelerated because of an Event of Default. If the Issuer exercises its covenant defeasance option, payment of the Debt Securities of the defeased series may not be accelerated because of an Event of Default specified in Sections 6.01(d), (e), (f) and (i) (except to the extent covenants or agreements referenced in such Sections remain applicable).

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

(c) Notwithstanding clauses (a) and (b) above, the Issuer's obligations in Sections 2.07, 2.09, 4.02, 4.04, 5.01, 7.06, 11.05, 11.06 and 11.07 shall survive until the Debt Securities of the defeased series have been paid in full. Thereafter, the Issuer's obligations in Sections 7.06, 11.05 and 11.06 shall survive.

SECTION 11.03. Conditions of Defeasance. The Issuer may exercise its legal defeasance option or its covenant defeasance option with respect to Debt Securities of a particular series only if:

(1) the Issuer irrevocably deposits in trust with the Trustee money or U.S. Government Obligations for the payment of principal of, and premium, if any, and interest on, the Debt Securities of such series to maturity or redemption, as the case may be;

(2) the Issuer delivers to the Trustee a certificate from a nationally recognized firm of independent accountants expressing their opinion that the payments of principal and interest when due and without reinvestment on the deposited U.S. Government Obligations plus any deposited money without investment will provide cash at such times and in such amounts as will be sufficient to pay the principal, premium and interest when due on all the Debt Securities of such series to maturity or redemption, as the case may be;

(3) 91 days pass after the deposit is made and during the 91-day period no Default specified in Section 6.01(g) or (h) with respect to the Company or BFC occurs which is continuing at the end of the period;

(4) no Default has occurred and is continuing on the date of such deposit and after giving effect thereto;

(5) the deposit does not constitute a default under any other agreement binding on the Company or BFC and, if the Debt Securities of such series are subordinated pursuant to Article XII, is not prohibited by Article XII;

(6) the Issuer delivers to the Trustee an Opinion of Counsel to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the Investment Company Act of 1940;

(7) in the event of the legal defeasance option, the Issuer shall have delivered to the Trustee an Opinion of Counsel stating that (i) the Issuer has received from the Internal Revenue Service a ruling, or (ii) since the date of this Indenture there has been a change in the applicable Federal income tax law, in either case of the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of Debt Securities of such series will not recognize income, gain or loss for Federal income tax purposes as a result of such defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred;

(8) in the event of the covenant defeasance option, the Issuer shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of Debt Securities of such series will not recognize income, gain or loss for Federal income tax purposes as a result of such covenant defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred; and

(9) the Issuer delivers to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Debt Securities of such series as contemplated by this Article XI have been complied with.

Before or after a deposit, the Issuer may make arrangements satisfactory to the Trustee for the redemption

of Debt Securities of such series at a future date in accordance with Article III.

SECTION 11.04. Application of Trust Money. The Trustee shall hold in trust money or U.S. Government Obligations deposited with it pursuant to this Article XI. It shall apply the deposited money and the money from U.S. Government Obligations through any paying agent and in accordance with this Indenture to the payment of principal of, and premium, if any, and interest on, the Debt Securities of the defeased series. In the event the Debt Securities of the defeased series are subordinated pursuant to Article XII, money and securities so held in trust are not subject to Article XII.

SECTION 11.05. Repayment to Issuer. The Trustee and any paying agent shall promptly turn over to the Issuer upon request any excess money or securities held by them at any time.

Subject to any applicable abandoned property law, the Trustee and any paying agent shall pay to the Issuer upon request any money held by them for the payment of principal, premium or interest that remains unclaimed for two years, and, thereafter, Holders entitled to such money must look to the Issuer for payment as general creditors.

SECTION 11.06. Indemnity for U.S. Government Obligations.



The Issuer shall pay and shall indemnify the Trustee, its officers, directors, employees and agents, and the Holders against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S.

Government Obligations.

SECTION 11.07. Reinstatement. If the Trustee or any paying agent is unable to apply any money or U.S. Government Obligations in accordance with this Article XI by reason of any legal proceeding or by reason of any order or judgment of any court or government authority enjoining, restraining or otherwise prohibiting such application, the Issuer's obligations under this Indenture and the Debt Securities of the defeased series shall be revived and reinstated as though no deposit had occurred pursuant to this Article XI until such time as the Trustee or any paying agent is permitted to apply all such money or U.S. Government Obligations in accordance with this Article XI.

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## ARTICLE XII

### Subordination of Debt Securities

SECTION 12.01. Applicability of Article; Agreement To Subordinate. The provisions of this Article XII shall be applicable to the Debt Securities of any series (Debt Securities of such series referred to in this Article XII as "Subordinated Debt Securities") designated, pursuant to Section 2.03, as subordinated to Senior Indebtedness. Each Holder by accepting a Subordinated Debt Security agrees that the Indebtedness evidenced by such Subordinated Debt Security is subordinated in right of payment, to the extent and in the manner provided in this Article XII, to the prior payment of all Senior Indebtedness and that the subordination is for the benefit of and enforceable by the holders of Senior Indebtedness. All provisions of this Article XII shall be subject to Section 12.12.

SECTION 12.02. Liquidation, Dissolution, Bankruptcy. Upon any payment or distribution of the assets of the Issuer to creditors upon a total or partial liquidation or a total or partial dissolution of the Issuer or in a bankruptcy, reorganization, insolvency, receivership or similar proceeding relating to the Issuer or its property:

(1) holders of Senior Indebtedness shall be entitled to receive payment in full in cash of the Senior Indebtedness (including interest (if any), accruing on or after the commencement of a proceeding in bankruptcy, whether or not allowed as a claim against the Issuer in such bankruptcy proceeding) before Holders of Subordinated Debt Securities shall be entitled to receive any payment of principal of, or premium, if any, or interest on, the Subordinated Debt Securities; and

(2) until the Senior Indebtedness is paid in full, any distribution to which Holders of Subordinated Debt Securities would be entitled but for this Article XII shall be made to holders of Senior Indebtedness as their interests may appear, except that such Holders

may receive shares of stock and any debt securities that are subordinated to Senior Indebtedness to at least the same extent as the Subordinated Debt Securities.

SECTION 12.03. Default on Senior Indebtedness. The Issuer may not pay the principal of, or premium, if any,

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or interest on, the Subordinated Debt Securities or make any deposit pursuant to

Article XI and may not repurchase, redeem or otherwise retire (except, in the case of Subordinated Debt Securities that provide for a mandatory sinking fund pursuant to Section 3.04, by the delivery of Subordinated Debt Securities by the Issuer to the Trustee pursuant to the first paragraph of Section 3.05) any Debt Securities (collectively, "pay the Subordinated Debt Securities") if (i) any principal, premium or interest in respect of Senior Indebtedness is not paid within any applicable grace period (including at maturity) or (ii) any other default on Senior Indebtedness occurs and the maturity of such Senior Indebtedness is accelerated in accordance with its terms unless, in either case, (x) the default has been cured or waived and any such acceleration has been rescinded or (y) such Senior Indebtedness has been paid in full in cash; provided, however, that the Issuer may pay the Subordinated Debt Securities without regard to the foregoing if the Issuer and the Trustee receive written notice approving such payment from the Representative of each issue of Designated Senior Indebtedness. During the continuance of any default (other than a default described in clause (i) or (ii) of the preceding sentence) with respect to any Senior Indebtedness pursuant to which the maturity thereof may be accelerated immediately without further notice (except such notice as may be required to effect such acceleration) or the expiration of any applicable grace periods, the Issuer may not pay the Subordinated Debt Securities for a period (a "Payment Blockage Period") commencing upon the receipt by the Issuer and the Trustee of written notice of such default from the Representative of any Designated Senior Indebtedness specifying an election to effect a Payment Blockage Period (a "Blockage Notice") and ending 179 days thereafter (or earlier if such Payment Blockage Period is terminated (i) by written notice to the Trustee and the Issuer from the Person or Persons who gave such Blockage Notice, (ii) by repayment in full in cash of such Designated Senior Indebtedness or (iii) because the default giving rise to such Blockage Notice is no longer continuing). Notwithstanding the provisions described in the immediately preceding sentence (but subject to the provisions contained in the first sentence of this Section 12.03), unless the holders of such Designated Senior Indebtedness or the Representative of such holders shall have accelerated the maturity of such Designated Senior Indebtedness, the Issuer may resume payments on the Subordinated Debt Securities after such Payment Blockage Period. Not more than one Blockage Notice may be given in any consecutive 360-day period, irrespective of the number of defaults with respect to any number of issues of Senior Indebtedness during such period; provided, however, that if

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any Blockage Notice within such 360-day period is given by or on behalf of any holders of Designated Senior Indebtedness (other than the Bank Indebtedness), the Representative of the Bank Indebtedness may give another Blockage Notice within such period; provided further, however, that in no event may the total number of days during which any Payment Blockage Period or Periods is in effect exceed 179 days in the aggregate during any 360 consecutive day period. For purposes of this Section 12.03, no default or event of default which existed or was continuing on the date of the commencement of any Payment Blockage Period with respect to the Senior Indebtedness initiating such Payment Blockage Period shall be, or be made, the basis of the commencement of a subsequent Payment Blockage Period by the Representative of such Senior Indebtedness, whether or not within a period of 360 consecutive days, unless such default or event of default shall have been cured or waived for a period of not less than 90 consecutive days.

SECTION 12.04. Acceleration of Payment of Debt Securities. If payment of the Subordinated Debt Securities is accelerated because of an Event of Default, the Issuer or the Trustee shall promptly notify the holders of the Designated Senior Indebtedness (or their Representatives) of the acceleration.

SECTION 12.05. When Distribution Must Be Paid Over. If a distribution is made to Holders of Subordinated Debt Securities that because of this Article XII should not have been made to them, the Holders who receive such distribution shall hold it in trust for holders of Senior Indebtedness and pay it over to them as their interests may appear.

SECTION 12.06. Subrogation. After all Senior Indebtedness is paid in full and until the Subordinated Debt Securities are paid in full,

Holders thereof shall be subrogated to the rights of holders of Senior Indebtedness to receive distributions applicable to Senior Indebtedness. A distribution made under this Article XII to holders of Senior Indebtedness which otherwise would have been made to Holders of Subordinated Debt Securities is not, as between the Issuer and such Holders, a payment by the Issuer on Senior Indebtedness.

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SECTION 12.07. Relative Rights. This Article XII defines the relative rights of Holders of Subordinated Debt Securities and holders of Senior Indebtedness. Nothing in this Indenture shall:

(1) impair, as between the Issuer and Holders of either

Subordinated Debt Securities or Debt Securities, the obligation of the Issuer, which is absolute and unconditional, to pay principal of, and premium, if any, and interest on, the Subordinated Debt Securities and the Debt Securities in accordance with their terms; or

(2) prevent the Trustee or any Holder of either Subordinated Debt Securities or Debt Securities from exercising its available remedies upon a Default, subject to the rights of holders of Senior Indebtedness to receive distributions otherwise payable to Holders of Subordinated Debt Securities.

SECTION 12.08. Subordination May Not Be Impaired by Issuer. No right of any holder of Senior Indebtedness to enforce the subordination of the Indebtedness evidenced by the Subordinated Debt Securities shall be impaired by any act or failure to act by the Issuer or by its failure to comply with this Indenture.

SECTION 12.09. Rights of Trustee and Paying Agent.

Notwithstanding Section 12.03, the Trustee or any paying agent may continue to make payments on Subordinated Debt Securities and shall not be charged with knowledge of the existence of facts that would prohibit the making of any such payments unless, not less than two business days prior to the date of such payment, a responsible officer of the Trustee receives written notice satisfactory to it that payments may not be made under this Article XII. The Issuer, the Registrar, any paying agent, a Representative or a holder of Senior Indebtedness may give the notice; provided, however, that, if an issue of Senior Indebtedness has a Representative, only the Representative may give the notice.

The Trustee in its individual or any other capacity may hold Senior Indebtedness with the same rights it would have if it were not Trustee. The Registrar and any paying agent may do the same with like rights. The Trustee shall be entitled to all the rights set forth in this Article XII with respect to any Senior Indebtedness which may at any time be held by it, to the same extent as any other holder of Senior Indebtedness; and nothing in Article VII shall deprive the Trustee of any of its rights as such holder. Nothing in this Article XII shall apply to

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claims of, or payments to, the Trustee under or pursuant to Section 7.06.

SECTION 12.10. Distribution or Notice to Representative. Whenever a distribution is to be made or a notice given to holders of Senior Indebtedness, the distribution may be made and the notice given to their Representative (if any).

SECTION 12.11. Article XII Not to Prevent Defaults or Limit Right to Accelerate. The failure to make a payment pursuant to the Debt Securities by reason of any provision in this Article XII shall not be construed

as preventing the occurrence of a Default. Nothing in this Article XII shall have any effect on the right of the Holders or the Trustee to accelerate the maturity of either the Subordinated Debt Securities or the Debt Securities, as the case may be.

SECTION 12.12. Trust Moneys Not Subordinated. Notwithstanding anything contained herein to the contrary, payments from money or the proceeds of U.S. Government Obligations held in trust under Article XI by the Trustee for the payment of principal of, and premium, if any, and interest on, the Subordinated Debt Securities or the Debt Securities shall not be subordinated to the prior payment of any Senior Indebtedness or subject to the restrictions set forth in this Article XII, and none of the Holders thereof shall be obligated to pay over any such amount to the Issuer or any holder of Senior Indebtedness of the Issuer or any other creditor of the Issuer.

SECTION 12.13. Trustee Entitled to Rely. Upon any payment or distribution pursuant to this Article XII, the Trustee and the Holders shall be entitled to conclusively rely (i) upon any order or decree of a court of competent jurisdiction in which any proceedings of the nature referred to in Section 12.02 are pending, (ii) upon a certificate of the liquidating trustee or agent or other Person making such payment or distribution to the Trustee or to such Holders or (iii) upon the Representatives for the holders of Senior Indebtedness for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Indebtedness and other Indebtedness of the Issuer, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article XII. In the event that the Trustee determines, in good faith, that 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 XII, the

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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 other facts pertinent to the rights of such Person under this Article XII, 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. The provisions of Sections 7.01 and 7.02 shall be applicable to all actions or omissions of actions by the Trustee pursuant to this Article XII.

SECTION 12.14. Trustee to Effectuate Subordination. Each Holder by accepting a Subordinated Debt Security authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination between the Holders of Subordinated Debt Securities and the holders of Senior Indebtedness as provided in this Article XII and appoints the Trustee as attorney-in-fact for any and all such purposes.

SECTION 12.15. Trustee Not Fiduciary for Holders of Senior Indebtedness. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness and shall not be liable to any such holders if it shall mistakenly pay over or distribute to Holders of Subordinated Debt Securities or the Issuer or any other Person, money or assets to which any holders of Senior Indebtedness shall be entitled by virtue of this Article XII or otherwise.

SECTION 12.16. Reliance by Holders of Senior Indebtedness on Subordination Provisions. Each Holder by accepting a Subordinated Debt Security acknowledges and agrees that the foregoing subordination provisions are, and are intended to be, an inducement and a consideration to each holder of any Senior Indebtedness, whether such Senior Indebtedness was created or acquired before or after the issuance of the Subordinated Debt Securities, to acquire and continue to hold, or to continue to hold, such Senior Indebtedness and such holder of Senior Indebtedness shall be deemed conclusively to have relied on such subordination provisions in acquiring and continuing to hold, or in continuing

to hold, such Senior Indebtedness.

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#### ARTICLE XIII

##### Guarantees of Debt Securities

SECTION 13.01. Guarantees. This Section 13.01 and Section 13.02 apply to the Debt Securities of any series of BFC to the extent that the form of the Guarantees to be endorsed on such Securities is not otherwise established as contemplated by Section 2.01.

The Guarantor hereby fully and unconditionally guarantees to each holder of a Debt Security of each series issued by BFC and authenticated and delivered by the Trustee, the due and punctual payment of the principal (including any amount due in respect of original issue discount) of and any premium and interest on such Debt Security, and the due and punctual payment of any sinking fund payments provided for pursuant to the terms of such Debt Security, then and as the same shall become due and payable, whether at the Stated Maturity, by declaration of acceleration, call for redemption or otherwise, in accordance with the terms of such Debt Security and of this Indenture. The Guarantor hereby agrees that in the event of an Event of Default its obligations hereunder shall be as if it were a principal debtor and not merely a surety, and shall be absolute and unconditional, irrespective of, and shall be unaffected by, any invalidity, irregularity or unenforceability of any Debt Security of any series or this Indenture, any failure to enforce the provisions of any Debt Security of any series or this Indenture, any waiver, modification or indulgence granted to BFC with respect thereto, by the Holder of any Debt Security of any series of BFC or the Trustee, or any other

circumstances which may otherwise constitute a legal or equitable discharge of a surety or guarantor; provided, however, that, notwithstanding the foregoing, no such waiver, modification or indulgence shall, without the consent of the Guarantor, increase the principal amount of any Debt Security of BFC or the interest rate thereon or increase any premium payable upon redemption thereof. The Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of merger or bankruptcy of BFC, any right to require a proceeding first against BFC, the benefit of discussion, protest or notice with respect to any Debt Security of BFC or the indebtedness evidenced thereby or with respect to any sinking fund payment required pursuant to the terms of such Debt Security issued under this Indenture and all demands whatsoever, and covenants that this Guarantee will not be discharged with respect to such Debt Security except by payment in full of the principal thereof and any premium and interest thereon or as

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provided in Article XI or Section 10.01. If any Holder or the Trustee is required by any court or otherwise to return to BFC, the Guarantor, or any custodian, trustee, liquidator or other similar official acting in relation to BFC or the Guarantor any amount paid by BFC or the Guarantor to the Trustee or such Holder, this Guarantee to the extent theretofore discharged, shall be reinstated in full force and effect. The Guarantor further agrees that, as between the Guarantor, on the one hand, and the Holders and the Trustee, on the other hand, the stated Maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6.01 hereof for the purposes of this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby.

The Guarantor agrees to pay any and all reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Trustee or any Holders in enforcing any rights under this Guarantee. The Guarantor hereby fully and unconditionally guarantees to the Trustee the due and punctual payment of all fees and expenses under Section 7.06.

The Guarantor hereby waives any right of setoff which the Guarantor may have against the Holder of any Debt Security of BFC in respect of any amounts which are or may become payable by such Holder to BFC.

The Guarantor shall be subrogated to all rights of the Holders of any series of Debt Securities and the Trustee against BFC in respect of any amounts paid to such Holders and the Trustee by the Guarantor pursuant to the provisions of the Guarantees; provided, however, that the Guarantor shall not be entitled to enforce or to receive any payments arising out of or based upon, such right of subrogation until the principal of, premium, if any, and interest on all of the Debt Securities of such series shall have been paid in full.

No past, present or future stockholder, officer, director, employee or incorporator of the Guarantor shall have any personal liability under the Guarantees set forth in this Section 13.01 by reason of his or its status as such stockholder, officer, director, employee or incorporator.

The Guarantees set forth in this Section 13.01 shall not be valid or become obligatory for any purpose with respect to a Debt Security until the certificate of authentication on such Debt Security shall have been signed by or on behalf of the Trustee.

SECTION 13.02. Execution of Guarantees. To evidence its guarantee to the Holders specified in

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Section 13.01, the Guarantor hereby agrees to execute the notation of the Guarantee in substantially the form set forth in Section 2.19 to be endorsed on each Debt Security of BFC authenticated and delivered by the Trustee. The Guarantor hereby agrees that its Guarantee set forth in Section 13.01 shall remain in full force and effect notwithstanding any failure to endorse on each Debt Security of BFC a notation of such Guarantee. Each such notation of such Guarantee shall be signed on behalf of the Guarantor by any Authorized Officer prior to the authentication of the Debt Security on which it is endorsed, and the delivery of such Debt Security by the Trustee, after the due authentication thereof by the Trustee hereunder, shall constitute due delivery of the Guarantee on behalf of the Guarantor. Such signatures upon the notation of the Guarantee may be manual or facsimile signatures of any present, past or future of such Authorized Officers and may be imprinted or otherwise reproduced below the notation of the Guarantee, and in case any such Authorized Officer who shall have signed the notation of the Guarantee shall cease to be such Authorized Officer before the Debt Security on which such notation is endorsed shall have been authenticated and delivered by the Trustee or disposed of by BFC, such Debt Security nevertheless may be authenticated and delivered or disposed of as though the person who signed the notation of the Guarantee had not ceased to be such Authorized Officer of the Guarantor.

SECTION 13.03. Subordination of Guarantees. Any Guarantee issued by the Guarantor of a Series of Debt Securities of BFC which is subordinated in accordance with the provisions of Article XII shall be subordinated as an obligation of the Guarantor to the same extent as set forth in Article XII.

#### ARTICLE XIV

##### Miscellaneous Provisions

SECTION 14.01. Successors and Assigns Bound by Indenture. All the covenants, stipulations, promises and agreements in this Indenture contained by or in behalf of the Company, BFC or the Trustee shall bind its successors and assigns, whether so expressed or not.

SECTION 14.02. Acts of Board, Committee or Officer of Successor Company Valid. Any act or proceeding by any provision of this

Indenture authorized or required to be done or performed by any board, committee or officer of the Company or BFC shall and may be done and performed with

like force and effect by the like board, committee or officer of any Successor Company.

SECTION 14.03. Required Notices or Demands. Except as otherwise expressly provided in this Indenture, any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders to or on the Company or BFC may be given or served by being deposited postage prepaid in a post office letter box in the United States addressed (until another address is filed by the Company or BFC with the Trustee) as follows: Block Financial Corporation, 4435 Main Street, Suite 500, Kansas City, Missouri 64111, Attention: John R. Cox. Except as otherwise expressly provided in this Indenture, any notice, direction, request or demand by the Company or by any Holder to or upon the Trustee may be given or made, for all purposes, by being deposited, postage prepaid, in a post office letter box in the United States addressed to the corporate trust office of the Trustee initially at Bankers Trust Company, Four Albany Street, 4th Floor, New York, New York 10006. The Company, BFC or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications.

Any notice required or permitted to a Registered Holder by the Company, BFC or the Trustee pursuant to the provisions of this Indenture shall be deemed to be properly mailed by being deposited postage prepaid in a post office letter box in the United States addressed to such Holder at the address of such Holder as shown on the Debt Security Register. Any report pursuant to Section 313 of the Trust Indenture Act shall be transmitted in compliance with subsection (c) therein.

In the event of suspension of regular mail service or by reason of any other cause it shall be impracticable to give notice by mail, then such notification as shall be given with the approval of the Trustee shall constitute sufficient notice for every purpose thereunder.

In the event of suspension of publication of any Authorized Newspaper or by reason of any other cause it shall be impracticable to give notice by publication, then such notification as shall be given with the approval of the Trustee shall constitute sufficient notice for every purpose hereunder.

Failure to mail a notice or communication to a Holder or any defect in it or any defect in any notice by publication as to a Holder shall not affect the sufficiency

of such notice with respect to other Holders. If a notice or communication is mailed or published in the manner provided above, it is conclusively presumed duly given.

SECTION 14.04. Indenture and Debt Securities to Be Construed in Accordance with the Laws of the State of New York. This Indenture and each Debt Security shall be deemed to be New York contracts, and for all purposes shall be construed in accordance with the laws of said State (without reference to principles of conflicts of law).

SECTION 14.05. Officers' Certificate and Opinion of Counsel to Be Furnished upon Application or Demand by the Issuer. Upon any application or demand by the Issuer to the Trustee to take any action under any of the provisions of this Indenture, the Issuer shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent provided for in this Indenture relating to the proposed action have been complied with and an Opinion

of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with, except that in the case of any such application or demand as to which the furnishing of such document is specifically required by any provision of this Indenture relating to such particular application or demand, no additional certificate or opinion need be furnished.

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

SECTION 14.06. Payments Due on Legal Holidays. In any case where the date of maturity of interest on or principal of and premium, if any, on the Debt Securities of a series or the date fixed for redemption or repayment of any Debt Security or the making of any sinking fund payment shall not be a business day at any Place of Payment for the Debt Securities of such series, then payment of interest or principal and premium, if any, or the making of such sinking

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fund payment need not be made on such date at such Place of Payment, 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 date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date. If a record date is not a business day, the record date shall not be affected.

SECTION 14.07. Provisions Required by Trust Indenture Act to Control. If and to the extent that any provision of this Indenture limits, qualifies or conflicts with another provision included in this Indenture which is required to be included in this Indenture by any of Sections 310 to 318, inclusive, of the Trust Indenture Act, such required provision shall control.

SECTION 14.08. Computation of Interest on Debt Securities. Interest, if any, on the Debt Securities shall be computed on the basis of a 360-day year of twelve 30-day months, except as may otherwise be provided pursuant to Section 2.03.

SECTION 14.09. Rules by Trustee, Paying Agent and Registrar. The Trustee may make reasonable rules for action by or a meeting of Holders. The Registrar and any paying agent may make reasonable rules for their functions.

SECTION 14.10. No Recourse Against Others. An incorporator or any past, present or future director, officer, employee or stockholder, as such, of the Company or BFC shall not have any liability for any obligations of the Company or BFC under the Debt Securities or this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Debt Security, each Holder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Debt Securities.

SECTION 14.11. Severability. In case any provision in this Indenture, the Debt Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 14.12. Effect of Headings. The article and section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.

SECTION 14.13. Indenture May Be Executed in Counterparts.



This Indenture may be executed in any number

of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument.

The Trustee hereby accepts the trusts in this Indenture upon the terms and conditions herein set forth.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly signed as of the date first written above.

H&R BLOCK, INC.,

by

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Name:

Title:

BLOCK FINANCIAL CORPORATION,

by

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Name:

Title:

BANKERS TRUST COMPANY,  
as trustee

by

-----

Name:

Title:

=====  
=====  
CREDIT AGREEMENT

dated as of December 10, 1996

by and among

BLOCK FINANCIAL CORPORATION,

as the Borrower,

THE LENDERS PARTIES HERETO FROM TIME TO TIME,

as the Lenders

and

MELLON BANK, N.A.,

as Agent  
=====  
=====

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CREDIT AGREEMENT

THIS CREDIT AGREEMENT, dated as of December 10, 1996, by and among BLOCK FINANCIAL CORPORATION, a Delaware corporation (the "Borrower"), the Lenders parties hereto from time to time (the "Lenders" as further defined below) and MELLON BANK, N.A., a national banking association, as agent for the Lenders hereunder (in such capacity, together with its successors in such capacity, the "Agent").

Recitals:

The Borrower has requested the Agent and the Lenders to enter into this Agreement and extend credit as provided herein to the Borrower to enable it to borrow, repay and reborrow hereunder from time to time amounts not exceeding One Billion Two Hundred Fifty Million Dollars (\$1,250,000,000) in aggregate principal at any time outstanding for the purpose of paying at maturity certain commercial paper issued by the Borrower, and the Lenders are willing to extend such credit upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I

CERTAIN DEFINITIONS

1.01. Certain Definitions. In addition to other words and terms defined elsewhere in this Agreement, as used herein the following words and terms shall have the following meanings, respectively, unless the context hereof otherwise clearly requires:

"Affected Lender" shall have the meaning set forth in Section 2.04(e) hereof.

"Agreement" shall mean this Credit Agreement, as it may be amended, modified or supplemented from time to time.

"Applicable Margin" shall have the meaning set forth in Section 2.04(b) hereof.

"Assessment Rate" shall have the meaning set forth in Section 2.04(a) hereof.

"Base Rate" shall have the meaning set forth in Section 2.04(a) hereof.

"Base Rate Option" shall have the meaning set forth in Section 2.04(a) hereof.

"Base Rate Portion" of any Loan or Loans shall mean at any time the portion, including the whole, of such Loan or Loans bearing interest at such time (i) under the Base Rate Option or (ii) in accordance with Section 2.08(c)(ii) hereof.

"Business Day" shall mean any day other than a Saturday, Sunday, public holiday under the laws of the Commonwealth of Pennsylvania or other day on which banking institutions are authorized or obligated to close in the city in which the Agent's Office is located or in New York, New York.

"Capitalized Lease" shall mean at any time any lease which is, or is required under GAAP to be, capitalized on the balance sheet of the lessee at such time.

"CD Rate" shall have the meaning set forth in Section 2.04(a) hereof.

"CD Rate Funding Period" shall have the meaning set forth in Section 2.04(c) hereof.

"CD Rate Option" shall have the meaning set forth in Section 2.04(a) hereof.

"CD Rate Portion" of any Loan or Loans shall mean at any time the portion, including the whole, of such Loan or Loans, bearing interest at any time under the CD Rate Option or at a rate calculated by reference to the CD Rate under Section 2.08(c)(i) hereof.

"CD Rate Reserve Percentage" shall have the meaning set forth in Section 2.04(a) hereof.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

"CERCLIS" shall mean the Comprehensive Environmental Response, Compensation and Liability Information System List, as the same may be amended from time to time.

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"Change of Control" shall mean any Person or group of Persons (as used in Sections 13 and 14 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations thereunder) shall have become the beneficial owner (as defined in Rules 13d-3 and 13d-5 promulgated by the Securities and Exchange Commission (the "SEC") under the Exchange Act) of 20% or more of the combined voting power of all the outstanding voting securities of the Guarantor and, at any time following an acquisition as described in this clause,

during any period of 6 consecutive calendar months, individuals who were directors of the Guarantor on the first day of such period, together with individuals elected as directors by not less than two-thirds of the individuals who were directors of the Guarantor on the first day of such period, shall cease to constitute a majority of the members of the board of directors of the Guarantor (it being understood that this definition does not require a period of 6 months

to have passed before a Change of Control can occur).

"Closing Date" shall have the meaning set forth in Section 4.01 hereof.

"Code" means the Internal Revenue Code of 1986, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time. References to sections of the Code shall be construed also to refer to any successor sections.

"Commitment" shall have the meaning set forth in Section 2.01(a) hereof.

"Commitment Percentage" of a Lender at any time shall mean the Commitment Percentage for such Lender set forth below its name on the signature page hereof, subject to transfer to another Lender as provided for in Section 9.14 hereof and subject to adjustment by operation of the procedures with respect to extensions of the Maturity Date described in Section 2.12 hereof.

"Committed Amount" shall have the meaning set forth in Section 2.01(a) hereof.

"CompuServe" shall mean CompuServe Corporation, a Delaware corporation.

"Consolidated Net Worth of CompuServe" at any time shall mean the total amount of stockholders' equity of CompuServe

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and its consolidated Subsidiaries at such time determined on a consolidated basis in accordance with GAAP.

"Consolidated Net Worth of Guarantor" at any time shall mean the total amount of stockholders' equity of the Guarantor and its consolidated Subsidiaries at such time determined on a consolidated basis in accordance with GAAP.

"Consolidated Net Worth of Guarantor Without CompuServe" at any time shall mean (a) if CompuServe is a consolidated Subsidiary of the Guarantor at such time, (i) an amount equal to the Consolidated Net Worth of Guarantor minus (ii) an amount equal to the Consolidated Net Worth of CompuServe plus (iii) an amount equal to the minority interest in CompuServe determined in accordance with GAAP, and (b) if CompuServe

is not a consolidated Subsidiary of the Guarantor at such time, (i) the Consolidated Net Worth of Guarantor minus (ii) the amount of any investment of Guarantor or any Subsidiary in CompuServe determined in accordance with GAAP.

"Controlled Group Member" shall mean each trade or business (whether or not incorporated) which together with any Loan Party is treated as a single employer under Sections 4001(a)(14) or 4001(b)(1) of ERISA or Sections 414(b), (c), (m) or (o) of the Code.

"Corresponding Source of Funds" shall mean:

(a) In the case of any Funding Segment of the CD Rate Portion, the proceeds of hypothetical issuances by a Lender of one or more of its certificates of deposit at the beginning of the CD Rate Funding Period corresponding to such Funding Segment, having maturities approximately equal to such CD Rate Funding Period and in an aggregate amount approximately equal to such Lender's Pro Rata share of such Funding Segment; and

(b) In the case of any Funding Segment of the Euro-Rate Portion, the proceeds of hypothetical receipts by a Notional Euro-Rate Funding Office or by a Lender through a Notional Euro-Rate Funding Office of one or more Dollar deposits in the interbank

eurodollar market at the beginning of the Euro-Rate Funding Period corresponding to such Funding Segment having maturities approximately equal to such Euro-Rate Funding Period and in an aggregate amount approximately equal to each Lender's Pro Rata share of such Funding Segment.

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"Cross-Default Event" shall have the meaning set forth in Section 7.01(f) hereof.

"Cross-Default Obligation" shall have the meaning set forth in Section 7.01(f) hereof.

"Designated Replacement Lender" shall have the meaning set forth in Section 2.13 hereof.

"Dollar," "Dollars" and the symbol "\$" shall mean lawful money of the United States of America.

"Environmental Affiliate" shall mean, with respect to any Person, any other Person whose liability (contingent or otherwise) for any Environmental Claim such Person has retained, assumed or otherwise is liable for (by Law, agreement or otherwise).

"Environmental Approvals" shall mean any Governmental Action pursuant to or required under any Environmental Law.

"Environmental Claim" shall mean, with respect to any Person, any action, suit, proceeding, investigation, notice, claim, complaint, demand, request for information or other communication (written or oral) by any other Person (including but not limited to any Governmental Authority, citizens' group or present or former employee of such Person) alleging, asserting or claiming any actual or potential (a) violation of any Environmental Law, (b) liability under any Environmental Law or (c) liability for investigatory costs, cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries, fines or penalties arising out of, based on or resulting from the presence, or release into the environment, of any Environmental Concern Materials at any location, whether or not owned by such Person.

"Environmental Cleanup Site" shall mean any location which is listed or proposed for listing on the National Priorities List, on CERCLIS or on any similar state list of sites requiring investigation or cleanup, or which is the subject of any pending or threatened action, suit, proceeding or investigation related to or arising from any alleged violation of any Environmental Law.

"Environmental Concern Materials" shall mean (a) any flammable substance, explosive, radioactive material, hazardous material, hazardous waste, toxic substance, solid

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waste, pollutant, contaminant or any related material, raw material, substance, product or by-product of any substance specified in or regulated or otherwise affected by any Environmental Law (including but not limited to any "hazardous substance" as defined in CERCLA or any similar state Law), (b) any toxic chemical or other substance from or related to industrial, commercial or institutional activities, and (c) asbestos, gasoline, diesel fuel, motor oil, waste and used oil, heating oil and other petroleum products or compounds, polychlorinated biphenyls, radon and urea formaldehyde.

"Environmental Law" shall mean any Law, whether now existing or subsequently enacted or amended, relating to (a) pollution or protection of the environment, including natural resources, (b) exposure of Persons, including but not limited to employees, to Environmental Concern Materials, (c) protection of the public health or

welfare from the effects of products, by-products, wastes, emissions, discharges or releases of Environmental Concern Materials or (d) regulation of the manufacture, use or introduction into commerce of Environmental Concern Materials including their manufacture, formulation, packaging, labeling, distribution, transportation, handling, storage or disposal. Without limitation, "Environmental Law" shall also include any Environmental Approval and the terms and conditions thereof.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time. References to sections of ERISA shall be construed also to refer to any successor sections.

"Euro-Rate" shall have the meaning set forth in Section 2.04(a) hereof.

"Euro-Rate Funding Period" shall have the meaning set forth in Section 2.04(c) hereof.

"Euro-Rate Option" shall have the meaning set forth in Section 2.04(a) hereof.

"Euro-Rate Portion" of any Loan or Loans shall mean at any time the portion, including the whole, of such Loan or Loans bearing interest at any time under the Euro-Rate Option or at a rate calculated by reference to the Euro-Rate under Section 2.08(c)(i) hereof.

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"Euro-Rate Reserve Percentage" shall have the meaning set forth in Section 2.04(a) hereof.

"Event of Default" shall mean any of the Events of Default described in Section 7.01 hereof.

"Facility Fee" shall have the meaning set forth in Section 2.02(a) hereof.

"Federal Funds Effective Rate" for any day shall mean the rate per annum (rounded upward to the nearest 1/100 of 1%) determined by the Agent (which determination shall be conclusive) to be the rate per annum announced by the Federal Reserve Bank of New York (or any successor) on such day as being the weighted average of the rates on overnight federal funds transactions arranged by federal funds brokers on the previous trading day, as computed and announced by such Federal Reserve Bank (or any successor) in substantially the same manner as such Federal Reserve Bank computes and announces the weighted average it refers to as the "Federal Funds Effective Rate" as of the date of this Agreement; provided, that if such Federal Reserve Bank (or its successor) does not announce such rate on any day, the "Federal Funds Effective Rate" for such day shall be the Federal Funds Effective Rate for the last day on which such rate was announced.

"Funding Breakage Date" shall have the meaning set forth in Section 2.09(b) hereof.

"Funding Breakage Indemnity" shall have the meaning set forth in Section 2.09(b) hereof.

"Funding Periods" shall have the meaning set forth in Section 2.04(c) hereof.

"Funding Segment" of the CD Rate Portion or the Euro-Rate Portion, as the case may be, of the Loans at any time shall mean the entire principal amount of such Portion to which at the time in question there is applicable a particular Funding Period beginning on a particular day and ending on a particular day. (By definition, each such Portion is at all times composed of an integral number of discrete Funding Segments and the sum of the principal amounts of all Funding



Segments of any such Portion at any time equals the principal amount of such Portion at such time.)

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"GAAP" shall have the meaning set forth in Section 1.03 hereof.

"Governmental Action" shall have the meaning set forth in Section 3.04 hereof.

"Governmental Authority" shall mean any government or political subdivision or any agency, authority, bureau, central bank, commission, department or instrumentality of either, or any court, tribunal, grand jury or arbitrator, in each case whether foreign or domestic.

"Guarantor" shall mean H & R Block, Inc., a Missouri corporation.

"Guaranty" shall have the meaning set forth in Section 4.01(b) hereof.

"Guaranty Equivalent" shall have the following meaning: A Person (the "Deemed Guarantor") shall be deemed to be subject to a Guaranty Equivalent in respect of any indebtedness, obligation or liability (the "Assured Obligation") of another Person (the "Deemed Obligor") if the Deemed Guarantor directly or indirectly guarantees, becomes surety for, endorses, assumes, agrees to indemnify the Deemed Obligor against, or otherwise agrees, becomes or remains liable (contingently or otherwise) for, such Assured Obligation. Without limitation, a Guaranty Equivalent shall be deemed to exist if a Deemed Guarantor agrees, becomes or remains liable (contingently or otherwise), directly or indirectly: (a) to purchase or assume, or to supply funds for the payment, purchase or satisfaction of, an Assured Obligation, (b) to make any loan, advance, capital contribution or other investment in, or to purchase or lease any property or services from, a Deemed Obligor (i) to maintain the solvency of the Deemed Obligor, (ii) to enable the Deemed Obligor to meet any other financial condition, (iii) to enable the Deemed Obligor to satisfy any Assured Obligation or to make any other payment, or (iv) to assure the holder

of such Assured Obligation against loss, (c) to purchase or lease property or services from the Deemed Obligor regardless of the non-delivery of or failure to furnish of such property or services, (d) in a transaction having the characteristics of a take-or-pay or throughput contract or as described in paragraph 6 of FASB Statement of Financial Accounting Standards No. 47, or (e) in respect of any other transaction the effect of which is to assure the payment or performance (or payment of damages or other remedy

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in the event of nonpayment or nonperformance) of any Assured Obligation.

"Indebtedness" of a Person shall mean:

(a) All obligations on account of money borrowed by, or credit extended to or on behalf of, or for or on account of deposits with or advances to, such Person;

(b) All obligations of such Person evidenced by bonds, debentures, notes or similar instruments;

(c) All obligations of such Person for the deferred purchase price of property or services;

(d) All obligations secured by a Lien on property owned by such Person (whether or not assumed); and all obligations of such Person under Capitalized Leases (without regard to any limitation of the rights and remedies of the holder of such Lien or the

lessor under such Capitalized Lease to repossession or sale of such property);

(e) The face amount of all letters of credit issued for the account of such Person and, without duplication, the unreimbursed amount of all drafts drawn thereunder, and all other obligations of such Person associated with such letters of credit or draws thereon;

(f) All obligations of such Person in respect of acceptances or similar obligations issued for the account of such Person;

(g) All obligations of such Person under a product financing or similar arrangement described in paragraph 8 of FASB Statement of Accounting Standards No. 49 or any similar requirement of GAAP; and

(h) All obligations of such Person under any interest rate or currency protection agreement, interest rate or currency future, interest rate or currency option, interest rate or currency swap or cap or other interest rate or currency hedge agreement.

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"Indemnified Parties" shall mean the Agent, the Lenders and their respective affiliates, and the directors, officers, employees, attorneys and agents of each of the foregoing.

"Initial Committed Amount" shall have the meaning set forth in Section 2.01(a) hereof.

"Law" shall mean any law (including common law), constitution, statute, treaty, convention, regulation, rule, ordinance, order, injunction, writ, decree or award of any Governmental Authority.

"Lender" shall mean any of the Lenders listed on the signature pages hereof, subject to the provisions of Section 9.14 hereof pertaining to Persons becoming or ceasing to be Lenders.

"Lien" shall mean any mortgage, deed of trust, pledge, lien, security interest, charge or other encumbrance or security arrangement of any nature whatsoever, including but not limited to any conditional sale or title retention arrangement, and any assignment, deposit arrangement or lease intended as, or having the effect of, security.

"Loan" shall mean any loan by a Lender to the Borrower under this Agreement, and "Loans" shall mean all Loans made by the Lenders under this Agreement.

"Loan Documents" shall mean this Agreement, the Notes, the Transfer Supplements and the Guaranty, and all other agreements and instruments executed and delivered in connection herewith or therewith (or furnished in connection herewith or therewith) or extending, renewing, refinancing or refunding any indebtedness, obligation or liability arising under any of the foregoing, in each case as the same may be amended, modified or supplemented from time to time hereafter.

"Loan Party" shall mean the Borrower and the Guarantor.

"London Business Day" shall mean a day for dealing in deposits in Dollars by and among banks in the London interbank market and which is a Business Day.

"Material Adverse Effect" shall mean: (a) a material adverse effect on the business, operations, condition (financial or otherwise) or prospects of the Guarantor and its Subsidiaries taken as a whole, (b) a material adverse effect on the ability of any Loan Party to perform or comply

with any of the terms and conditions of any Loan Document, or (c) an adverse effect on the legality, validity, binding effect, enforceability or admissibility into evidence of any Loan Document, or the ability of the Agent or any Lender to enforce any rights or remedies under or in connection with any Loan Document.

"Maturity Date" shall mean December 9, 1997, as such date may be extended in accordance with Section 2.12 hereof.

"Mellon" shall mean Mellon Bank, N.A.

"Moody's" shall mean Moody's Investors Service, Inc.

"Multiemployer Plan" shall mean any employee benefit plan which is a "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA and to which any Loan Party or any Controlled Group Member has or had an obligation to contribute.

"Nonextending Lender" shall have the meaning given to that term in Section 2.12.

"Note" or "Notes" shall mean the revolving credit promissory notes of the Borrower executed and delivered under this Agreement and as further defined in Section 2.01(c) hereof, together with all extensions, renewals, refinancings or refundings thereof in whole or part.

"Notional Euro-Rate Funding Office" shall have the meaning given to that term in Section 2.11(a) hereof.

"Obligations" shall mean all indebtedness, obligations and liabilities of the Borrower to any Lender or the Agent from time to time arising under or in connection with or related to or evidenced by or secured by or under color of this Agreement or any other Loan Document, and all extensions, renewals or refinancings thereof, whether such indebtedness, obligations or liabilities are direct or indirect, otherwise secured or unsecured, joint or several, absolute or contingent, due or to become due, whether for payment or performance, now existing or hereafter arising (including interest and other obligations arising or accruing after the commencement of any bankruptcy, insolvency, reorganization, dissolution or similar proceeding with respect to the Borrower or any other Person, or which would have arisen or accrued but for the commencement of such proceeding, even if such obligation or the claim therefor is not enforceable or allowable in such proceeding). Without

limitation of the foregoing, such indebtedness, obligations and liabilities include the principal amount of Loans, interest, fees, indemnities or expenses under or in connection with this Agreement or

any other Loan Document, and all extensions, renewals and refinancings thereof, whether or not such Loans were made in compliance with the terms and conditions of this Agreement or in excess of the obligation of the Lenders to lend. Obligations shall remain Obligations notwithstanding any assignment or transfer or any subsequent assignment or transfer of any of the Obligations or any interest therein.

"Office," when used in connection with the Agent, shall mean its office located at One Mellon Bank Center, Pittsburgh, Pennsylvania 15258, or at such other office or offices of the Agent or any branch, subsidiary or affiliate thereof as may be designated in writing from time to time by the Agent to the Borrower.

"Option" shall mean the Base Rate Option, the CD Rate Option or the Euro-Rate Option, as the case may be.

"Participant" shall have the meaning set forth in Section 9.14(b) hereof.

"PBGC" means the Pension Benefit Guaranty Corporation established under Title IV of ERISA or any other governmental agency, department or instrumentality succeeding to the functions of said corporation.

"Pension-Related Event" shall mean any of the following events or conditions:

(a) Any action is taken by any Person (i) to terminate, or which would result in the termination of, a Plan, either pursuant to its terms or by operation of law (including, without limitation, any amendment of a Plan which would result in a termination under Section 4041(e) of ERISA), or (ii) to have a trustee appointed for a Plan pursuant to Section 4042 of ERISA;

(b) PBGC notifies any Person of its determination that an event described in Section 4042 of ERISA has occurred with respect to a Plan, that a Plan should be terminated, or that a trustee should be appointed for a Plan;

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(c) Any Reportable Event occurs with respect to a Plan;

(d) Any action occurs or is taken which could result in any Loan Party becoming subject to liability for a complete or partial withdrawal by any Person from a Multiemployer Plan (including, without limitation, seller liability incurred under Section 4204(a)(2) of

ERISA), or any Loan Party or any Controlled Group Member receives from any Person a notice or demand for payment on account of any such alleged or asserted liability; or

(e) (i) There occurs any failure to meet the minimum funding standard under Section 302 of ERISA or Section 412 of the Code with respect to a Plan, or any tax return is filed showing any tax payable under Section 4971(a) of the Code with respect to any such failure, or any Loan Party or any Controlled Group Member receives a notice of deficiency from the Internal Revenue Service with respect to any alleged or asserted such failure, or (ii) any request is made by any Person for a variance from the minimum funding standard, or an extension of the period for amortizing unfunded liabilities, with respect to a Plan.

"Person" shall mean an individual, corporation, partnership, trust, unincorporated association, joint venture, joint-stock company, limited liability company, Governmental Authority or any other entity.

"Plan" means any employee pension benefit plan within the meaning of Section 3(2) of ERISA (other than a Multiemployer Plan) covered by Title IV of ERISA by reason of Section 4021 of ERISA, of which any Loan Party or any Controlled Group Member is or has been within the preceding five years a "contributing sponsor" within the meaning of Section 4001(a)(13) of ERISA, or which is or has been within the preceding five years maintained for employees of any Loan Party or any Controlled Group Member.

"Portion" shall mean the Base Rate Portion, the CD Rate Portion or the Euro-Rate Portion, as the case may be.

"Postretirement Benefits" shall mean any benefits, other than retirement income, provided by any Loan Party to retired employees, or

to their spouses, dependents or beneficiaries,

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including, without limitation, group medical insurance or benefits, or group life insurance or death benefits.

"Potential Default" shall mean any event or condition which with notice, passage of time or a determination by a Lender or the Agent, or any combination of the foregoing, would constitute an Event of Default.

"Prime Rate" as used herein, shall mean the interest rate per annum announced from time to time by Mellon Bank, N.A. as its prime rate. The Prime Rate may be greater or less than other interest rates charged by Mellon Bank, N.A. to other borrowers and is not solely based or dependent upon the interest rate which Mellon Bank, N.A. may charge any particular borrower or class of borrowers.

"Pro Rata" shall mean from, to or with respect to each Lender in proportion to its Commitment Percentage.

"Purchasing Lender" shall have the meaning set forth in Section 9.14 hereof.

"RAL Program Documents" shall mean and include: (a) that certain Refund Anticipation Loan Participation Agreement, dated as of July 19, 1996, among Borrower, Beneficial National Bank, and Beneficial Tax Masters, Inc.; (b) that certain Refund Anticipation Loan Operations Agreement, dated as of July 19, 1996, among H & R Block Tax Services, Inc., HRB Royalty, Inc., Beneficial Tax Masters, Inc., Beneficial National Bank, and Beneficial Franchise Company, Inc.; and (c) all other documents, instruments, agreements or schedules now or hereafter attached to, referred to in or delivered in connection with any or all of the agreements referred to in the foregoing clauses (a) and (b), as any or all of the items referred to in the foregoing clauses (a) through (c) may be amended, modified or supplemented at any time or from time to time.

"Register" shall have the meaning set forth in Section 9.14(d) hereof.

"Regular Payment Date" shall mean the last Business Day of each January, April, July and October after the Closing Date.

"Replacement Lender" shall have the meaning given to such term in Section 2.12.

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"Reportable Event" means (i) a reportable event described in Section 4043 of ERISA and regulations thereunder, (ii) a withdrawal by a substantial employer from a Plan to which more than one employer contributes, as referred to in Section 4063(b) of ERISA, (iii) a cessation of operations at a facility causing more than twenty percent (20%) of Plan participants to be separated from employment, as referred to in Section 4062(e) of ERISA, or (iv) a failure to make a required installment or other payment with respect to a Plan when due in accordance with Section 412 of the Code or Section 302 of ERISA which causes the total unpaid balance of missed installments and payments (including unpaid interest) to exceed \$750,000.

"Required Lenders" shall mean, as of any date, Lenders which have made Loans constituting, in the aggregate, at least 66 2/3% in principal amount of Loans outstanding on such date or, if no Loans are outstanding on such date, Lenders which have Committed Amounts constituting, in the aggregate, at least 66 2/3% of the total Committed Amounts of the Lenders.

"Responsible Officer" of any Loan Party shall mean the President, the Treasurer or the Chief Financial Officer of such Loan

Party.

"S&P" shall mean Standard & Poor's Ratings Group, a division of McGraw Hill, Inc.

"Solvent" means, with respect to any Person at any time, that at such time (a) the sum of the debts and liabilities (including, without limitation, contingent liabilities) of such Person is not greater than all of the assets of such Person at a fair valuation, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person has not incurred, will not incur, does not intend to incur, and does not believe that it will incur, debts or liabilities (including, without limitation, contingent liabilities) beyond such person's ability to pay as such debts and liabilities mature, (d) such Person is not engaged in, and is not about to engage in, a business or a transaction for which such person's property constitutes or would constitute unreasonably small capital, and (e) such Person is not otherwise insolvent as defined in, or otherwise in a condition which could in any circumstances then or subsequently render any transfer, conveyance, obligation or act then made, incurred or performed by it avoidable or

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fraudulent pursuant to, any Law that may be applicable to such Person pertaining to bankruptcy, insolvency or creditors' rights (including but not limited to the Bankruptcy Code of 1978, as amended, and, to the extent applicable to such Person, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act, or any other applicable Law pertaining to fraudulent conveyances or fraudulent transfers or preferences).

"Standard Notice" shall mean an irrevocable notice provided to the Agent on a Business Day which is

(a) At least on the same Business Day in the case of selection of, conversion to or renewal of the Base Rate Option or prepayment of any Base Rate Portion;

(b) At least two Business Days in advance in the case of selection of, conversion to or renewal of the CD Rate Option or prepayment of any CD Rate Portion; and

(c) At least three London Business Days in advance in the case of selection of the Euro-Rate Option or prepayment of any Euro-Rate Portion.

Standard Notice must be provided no later than 10:00 a.m., Pittsburgh time, on the last day permitted for such notice.

"Subsidiary" of a Person at any time shall mean any corporation of which a majority (by number of shares or number of votes) of any class of outstanding capital stock normally entitled to vote for the election of one or more directors (regardless of any contingency which does or may suspend or dilute the voting rights of such class) is at such time owned directly or indirectly, beneficially or of record, by such Person or one or more Subsidiaries of such Person, and any trust, partnership or limited liability company of which a majority of the beneficial or equity interest is at such time owned directly or indirectly, beneficially or of record, by such Person or one or more Subsidiaries of such Person.

"Taxes" shall have the meaning set forth in Section 2.10 hereof.

"Transfer Effective Date" shall have the meaning set forth in the applicable Transfer Supplement.

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"Transfer Supplement" shall have the meaning set forth in Section 9.14(c) hereof.

"Treasury Rate" as of any Funding Breakage Date shall mean the rate per annum determined by the applicable Lender (which determination shall be conclusive) to be the semiannual equivalent yield to maturity (expressed as a semiannual equivalent and decimal and, in the case of United States Treasury bills, converted to a bond equivalent yield) for United States Treasury securities maturing on the last day of the corresponding Funding Period and trading in the secondary market in reasonable volume (or if no such securities mature on such date, the rate determined by standard securities interpolation methods as applied to the series of securities maturing as close as possible to, but earlier than, such date, and the series of such securities maturing as close as possible to, but later than, such date).

## ARTICLE I

### DEFINITIONS; CONSTRUCTION

1.02. Construction. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, the singular the plural and the part the whole; "or" has the inclusive meaning represented by the phrase "and/or"; and "property" includes all properties and assets of any kind or nature, tangible or intangible, real, personal or mixed. References in this Agreement to "determination" (and similar terms) by the Agent or by any Lender include good faith estimates by the Agent or by any Lender (in the case of quantitative determinations) and good faith beliefs by the Agent or by any Lender (in the case of qualitative determinations). The words "hereof," "herein," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. References herein to "out-of-pocket expenses" of a Person (and similar terms) include, but are not limited to, the reasonable fees of in-house counsel and other in-house professionals of such Person to the extent that such fees are routinely identified and specifically charged under such Person's normal cost accounting system. The section and other headings contained in this Agreement

and the Table of Contents preceding this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect. Section, subsection and exhibit references are to this Agreement unless otherwise specified.

#### 1.03. Accounting Principles.

(a) As used herein, "GAAP" shall mean generally accepted accounting principles in the United States, applied on a basis consistent with the principles used in preparing the

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Guarantor's financial statements as of April 30, 1996 and the fiscal year then ended, as referred to in Section 3.06 hereof.

(b) Except as otherwise provided in this Agreement, all computations and determinations as to accounting or financial matters shall be made, and all financial statements to be delivered pursuant to this Agreement shall be prepared, in accordance with GAAP (including principles of consolidation where appropriate), and all accounting or financial terms shall have the meanings ascribed to such terms by GAAP.

(c) If and to the extent that the financial statements generally prepared by any Loan Party apply accounting principles other than GAAP, all financial statements referred to in this Agreement or any other Loan Document shall be delivered in duplicate, one set based on the accounting principles then generally applied by such Loan Party and one set based on GAAP. To the extent this Agreement or such other Loan Document requires financial statements to be accompanied by an opinion of independent accountants, each set of financial statements shall be accompanied by such an opinion.

## ARTICLE II

### THE CREDITS

#### 2.01. The Loans.

(a) Loan Commitments. Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Lender, severally and not jointly, agrees (such agreement being herein called such Lender's "Commitment") to make loans to the Borrower (the "Loans") at any time or from time to time on or after the Closing Date and to but not including the Maturity Date. A Lender shall have no obligation to make any Loan to the extent, after giving effect to such Loan, that the aggregate principal amount of such Lender's Loans at any time outstanding would exceed such Lender's Committed Amount at such time. Each Lender's "Committed Amount" at any time shall be equal to the amount set forth as its "Initial Committed Amount" below its name on the signature pages hereof, as such amount may have been reduced under Section 2.02 hereof at such time, and subject to transfer to another Lender as provided in Section 9.14 hereof. The aggregate principal amount of all the Lenders' Committed Amounts shall not at any time exceed \$1,250,000,000.

(b) Nature of Credit. Within the limits of time and amount set forth in this Section 2.01, and subject to the other

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provisions of this Agreement, the Borrower may borrow, repay and reborrow Loans hereunder.

(c) Notes. The obligation of the Borrower to repay the unpaid principal amount of the Loans made to it by each Lender under this Agreement and to pay interest thereon shall be evidenced in part by revolving credit promissory notes of the Borrower, one to each Lender, dated the Closing Date (the "Notes") and in substantially the form attached hereto as Exhibit A, with the blanks appropriately filled, payable to the order of such Lender in a face amount equal to such Lender's Initial Committed Amount.

(d) Maturity. To the extent not due and payable earlier, the Loans shall be due and payable on the Maturity Date.

#### 2.02. Facility Fee; Reduction of the Committed Amount.

(a) Facility Fee. The Borrower agrees to pay to the Agent for the account of each Lender a facility fee (the "Facility Fee") equal to 0.07% per annum (based upon a year of 360 days and actual days elapsed), for each day from and including the Closing Date to but not including the Maturity Date (or any later date that the Loans are repaid), on the amount (not less than zero) equal to such Lender's Committed Amount on such day. Such Facility Fee shall be due and payable for the preceding period for which such fee has not been paid: (x) on each Regular Payment Date, and (y) on the Maturity Date.

(b) Automatic Reduction of the Unborrowed Committed Amounts. The Committed Amounts of the Lenders automatically shall be reduced to \$400,000,000 on May 1, 1997. If the aggregate principal amount of Loans outstanding on such date exceeds \$400,000,000, the Borrower shall on such date prepay the Loans in a principal amount at least equal to such excess, together with accrued interest thereon.

(c) Optional Reduction of the Committed Amounts. Commencing on the Closing Date, the Borrower may at any time or from time to time reduce Pro Rata the Committed Amounts of the Lenders, provided, however, that (a) the Borrower may not reduce the Committed Amounts pursuant to this Section 2.02(c) more frequently than twice during each calendar month, (b) the Borrower may not reduce the Committed Amounts pursuant to this Section 2.02(c) if, after giving effect thereto, the remaining aggregate Committed Amounts of the Lenders would be less than (i) \$800,000,000 at any time on or before February 28, 1997 (ii) \$500,000,000 at any time from and including March 1, 1997 to and

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including March 31, 1997 and (iii) \$400,000,000 at any time from and including April 1, 1997 to and including April 30, 1997, (c) any reduction of the Committed Amounts pursuant to this Section 2.02(c) must be in an aggregate

amount which is at least \$25,000,000 or any integral multiple of \$1,000,000 in excess thereof, and (d) in no event may the Committed Amounts be reduced to an aggregate amount which is less than the sum of the aggregate principal amount



of Loans then outstanding plus the aggregate principal amount of Loans not yet made as to which notice has been given by the Borrower under Section 2.03 hereof. Reduction of the Committed Amounts pursuant to this Section 2.02(c) shall be made by providing not less than five Business Days' notice (which notice shall be irrevocable) to such effect to the Agent. After the date specified in such notice the Facility Fee shall be calculated upon the Committed Amounts as so reduced.

2.03 Making of Loans. Whenever the Borrower desires that the Lenders make Loans, the Borrower shall provide Standard Notice to the Agent setting forth the following information:

- (a) The date, which shall be a Business Day, on which such proposed Loans are to be made;
- (b) The principal amount of such proposed Loans, which shall be the sum of the principal amounts selected pursuant to clause (c) of this Section 2.03, and which shall be an amount equal to \$25,000,000 or any integral multiple of \$1,000,000 in excess thereof.
- (c) The interest rate Option or Options selected in accordance with Section 2.04(a) hereof and the principal amounts selected in accordance with Section 2.04(d) hereof of the Base Rate Portion and each Funding Segment of the CD Rate Portion and the Euro-Rate Portion, as the case may be, of such proposed Loans; and
- (d) With respect to each such Funding Segment of such proposed Loans, the Funding Period to apply to such Funding Segment, selected in accordance with Section 2.04(c) hereof.

Standard Notice having been so provided, the Agent shall promptly notify each Lender of the information contained therein and of the amount of such Lender's Loan. Unless any applicable condition specified in Article 4 hereof has not been satisfied, on the date specified in such Standard Notice each Lender shall make the proceeds of its Loan available to the Agent at the Agent's Office, no later than 12:00 o'clock Noon, Pittsburgh time, in funds immediately available at such Office. The Agent will make the

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funds so received available to the Borrower in funds immediately available at the Agent's Office.

#### 2.04. Interest Rates.

(a) Optional Bases of Borrowing. The unpaid principal amount of the Loans shall bear interest for each day until due on one or more bases selected by the Borrower from among the interest rate Options set forth below. Subject to the provisions of this Agreement the Borrower may select different Options to apply simultaneously to different Portions of the Loans and may select different Funding Segments to apply simultaneously to different parts of the CD Rate Portion or the Euro-Rate Portion of the Loans. The aggregate number of Funding Segments applicable to the CD Rate Portion and the Euro-Rate Portion of the Loans at any time shall not exceed six.

(i) Base Rate Option: A rate per annum (based on a year of 360 days and actual days elapsed) for each day equal to the Base Rate for such day plus the Applicable Margin for such day. The "Base Rate" for any day shall mean the greater of (A) the Prime Rate for such day or (B) 0.50% plus the Federal Funds Effective Rate for the Business Day immediately preceding the date of calculation, such interest rate to change automatically from time to time effective as of the effective date of each change in the Prime Rate or the Federal Funds Effective Rate.

(ii) CD Rate Option: A rate per annum (based on a year of 360 days and actual days elapsed) for each day equal to the CD Rate for such day plus the Applicable Margin for such day. "CD Rate" for any day shall mean for each Funding Segment of the CD Rate Portion corresponding to a proposed or existing CD Rate Funding Period the rate per annum determined by the Agent by adding

- (a) the rate per annum obtained by dividing (the

resulting quotient to be rounded upward to the nearest 1/100 of 1%) (1) the rate of interest (which shall be the same for each day in such CD Rate Funding Period) determined in good faith by the Agent in accordance with its usual procedures (which determination shall be conclusive) to be the average of the secondary market bid rates at or about 11:00 a.m., Eastern time, on the first day of such CD Rate Funding Period by dealers of recognized standing in negotiable certificates of deposit for the purchase at face value of negotiable certificates of deposit of major money center banks for delivery on such day in amounts comparable to such

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Funding Segment and having maturities comparable to such CD Rate Funding Period by (2) a number equal to 1.00 minus the CD Rate Reserve Percentage for such CD Rate Funding Period, plus

(b) the Assessment Rate.

The "CD Rate" may also be expressed by the following formula:

$$\text{CD Rate} = \frac{\begin{array}{l} \text{[average of the secondary market} \\ \text{[bid rates determined by the Agent} \\ \text{[per subsection (A) (1)} \end{array} ] + \text{Assessment Rate}}{\text{[1.00 - CD Rate Reserve Percentage ]}}$$

"CD Rate Reserve Percentage" for any day and for any CD Rate Funding Period shall mean the percentage (expressed as a decimal, rounded upward to the nearest 1/100 of 1%), as determined in good faith by the Agent (which determination shall be conclusive), which is in effect on such day as prescribed by the Board of Governors of the Federal Reserve System (or any successor) representing the maximum reserve requirement (including without limitation supplemental, marginal and emergency reserve requirements) for a member bank of such System in respect of nonpersonal time deposits in Dollars in the United States having a maturity comparable to such CD Rate Funding Period. The CD Rate shall be adjusted automatically as of the effective date of each change in the CD Rate Reserve Percentage. The CD Rate Option shall be calculated in accordance with the foregoing whether or not any Lender is actually required to hold such reserves in connection with its funding hereof or, if required to hold such reserves, is required to hold reserves at the "CD Rate Reserve Percentage" as herein defined.

"Assessment Rate" for any day shall mean the rate per annum (rounded upward to the nearest 1/100 of 1%) determined in good faith by the Agent in accordance with its usual procedures (which determination shall be conclusive) to be the maximum rate per annum payable by a depository institution insured by the Federal Deposit Insurance Corporation (or any successor) for such day as an assessment for insurance on Dollar time deposits, exclusive of any credit that is or may be allowed against such assessment on account of assessment payments made or to be made by such depository institution. The CD Rate shall be adjusted automatically as of the effective date of each change in the Assessment Rate. The CD Rate Option shall be calculated in accordance with the foregoing whether or not any Lender is

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actually required to pay Federal Deposit Insurance Corporation assessments or, if required to pay such assessments, is required to pay such assessments at the "Assessment Rate" as herein defined.

The Agent shall give prompt notice to the Borrower and to the Lenders of the CD Rate determined or adjusted in accordance with the definition of CD Rate, which determination or adjustment shall be conclusive if made in good faith.

(iii) Euro-Rate Option: A rate per annum (based on a year of 360 days and actual days elapsed) for each day equal to the Euro-Rate

for such day plus the Applicable Margin for such day. "Euro-Rate" for any day, as used herein, shall mean for each Funding Segment of the Euro-Rate Portion corresponding to a proposed or existing Euro-Rate Funding Period the rate per annum determined by the Agent by dividing (the resulting quotient to be rounded upward to the nearest 1/100 of 1%) (A) the rate of interest (which shall be the same for each day in such Euro-Rate Funding Period) determined in good faith by the Agent in accordance with its usual procedures (which determination shall be conclusive) to be the average of the rates per annum for deposits in Dollars offered to major money center banks in the London interbank market at approximately 11:00 a.m., London time, two London Business

Days prior to the first day of such Euro-Rate Funding Period for delivery on the first day of such Euro-Rate Funding Period in amounts comparable to such Funding Segment and having maturities comparable to such Funding Period by (B) a number equal to 1.00 minus the Euro-Rate Reserve Percentage.

The "Euro-Rate" may also be expressed by the following formula:

$$\text{Euro-Rate} = \frac{\begin{array}{l} \text{[average of the rates offered to major money]} \\ \text{[center banks in the London interbank market]} \\ \text{[determined by the Agent per subsection (A)]} \end{array}}{\begin{array}{l} \text{-----} \\ \text{[1.00 - Euro-Rate Reserve Percentage]} \end{array}}$$

"Euro-Rate Reserve Percentage" for any day shall mean the percentage (expressed as a decimal, rounded upward to the nearest 1/100 of 1%), as determined in good faith by the Agent (which determination shall be conclusive), which is in effect on such day as prescribed by the Board of Governors of the Federal Reserve System (or any successor) representing the maximum reserve requirement (including, without limitation, supplemental, marginal and emergency reserve

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requirements) with respect to eurocurrency funding (currently referred to as "Eurocurrency liabilities") of a member bank in such System. The Euro-Rate shall be adjusted automatically as of the effective date of each change in the Euro-Rate Reserve Percentage. The Euro-Rate Option shall be calculated in accordance with the foregoing whether or not any Lender is actually required to hold reserves in connection with its eurocurrency funding or, if required to hold such reserves, is required to hold reserves at the "Euro-Rate Reserve Percentage" as herein defined.

The Agent shall give prompt notice to the Borrower and to the Lenders of the Euro-Rate determined or adjusted in accordance with the definition of the Euro-Rate, which determination or adjustment shall be conclusive if made in good faith.

(b) Applicable Margins. The "Applicable Margin" for each interest rate Option for any day shall mean the relevant percentage set forth below:

| Interest Rate Option<br>----- | Applicable Margin<br>----- |
|-------------------------------|----------------------------|
| Base Rate Option              | 0.000%                     |
| Euro-Rate Option              | 0.175%                     |
| CD-Rate Option                | 0.300%                     |

(c) Funding Periods. At any time when the Borrower shall select, convert to or renew the CD Rate Option or the Euro-Rate Option to apply to any part of the Loans, the Borrower shall specify one or more periods (the "Funding Periods") during which each such Option shall apply, such Funding Periods being as set forth below:

| Interest Rate Option<br>----- | Available Funding Periods<br>-----                 |
|-------------------------------|--|
| CD Rate Option                | 30, 60, or 90 days ("CD Rate Funding Period"); and |

Euro-Rate Option

One, two, or three months  
("Euro-Rate Funding Period");

provided, that:

(i) Each CD Rate Funding Period which would otherwise end on a day which is not a Business Day shall be extended to the next succeeding Business Day;

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(ii) Each Euro-Rate Funding Period shall begin on a London Business Day, and the term "month", when used in connection with a Euro-Rate Funding Period, shall be construed in accordance with prevailing practices in the interbank eurodollar market at the commencement of such Euro-Rate Funding Period, as determined in good faith by the Agent (which determination shall be conclusive); and

(iii) The Borrower may not select a Funding Period that would end after the Maturity Date.

(d) Transactional Amounts. Every selection of, conversion from, conversion to or renewal of an interest rate Option and every prepayment of any Loans shall be in a principal amount such that after giving effect thereto the aggregate principal amount of the Base Rate Portion of the Loans, or the aggregate principal amount of each Funding Segment of the CD Rate Portion or the Euro-Rate Portion of the Loans, as the case may be, shall be as set forth below:

| Portion or Funding Segment<br>-----              | Allowable Aggregate Principal Amounts<br>-----                                   |
|--|--|
| Base Rate Portion                                | Any;   |
| Each Funding Segment<br>of the CD Rate Portion   | \$25,000,000 or an integral<br>multiple of \$1,000,000 in excess<br>thereof; and |
| Each Funding Segment<br>of the Euro-Rate Portion | \$25,000,000 or an integral<br>multiple of \$1,000,000 in excess<br>thereof.     |

(e) CD Rate or Euro-Rate Unascertainable; Impracticability. If

(i) on any date on which a CD Rate or a Euro-Rate would otherwise be set the Agent (in case of clauses (A) or (B) below) or any Lender (in the case of clause (C) below) shall have determined in good faith (which determination shall be conclusive) that:

(a) adequate and reasonable means do not exist for ascertaining such CD Rate or Euro-Rate,

(b) a contingency has occurred which materially and adversely affects the secondary market for negotiable certificates of deposit maintained by dealers of recognized standing or the interbank eurodollar market, as the case may be, or

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(c) the effective cost to such Lender of funding a proposed Funding Segment of the CD Rate Portion or the Euro-Rate Portion from a Corresponding Source of Funds shall exceed the CD Rate or the Euro-Rate, as the case may be, applicable to such Funding Segment, or

(ii) at any time any Lender shall have determined in good faith (which determination shall be conclusive) that the making, maintenance or funding of any part of the CD Rate Portion or the Euro-Rate Portion has been made impracticable or unlawful by compliance by such Lender or a Notional Euro-Rate Funding Office in good faith with any Law or guideline or interpretation or administration thereof by any Governmental Authority charged with the interpretation or

administration thereof or with any request or directive of any such Governmental Authority (whether or not having the force of law);

then, and in any such event, the Agent or such Lender, as the case may be, may notify the Borrower of such determination (and any Lender giving such notice shall notify the Agent). Upon such date as shall be specified in such notice (which shall not be earlier than the date such notice is given), the obligation of each of the Lenders to allow the Borrower to select, convert to or renew the CD Rate Option or Euro-Rate Option, as the case may be, shall be suspended until the Agent or such Lender, as the case may be, shall have later notified the Borrower (and any Lender giving such notice shall notify the Agent) of the Agent's or such Lender's determination in good faith (which determination shall be conclusive) that the circumstances giving rise to such previous determination no longer exist.

If any Lender notifies the Borrower of a determination under subsection (ii) of this Section 2.04(e), the CD Rate Portion or the Euro-Rate Portion, as the case may be, of the Loans of such Lender (the "Affected Lender") shall automatically be converted to the Base Rate Option as of the date specified in such notice (and accrued interest thereon shall be due and payable on such date).

If at the time the Agent or a Lender makes a determination under subsection (i) or (ii) of this Section 2.04(e) the Borrower previously has notified the Agent that it wishes to select, convert to or renew the CD Rate Option or the Euro-Rate Option, as the case may be, with respect to any proposed

Loans but such Loans have not yet been made, such notification shall be deemed to provide for selection of, conversion to or renewal of the Base Rate Option instead of the CD Rate Option or the Euro-Rate Option, as the case may be, with respect to such Loans

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or, in the case of a determination by a Lender, such Loans of such Lender.

#### 2.05. Conversion or Renewal of Interest Rate Options.

(a) Conversion or Renewal. Subject to the provisions of Section 2.09(b) hereof, the Borrower may convert any part of its Loans from any interest rate Option or Options to one or more different interest rate Options and may renew the CD Rate Option or the Euro-Rate Option as to any Funding Segment of the CD Rate Portion or the Euro-Rate Portion:

(i) At any time with respect to conversion from the Base Rate Option; or

(ii) At the expiration of any Funding Period with respect to conversions from or renewals of the CD Rate Option or the Euro-Rate Option, as the case may be, as to the Funding Segment corresponding to such expiring Funding Period.

Whenever the Borrower desires to convert or renew any interest rate Option or Options, the Borrower shall provide to the Agent Standard Notice setting forth the following information:

(a) The date, which shall be a Business Day, on which the proposed conversion or renewal is to be made;

(b) The principal amounts selected in accordance with Section 2.04(d) hereof of the Base Rate Portion and each Funding Segment of the CD Rate Portion and the Euro-Rate Portion, as the case may be, to be converted from or renewed;

(c) The interest rate Option or Options selected in accordance with Section 2.04(a) hereof and the principal amounts selected in accordance with Section 2.04(d) hereof of the Base Rate Portion and each Funding Segment of the CD Rate Portion and the Euro-Rate Portion, as the case may be, to be converted to; and

(d) With respect to each Funding Segment to be converted to or renewed, the Funding Period selected in accordance with Section 2.04(c) hereof to apply to such Funding Segment.

Standard Notice having been so provided, after the date specified in such Standard Notice, interest shall be calculated upon the principal amount of the Loans as so converted or renewed. Interest on the principal amount of any part of the Loans

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converted or renewed (automatically or otherwise) shall be due and payable on the conversion or renewal date.

(b) Failure to Convert or Renew. Absent due notice from the Borrower of conversion or renewal in the circumstances described in Section 2.05(a)(ii) hereof, any part of the CD Rate Portion or Euro-Rate Portion for which such notice is not received shall be converted automatically to the Base Rate Option on the last day of the expiring Funding Period.

2.06. Optional Prepayments. The Borrower shall have the right at its option from time to time to prepay the Loans in whole or part without premium or penalty (subject, however, to Section 2.09(b) hereof):

(a) At any time with respect to any part of the Base Rate Portion; or

(b) At the expiration of any Funding Period with respect to prepayment of the CD Rate Portion or the Euro-Rate Portion, as the case may be, with respect to any part of the Funding Segment corresponding to such expiring Funding Period.

Whenever the Borrower desires to prepay any part of its Loans, it shall provide Standard Notice to the Agent setting forth the following information:

(i) The date, which shall be a Business Day, on which the proposed prepayment is to be made;

(ii) The total principal amount of such prepayment, which shall be the sum of the principal amounts selected pursuant to clause (iii) of this Section 2.06; and

(iii) The principal amounts selected in accordance with Section 2.04(d) hereof of the Base Rate Portion and each part of each Funding Segment of the CD Rate Portion and the Euro-Rate Portion, as the case may be, to be prepaid.

Standard Notice having been so provided, on the date specified in such Standard Notice, the principal amounts of the Base Rate Portion and each part of the CD Rate Portion and the Euro-Rate Portion specified in such notice, together with interest on each such principal amount to such date, shall be due and payable.

2.07. Interest Payment Dates. Interest on the Loans shall be due and payable on each Regular Payment Date and on the Maturity Date. Interest on each Funding Segment of the CD Rate

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Portion shall also be due and payable on the last day of the corresponding CD Rate Funding Period, and interest on each Funding Segment of the Euro-Rate Portion shall also be due and payable on the last day of the corresponding Euro-Rate Funding Period. After maturity of any part of the Loans (by

acceleration or otherwise), interest on such part of the Loans shall be due and payable on demand.

2.08. Pro Rata Treatment; Payments Generally; Interest on Overdue Amounts.

(a) Pro Rata Treatment. Each borrowing and conversion and renewal of interest rate Options hereunder shall be made, and all payments made in respect of principal, interest, and Facility Fees due from the Borrower hereunder or under the Notes shall be applied, Pro Rata from and to each Lender, except for payments of interest involving an Affected Lender as provided in Section 2.04(e) hereof and payments to a Lender subject to a withholding deduction under Section 2.10(c) hereof. The failure of any Lender to make a Loan

shall not relieve any other Lender of its obligation to lend hereunder, but neither the Agent nor any Lender shall be responsible for the failure of any other Lender to make a Loan.

(b) Payments Generally. All payments and prepayments to be made by the Borrower in respect of principal, interest, fees, indemnity, expenses or other amounts due from the Borrower hereunder or under any Loan Document shall be payable in Dollars at 12:00 o'clock Noon, Pittsburgh time, on the day when due without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived, and an action therefor shall immediately accrue, without setoff, counterclaim, withholding or other deduction, reduction or diminution of any kind or nature, except for payments to a Lender subject to a withholding deduction under Section 2.10(c) hereof. Except for payments under Sections 2.09 and 9.06 hereof, such payments shall be made to the Agent at its Office in Dollars in funds immediately available at such Office, and payments under Sections 2.09 and 9.06 hereof shall be made to the applicable Lender at such domestic account as it shall specify to the Borrower from time to time in funds immediately available at such account. Any payment or prepayment received by the Agent or such Lender after 12:00 o'clock Noon, Pittsburgh time, on any day shall be deemed to have been received on the next succeeding Business Day. The Agent shall distribute to the Lenders all such payments received by it from the Borrower as promptly as practicable after receipt by the Agent.

(c) Interest on Overdue Amounts. To the extent permitted by Law, after there shall have become due (by

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acceleration or otherwise) principal, interest, fees, indemnity, expenses or any other amounts due from the Borrower hereunder or under any other Loan Document, such amounts shall bear interest for each day until paid (before and after judgment), payable on demand, at a rate per annum (in each case based on a year of 360 days and actual days elapsed) which for each day shall be equal to the following:

(i) In the case of any part of the CD Rate Portion or Euro-Rate Portion of any Loans, (A) until the end of the applicable then-current Funding Period at a rate per annum 2.000% above the rate otherwise applicable to such part, and (B) thereafter in accordance with the following clause (ii); and

(ii) In the case of any other amount due from the Borrower hereunder or under any Loan Document, 2.000% above the then-current Base Rate Option.

To the extent permitted by Law, interest accrued on any amount which has become due hereunder or under any Loan Document shall compound on a day-by-day basis, and hence shall be added daily to the overdue amount to which such interest relates.

#### 2.09. Additional Compensation in Certain Circumstances.

(a) Increased Costs or Reduced Return Resulting From Taxes, Reserves, Capital Adequacy Requirements, Expenses, Etc. If any Law or guideline or interpretation or application thereof by any Governmental Authority charged with the interpretation or administration thereof or compliance with any request or directive of any Governmental Authority (whether or not having the force of Law) now existing or hereafter adopted:

(i) subjects any Lender or any Notional Euro-Rate Funding Office to any tax or changes the basis of taxation with respect to this Agreement, the Notes, the Loans or payments by the Borrower of principal, interest, Facility Fees or other amounts due from the Borrower hereunder or under the Notes (except for taxes on the overall net income or overall gross receipts of such Lender or such Notional Euro-Rate Funding Office imposed by the jurisdictions (federal, state and local) in which the Lender's principal office or Notional Euro-Rate Funding Office is located),

(ii) imposes, modifies or deems applicable any reserve, special deposit or similar requirement against credits or commitments to extend credit extended by, assets (funded or contingent) of, deposits with or for the account of, or other

acquisitions of funds by, such Lender or any Notional Euro-Rate Funding Office (other than requirements expressly included herein in the determination of the CD Rate or the Euro-Rate, as the case may be, hereunder),

(iii) imposes, modifies or deems applicable any capital adequacy or similar requirement (A) against assets (funded or contingent) of, or credits or commitments to extend credit extended by, any Lender or any Notional Euro-Rate Funding Office, or (B) otherwise applicable to the obligations of any Lender or any Notional Euro-Rate Funding Office under this Agreement, or

(iv) imposes upon any Lender or any Notional Euro-Rate Funding Office any other condition or expense with respect to this Agreement, the Notes or its making, maintenance or funding of any Loan,

and the result of any of the foregoing is to increase the cost to, reduce the income receivable by, or impose any expense (including loss of margin) upon any Lender, any Notional Euro-Rate Funding Office or, in the case of clause (iii) hereof, any Person controlling a Lender, with respect to this Agreement, the Notes or the making, maintenance or funding of any Loan (or, in the case of any capital adequacy or similar requirement, to have the effect of reducing the rate of return on such Lender's or such controlling Person's capital, taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) by an amount which such Lender in good faith deems to be material (such Lender being deemed for this purpose to have made, maintained or funded each Funding Segment of the CD Rate Portion and the Euro-Rate Portion from a Corresponding Source of Funds), such Lender may from time to time notify the Borrower of the amount determined in good faith (using any averaging and attribution methods) by such Lender (which determination shall be conclusive) to be necessary to compensate such Lender or such Notional Euro-Rate Funding Office for such increase, reduction or imposition. In making any such determination, such Lender may take into account any special, supplemental or other nonrecurring items, may apply any averaging or attribution methods, and may make such determination prospectively or retrospectively. Such amount shall be due and payable by the Borrower to such Lender five Business Days after such notice is given, together with an amount equal to interest on such amount from the date two Business Days after the date demanded until such due date at the Base Rate Option.

(b) Funding Breakage. In addition to all other amounts payable hereunder, if and to the extent for any reason any part of

any Funding Segment of any CD Rate Portion or Euro-Rate Portion of the Loans becomes due (by acceleration or otherwise), or is paid, prepaid or converted to another interest rate Option (whether or not such payment, prepayment or conversion is mandatory or automatic and whether or not such payment or prepayment is then due), on a day other than the last day of the corresponding Funding Period (the date such amount so becomes due, or is so paid, prepaid or converted, being referred to as the "Funding Breakage Date"), the Borrower shall pay each Lender an amount ("Funding Breakage Indemnity") determined by such Lender as follows:

(i) first, the Lender shall calculate the following amount:  
(A) the principal amount of such Funding Segment of the Loans owing to such Lender which so became due, or which was so paid, prepaid or converted, times (B) the greater of (x) zero or (y) the rate of interest applicable to such principal amount on the Funding Breakage Date minus the Treasury Rate as of the Funding Breakage Date, times (C) the number of days from and including the Funding Breakage Date to but not including the last day of such Funding Period, times (D) 1/360;

(ii) then, the Funding Breakage Indemnity to be paid by the Borrower to such Lender shall be the amount equal to the present value as of the Funding Breakage Date (discounted from the last day of such corresponding Funding Period at the Treasury Rate as of such Funding Breakage Date, and calculated on the basis of a year of 365 or 366



days, as the case may be, and actual days elapsed) of the amount

described in the preceding clause (i) (which amount described in the preceding clause (i) is assumed for purposes of such present value calculation to be payable on the last day of the corresponding Funding Period).

Such Funding Breakage Indemnity shall be due and payable on demand, and each Lender shall, upon making such demand, notify the Agent of the amount so demanded. In addition, the Borrower shall, on the due date for payment of any Funding Breakage Indemnity, pay to such Lender an additional amount equal to interest on such Funding Breakage Indemnity for each day from the Funding Breakage Date to but not including such due date at the Base Rate Option (calculated on the basis of a year of 360 days and actual days elapsed). The amount payable to each Lender under this Section 2.09(b) shall be determined in good faith by such Lender, and such determination shall be conclusive.

#### 2.10. Taxes.

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(a) Payments Net of Taxes. All payments made by the Borrower under this Agreement or any other Loan Document shall be made free and clear of, and without reduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, and all liabilities with respect thereto, excluding

(i) in the case of the Agent and each Lender, income or franchise taxes imposed on the Agent or such Lender by the jurisdiction under the laws of which the Agent or such Lender is organized or any political subdivision or taxing authority thereof or therein or as a result of a connection between the Agent or such Lender and any jurisdiction other than a connection resulting solely from this Agreement and the transactions contemplated hereby, and

(ii) in the case of each Lender, income or franchise taxes imposed by any jurisdiction in which such Lender's lending offices which make or book Loans are located or any political subdivision or taxing authority thereof or therein

(all such non-excluded taxes, levies, imposts, deductions, charges or withholdings being hereinafter called "Taxes"). If any Taxes are required to be withheld or deducted from any amounts payable to the Agent or any Lender under this Agreement or any other Loan Document, the Borrower shall pay the relevant amount of such Taxes and the amounts so payable to the Agent or such Lender shall be increased to the extent necessary to yield to Agent or such Lender (after payment of all Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement and the other Loan Documents. Whenever any Taxes are paid by the Borrower with respect to payments made in connection with this Agreement or any other Loan Document, as promptly as possible thereafter, the Borrower shall send to the Agent for its own account or for the account of such Lender, as the case may be, a certified copy of an original official receipt received by the Borrower showing payment thereof.

(b) Indemnity. The Borrower hereby indemnifies the Agent and each of the Lenders for the full amount of all Taxes attributable to payments by or on behalf of the Borrower hereunder or under any of the other Loan Documents, any Taxes paid by the Agent or any such Lender, and any present or future claims, liabilities or losses with respect to or resulting from any omission to pay or delay in paying any Taxes (including any incremental Taxes, interest or penalties that may become payable by the Agent or such Lender as a result of any failure to pay such

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Taxes), whether or not such Taxes were correctly or legally asserted. Such indemnification shall be made within 15 days from the date such Lender or the Agent, as the case may be, makes written demand therefor.

(c) Withholding and Backup Withholding. Each Lender that is incorporated or organized under the laws of any jurisdiction other than the United States or any State thereof agrees that, on or prior to the date it becomes a party to this Agreement or any other Loan Document, it will furnish to the Borrower and the Agent

(i) two valid, duly completed copies of United States Internal Revenue Service Form 4224 or United States Internal Revenue Form 1001 or successor applicable form, as the case may be, certifying in each case that such Lender is entitled to receive payments under this Agreement and the other Loan Documents without deduction or withholding of any United States federal income taxes and

(ii) a valid, duly completed Internal Revenue Service Form W-8 or W-9 or successor applicable form, as the case may be, to establish an exemption from United States backup withholding tax.

Each Lender which so delivers to the Borrower and the Agent a Form 1001 or 4224 and Form W-8 or W-9, or successor applicable forms agrees to deliver to the Borrower and the Agent two further copies of the said Form 1001 or 4224 and Form W-8 or W-9, or successor applicable forms, or other manner of certification, as the case may be, on or before the date that any such form expires or becomes obsolete or otherwise is required to be resubmitted as a condition to obtaining an exemption from withholding tax, or after the occurrence of any event requiring a change in the most recent form previously delivered by it, and such extensions or renewals thereof as may reasonably be requested by the Borrower and the Agent, certifying in the case of a Form 1001 or Form 4224 that such Lender is entitled to receive payments under this Agreement or any other Loan Document without deduction or withholding of any United States federal income taxes, unless in any such cases an event (including any changes in Law) has occurred prior to the date on which any such delivery would otherwise be required which renders all such forms inapplicable or which would prevent such Lender from duly completing and delivering any such letter or form with respect to it and such Lender advises the Borrower and the Agent that it is not capable of receiving payments without any deduction or withholding of United States federal income tax, and in the case of a Form W-8 or

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W-9, establishing an exemption from United States backup withholding tax.

#### 2.11. Funding by Branch, Subsidiary or Affiliate.

(a) Notional Funding. Each Lender shall have the right from time to time, prospectively or retrospectively, without notice to the Borrower, to deem any branch, subsidiary or affiliate of such Lender to have made, maintained or funded any part of the Euro-Rate Portion at any time. Any branch, subsidiary or affiliate so deemed shall be known as a "Notional Euro-Rate Funding Office." Such Lender shall deem any part of the Euro-Rate Portion of the Loans or the funding therefor to have been transferred to a different Notional Euro-Rate Funding Office if such transfer would avoid or cure an event or condition described in Section 2.04(e)(ii) hereof or would lessen compensation payable by the Borrower under Section 2.09(a) hereof, and if such Lender determines in its sole discretion that such transfer would be practicable and would not have a material adverse effect on such part of the Loans, such Lender or any Notional Euro-Rate Funding Office (it being assumed for purposes of such determination that each part of the Euro-Rate Portion is actually made or maintained by or funded through the corresponding Notional Euro-Rate Funding Office). Notional Euro-Rate Funding Offices may be selected by such Lender without regard to the Lender's actual methods of making, maintaining or funding Loans or any sources of funding actually used by or available to such Lender.

(b) Actual Funding. Each Lender shall have the right from time to time to make or maintain any part of the Euro-Rate Portion by arranging for a branch, subsidiary or affiliate of such Lender to make or maintain such part of the Euro-Rate Portion. Such Lender shall have the right to (i) hold any applicable Note payable to its order for the benefit and account of such branch, subsidiary or affiliate or (ii) request the Borrower to issue one or more revolving credit promissory notes in the principal amount of such Euro-Rate Portion, in substantially the form attached hereto as Exhibit A, with the blanks appropriately filled, payable to such branch, subsidiary or affiliate and with appropriate changes reflecting that the holder thereof is not obligated to make any additional Loans to the Borrower. The Borrower agrees to comply promptly

with any request under subsection (ii) of this Section 2.11(b). If any Lender causes a branch, subsidiary or affiliate to make or maintain any part of the Euro-Rate Portion hereunder, all terms and conditions of this Agreement shall, except where the context clearly requires otherwise, be applicable to such part of the Euro-Rate Portion and to any note payable to the order of such branch, subsidiary or affiliate to the same extent as if such part of the Euro-Rate Portion were made or

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maintained and such note were a Note payable to such Lender's order.

2.12. Extensions of Maturity Date. The Borrower may, at its option, give the Agent written notice (an "Extension Request") not more than 90 days, nor less than 60 days, prior to the then effective Maturity Date, of the

Borrower's desire to extend the then effective Maturity Date to a date which is not later than 364 days after the "Reset Date". The "Reset Date" means the date which is 30 days prior to the then effective Maturity Date. The Agent shall promptly inform the Lenders of such Extension Request. Each Lender that agrees with such Extension Request shall deliver to the Agent its express written consent thereto no later than the Reset Date. No extension shall become effective unless agreed to by the Required Lenders on or prior to the Reset Date. If all Lenders have not in writing expressly consented to any such Extension Request by the Reset Date, then the Agent shall so notify the Borrower and the Borrower, at its option, may, as of the then effective Maturity Date, (i) replace any Lender which has not agreed to such Extension Request (a "Nonextending Lender") with another commercial lending institution reasonably satisfactory to the Agent (a "Replacement Lender") by giving notice of the name of such Replacement Lender to the Agent not later than five Business Days prior to the then effective Maturity Date or (ii) pay the Loans of such Nonextending Lender. Upon notice from the Agent, such Nonextending Lender shall, as of the then effective Maturity Date, assign all of its interests hereunder to such Replacement Lender in accordance with the provisions of Section 9.14 hereof. If the Required Lenders shall have consented to such Extension Request, then, on the then effective Maturity Date, after payment by the Borrower (or, if applicable, by a Replacement Lender) of all amounts payable hereunder to each Nonextending Lender, the Maturity Date shall be deemed to have been extended to, and shall be, the date specified in such Extension Notice. The Agent shall promptly after any such extension advise the Lenders of any decrease in the aggregate Committed Amounts of the Lenders and of the respective Commitment Percentages of all Lenders. Each Lender may agree or not agree to any such Extension Request in its sole and absolute discretion and any Lender not agreeing (or not responding) to an Extension Request shall not be deemed to have extended the Maturity Date regardless of whether a Replacement Lender is obtained.

2.13 Replacement Lenders. If a Lender (i) shall have requested compensation or indemnification under Section 2.09(a) hereof, Section 2.10(b) hereof or the penultimate sentence of Section 2.10(a) hereof or (ii) shall have notified the Borrower or the Agent of a determination under Section 2.04(e) (i) (C) or

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2.04(e)(ii) hereof, the Borrower may, at its option, require that such Lender be replaced with another commercial lending institution reasonably satisfactory to the Agent (a "Designated Replacement Lender") by giving notice of the name of such Designated Replacement Lender to the Agent and such Lender. Upon receipt of such notice, such Lender shall assign all of its interests hereunder to such Designated Replacement Lender in accordance with the provisions of Section 9.14 hereof, upon payment to such Lender of all principal, interest, fees and other amounts payable to such Lender hereunder.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

The Borrower hereby represents and warrants to the Agent and each Lender as follows:

3.01. Corporate Status. Each Loan Party and each Subsidiary of

each Loan Party is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation. Each Loan Party and each Subsidiary of each Loan Party has corporate power and authority to own its property and to transact the business in which it is engaged or presently proposes to engage. Each Loan Party and each Subsidiary of each Loan Party is duly qualified to do business as a foreign corporation and is in good standing in all jurisdictions in which the ownership of its properties or the nature of its activities or both makes such qualification necessary or advisable, except for matters that, individually or in the aggregate, could not have a Material Adverse Effect.

3.02. Corporate Power and Authorization. Each Loan Party and each Subsidiary of each Loan Party has corporate power and authority to execute, deliver, perform, and take all actions contemplated by, each Loan Document to which it is a party, and all such action has been duly and validly authorized by all necessary corporate proceedings on its part. Without limitation of the foregoing, the Borrower has the corporate power and authority to borrow pursuant to the Loan Documents to the fullest extent permitted hereby and thereby from time to time, and has taken all necessary corporate action to authorize such borrowings.

3.03. Execution and Binding Effect. This Agreement and each other Loan Document to which any Loan Party or any Subsidiary of any Loan Party is a party and which is required to be delivered on or before the Closing Date pursuant to Section 4.01 hereof has been duly and validly executed and delivered by each Loan Party or

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any Subsidiary of such Loan Party which is a party hereto or thereto, as the case may be. This Agreement and each such other Loan Document constitute, and each other Loan Document when executed and delivered by the applicable Loan Party or Subsidiary of such Loan Party will constitute, the legal, valid and binding obligation of each Loan Party or each Subsidiary of such Loan Party which is a party hereto or thereto, as the case may be, enforceable against such Loan Party or such Subsidiary in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors' rights or by general principles of equity limiting the availability of equitable remedies.

3.04. Governmental Approvals and Filings. No approval, order, consent, authorization, certificate, license, permit or validation of, or exemption or other action by, or filing, recording or registration with, or notice to, any Governmental Authority (collectively, "Governmental Action") is or will be necessary or advisable in connection with execution and delivery of any Loan Document by any Loan Party or any Subsidiary of any Loan Party, consummation by any Loan Party or any Subsidiary of any Loan Party of the transactions herein or therein contemplated, performance of or compliance with the terms and conditions hereof or thereof by any Loan Party or any Subsidiary of any Loan Party or to ensure the legality, validity, binding effect, enforceability or admissibility in evidence hereof or thereof.

3.05. Absence of Conflicts. Neither the execution and delivery of any Loan Document or any agreement with respect to the RAL Program Documents by any Loan Party or any Subsidiary of any Loan Party, nor consummation by any Loan Party or any Subsidiary of any Loan Party of the transactions herein or therein or in the RAL Program Documents contemplated, nor performance of or compliance with the terms and conditions hereof or thereof by any Loan Party or any Subsidiary of any Loan Party, does or will

(a) violate or conflict with any Law, or

(b) violate, conflict with or result in a breach of any term or condition of, or constitute a default under, or result in (or give rise to any right, contingent or otherwise, of any Person to cause) any termination, cancellation, prepayment or acceleration of performance of, or result in the creation or imposition of (or give rise to any obligation, contingent or otherwise, to create or impose) any Lien upon any property of any Loan Party or any Subsidiary of any Loan Party (except for any Lien in favor of the Agent for the benefit of the Lenders and the Agent

securing the Obligations) pursuant to, or otherwise result in (or give rise to any right, contingent or otherwise, of any Person to cause) any change in any right, power, privilege, duty or obligation of any Loan Party or any Subsidiary of any Loan Party under or in connection with,

(i) the articles of incorporation or by-laws (or other constituent documents) of any Loan Party or any Subsidiary of any Loan Party,

(ii) any agreement or instrument creating, evidencing, securing or guaranteeing any Indebtedness to which any Loan Party or any Subsidiary of any Loan Party is a party or by which any of them or any of their respective properties (now owned or hereafter acquired) may be subject or bound, or

(iii) any other agreement or instrument or arrangement to which any Loan Party or any Subsidiary of any Loan Party is a party or by which any of them or any of their respective properties (now owned or hereafter acquired) may be subject or bound, except, in the case of this clause (b)(iii), for matters that, individually or in the aggregate, could not have a Material Adverse Effect.

3.06. Audited Financial Statements. The Borrower has heretofore furnished to the Agent and each Lender consolidated balance sheets of

the Guarantor and its consolidated Subsidiaries as of April 30, 1996 and 1995 and the related consolidated statements of income, cash flows and changes in stockholders' equity for the fiscal years then ended, as examined and reported on by Deloitte & Touche, independent certified public accountants for the Guarantor, who delivered an unqualified opinion in respect thereof. Such financial statements (including the notes thereto) present fairly the financial condition of the Guarantor and its consolidated Subsidiaries as of the end of each such fiscal year and the results of their operations and their cash flows for the fiscal years then ended, all in conformity with GAAP.

3.07. Interim Financial Statements. The Borrower has heretofore furnished to the Agent and each Lender interim consolidated balance sheets of the Guarantor and its consolidated Subsidiaries as of the end of each of the first two fiscal quarters of the fiscal year beginning May 1, 1996 together with the related consolidated statements of income, cash flows and changes in stockholders' equity for the applicable fiscal periods ending on each such date. Such financial statements (including

the notes thereto) present fairly the financial condition of the Guarantor and its consolidated Subsidiaries as of the end of each such fiscal quarter and the results of their operations and their cash flows for the fiscal periods then ended, all in conformity with GAAP, subject to normal and recurring year-end audit adjustments.

3.08. Absence of Undisclosed Liabilities. Neither any Loan Party nor any Subsidiary of any Loan Party has any liability or obligation of any nature whatever (whether absolute, accrued, contingent or otherwise, whether or not due), forward or long-term commitments or unrealized or anticipated losses from unfavorable commitments, except (a) as disclosed in the financial statements referred to in Sections 3.06 and 3.07 hereof, and (b) matters that, individually or in the aggregate, could not have a Material Adverse Effect.

3.09. Absence of Material Adverse Changes. Since April 30, 1996 to and including the Closing Date, there has been no material adverse change in the business, operations, condition (financial or otherwise), or prospects of the Guarantor and its Subsidiaries taken as a whole, except as otherwise publicly disclosed before the Closing Date.

3.10. Accurate and Complete Disclosure. All information heretofore, contemporaneously or hereafter provided (orally or in writing) by or

on behalf of any Loan Party or any Subsidiary of any Loan Party to the Agent or any Lender pursuant to or in connection with any Loan Document or any transaction contemplated hereby or thereby is or will be (as the case may be) true and accurate in all material respects on the date as of which such information is dated (or, if not dated, when received by the Agent or such Lender, as the case may be) and does not or will not (as the case may be) omit to state any material fact necessary to make such information not misleading at such time in light of the circumstances in which it was provided. Each Loan Party and each Subsidiary of each Loan Party has disclosed to the Agent and each Lender in writing every fact or circumstance known to such Loan Party or to such Subsidiary which has, or which could have, a Material Adverse Effect.

3.11. Solvency. On and as of the Closing Date, and on the date of each Loan and after giving effect to application of the proceeds thereof in accordance with the terms of the Loan Documents, each Loan Party is and will be Solvent.

3.12. Margin Regulations. No part of the proceeds of any Loan hereunder will be used for the purpose of buying or carrying any "margin stock," as such term is used in Regulations G

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and U of the Board of Governors of the Federal Reserve System, as amended from time to time, or to extend credit to others for the purpose of buying or carrying any "margin stock". Neither any Loan Party nor any Subsidiary of any Loan Party is engaged in the business of extending credit to others for the purpose of buying or carrying "margin stock". Neither the making of any Loan nor any use of proceeds of any such Loan will violate or conflict with the provisions of Regulation G, T, U or X of the Board of Governors of the Federal Reserve System, as amended from time to time.

3.13. Subsidiaries. Schedule 3.13 hereof states as of the Closing Date the name of each Subsidiary of each Loan Party (other than partnership or limited liability company Subsidiaries set forth in Schedule 3.14) and the percentage of outstanding shares of each class of capital stock of such Subsidiary owned by each Loan Party and by each other Subsidiary. The outstanding shares of each Subsidiary of each Loan Party have been duly authorized and validly issued and are fully paid and nonassessable. Each Loan Party and each Subsidiary of each Loan Party owns beneficially and of record and has good title to all of the shares it is listed as owning in such Schedule 3.13, free and clear of any Lien. There are no options, warrants, calls, subscriptions, conversion rights, exchange rights, preemptive rights or other rights, agreements or arrangements (contingent or otherwise) which may in any circumstances now or hereafter obligate any Subsidiary to issue any shares of its capital stock.

3.14. Partnerships, Etc. As of the Closing Date, neither any Loan Party nor any Subsidiary of any Loan Party is a partner (general or limited) of any partnership, is a party to any joint venture or owns (beneficially or of record) any equity or similar interest in any Person (including but not limited to any interest pursuant to which such Loan Party or Subsidiary has or may in any circumstance have an obligation to make capital contributions to, or be generally liable for or on account of the liabilities, acts or omissions of such other Person), except as set forth in Schedule 3.14 or Schedule 3.13 attached hereto.

3.15. Litigation. There is no pending or threatened action, suit, proceeding or investigation by or before any Governmental Authority against or affecting any Loan Party or any Subsidiary of any Loan Party, except for matters that, if adversely decided, individually or in the aggregate, could not have a Material Adverse Effect.

3.16. Absence of Events of Default. No event has occurred and is continuing and no condition exists which constitutes an Event of Default or Potential Default.

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3.17. Absence of Other Conflicts. Neither any Loan Party nor any Subsidiary of any Loan Party is in violation of or conflict with, or

is subject to any contingent liability on account of any violation of or conflict with:

(a) any Law,

(b) its articles of incorporation or by-laws (or other constituent documents), or

(c) any agreement or instrument or arrangement to which it is party or by which it or any of its properties (now owned or hereafter acquired) may be subject or bound,

except for matters that, individually or in the aggregate, could not have a Material Adverse Effect.

3.18. Insurance. Each Loan Party and each Subsidiary of each Loan Party maintains with financially sound and reputable insurers insurance with respect to its properties and business and against at least such liabilities, casualties and contingencies and in at least such types and amounts as is customary in the case of corporations engaged in the same or a similar business or having similar properties similarly situated.

3.19. Title to Property. Each Loan Party and each Subsidiary of each Loan Party has good and marketable title in fee simple to all real property owned or purported to be owned by it and good title to all other property of whatever nature owned or purported to be owned by it, including but not limited to all property reflected in the most recent audited balance sheet referred to in Section 3.06 hereof or submitted pursuant to Section 5.01(a) hereof, as the case may be (except as sold or otherwise disposed of in the ordinary course of business after the date of such balance sheet and except for such defects in title that, individually or in the aggregate, could not have a Material Adverse Effect).

3.20. Intellectual Property. Each Loan Party and each Subsidiary of each Loan Party owns, or is licensed or otherwise has the right to use, all the patents, trademarks, service marks, names (trade, service, fictitious or otherwise), copyrights, technology (including but not limited to computer programs and software), processes, data bases and other rights, free from burdensome restrictions, necessary to own and operate its properties and to carry on its business as presently conducted and presently planned to be conducted without conflict with the rights

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of others, except for matters that, individually or in the aggregate, could not have a Material Adverse Effect.

3.21. Taxes. All tax and information returns required to be filed by or on behalf of any Loan Party or any Subsidiary of any Loan Party have been properly prepared, executed and filed. All taxes, assessments, fees and other governmental charges upon any Loan Party or any Subsidiary of any Loan Party or upon any of their respective properties, incomes, sales or franchises which are due and payable have been paid, other than those not yet delinquent and payable without premium or penalty, and except for those being diligently contested in good faith by appropriate proceedings, and in each case adequate reserves and provisions for taxes have been made on the books of each Loan Party and each Subsidiary of each Loan Party. The reserves and provisions for taxes on the books of each Loan Party and each Subsidiary of each Loan Party are adequate for all open years and for its current fiscal period. Neither any Loan Party nor any Subsidiary of any Loan Party knows of any proposed additional assessment or basis for any material assessment for additional taxes (whether or not reserved against).

3.22. Employee Benefits. A copy of the most recent Annual Report (5500 Series Form) including all attachments thereto as filed with the Internal Revenue Service for each Plan has been provided to the Agent and to each Lender and fairly presents the funding status of each Plan. There has been no material deterioration in any Plan's funding status since the date of such Annual Report. Schedule 3.22 hereof sets forth as of the date hereof a list of all Plans and Multiemployer Plans, and all information available to the Borrower with respect to the direct, indirect or potential withdrawal liability to any Multiemployer Plan of any Loan Party or any Controlled Group Member. Except as set forth in Schedule 3.22 hereof, no Loan Party and no Subsidiary of any Loan

Party has any liability (contingent or otherwise) for or in connection with, and none of their respective properties is subject to a Lien in connection with, any Pension-Related Event. No Loan Party and no Subsidiary of any Loan Party has any liability (contingent or otherwise) for or in connection with, any Postretirement Benefits.

### 3.23. Environmental Matters.

(a) Each Loan Party and each Subsidiary of each Loan Party and each of their respective Environmental Affiliates is and has been in full compliance with all applicable Environmental Laws, except for matters which, individually or in the aggregate, could not have a Material Adverse Effect. There are no

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circumstances that may prevent or interfere with such full compliance in the future.

(b) Each Loan Party and each Subsidiary of each Loan Party and their respective Environmental Affiliates have all Environmental Approvals necessary or desirable for the ownership and operation of their respective properties, facilities and businesses as presently owned and operated and as presently proposed to be owned and operated, except for matters which, individually or in the aggregate, could not have a Material Adverse Effect.

(c) There is no Environmental Claim pending or threatened, and there are no past or present acts, omissions, events or circumstances (including but not limited to any dumping, leaching, deposit, removal, abandonment, escape, emission, discharge or release of any Environmental Concern Material at, on or under any facility or property now or previously owned, operated or leased by any Loan Party or any Subsidiary of any Loan Party or any of their respective Environmental Affiliates) that could form the basis of any Environmental Claim, against any Loan Party or any Subsidiary of any Loan Party or any of their respective Environmental Affiliates, except for matters which, if adversely decided, individually or in the aggregate, could not have a Material Adverse Effect.

(d) No facility or property now or previously owned, operated or leased by any Loan Party or Subsidiary of any Loan Party or any of their respective Environmental Affiliates is an Environmental Cleanup Site. Neither any Loan Party nor any Subsidiary of any Loan Party nor any of their respective Environmental Affiliates has directly transported or directly arranged for the transportation of any Environmental Concern Materials to any Environmental Cleanup Site. No Lien exists, and no condition exists which could result in the filing of a Lien, against any property of any Loan Party or any Subsidiary of any Loan Party or any of their respective Environmental Affiliates, under any Environmental Law.

3.24. Regulatory Restrictions. Neither any Loan Party nor any Subsidiary of any Loan Party is (a) an "investment company" or a company "controlled" by an investment company within the meaning of the Investment Company Act of 1940, as amended, (b) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended, (c) subject to regulation under the Federal Power Act, the Interstate Commerce Act, or the Investment Company Act of 1940, as amended, or (d) subject to any

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other Law which purports to restrict or regulate its ability to borrow money or obtain credit.

3.25. RAL Program Documents. Each of the RAL Program Documents is in full force and effect; none of the respective parties thereto is in breach of or default under any of the terms, conditions or provisions thereof; and no event or condition has occurred or exists which would give rise to any right on the part of any party to terminate any or all of the obligations or liabilities of such party under any of the RAL Program Documents. The Borrower has furnished to the Agent true, correct and complete copies of each of the RAL Program Documents.



ARTICLE IV

CONDITIONS OF LENDING

4.01. Conditions to Effectiveness. This Agreement shall be and become effective on such date (herein referred to as the "Closing Date") when, and only when, the following conditions precedent have all been satisfied:

(a) Agreement; Notes. The Agent shall have received an executed counterpart of this Agreement for each Lender, duly executed by the Borrower, and executed Notes conforming to the requirements hereof, duly executed on behalf of the Borrower;

(b) Guaranty. The Agent shall have received from the Guarantor, with a copy for each Lender, a Guaranty and Suretyship Agreement substantially in the form of Exhibit B hereto (as amended, modified or supplemented from time to time, the "Guaranty"), duly executed on behalf of the Guarantor.

(c) Corporate Proceedings. The Agent shall have received, with a counterpart for each Lender, certificates by the Secretary or Assistant Secretary of each Loan Party dated as of the Closing Date, in a form satisfactory to the Agent, as to (i) true copies of the articles of incorporation and by-laws (or other constituent documents) of each Loan Party in effect on such date, (ii) true copies of all corporate action taken by each Loan Party relative to this Agreement and the other Loan Documents and (iii) the incumbency and signature of the respective officers of each Loan Party executing this Agreement and the other Loan Documents to which such Loan Party is a party, together with satisfactory evidence of the incumbency of such Secretary or Assistant

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Secretary. The Agent shall have received, with a copy for each Lender, certificates from the appropriate Secretaries of State or other applicable Governmental Authorities dated not more than 45 days before the Closing Date showing the good standing of each Loan Party in its state of incorporation.

(d) Legal Opinion of Counsel to the Loan Parties. The Agent shall have received, with an executed counterpart for each Lender, an opinion addressed to the Agent, dated the Closing Date, of Bryan Cave L.L.P., counsel to each of the Loan Parties, in substantially the form attached hereto as Exhibit C and which shall be satisfactory to the Agent; the Loan Parties hereby expressly instruct such counsel to prepare such opinion, and the executed counterparts, and to deliver such opinion and counterparts to the Agent.

(e) Officers' Certificates. The Agent shall have received, with an executed counterpart for each Lender, certificates from such officers of each Loan Party, in a form satisfactory to the Agent, as to such matters as the Agent or any Lender may request.

(f) Fees, Expenses, etc. All fees, expenses and other compensation required to be paid to the Agent or the Lenders pursuant hereto or pursuant to any other written agreement on or prior to the Closing Date shall have been paid or received.

(g) Termination of Prior Facility. Borrower shall have terminated all prior credit agreements or other agreements or facilities for the extension of credit or lending of money with Mellon and paid any and all amounts due thereunder. The Agent shall have received, with a copy for each Lender, such written proof, satisfactory to the Agent, that Borrower has terminated all such prior credit agreements or other agreements or facilities for the extension or credit or lending of money with Mellon and paid any and all amounts due thereunder.

(h) Additional Matters. The Agent shall have received such other certificates, opinions, documents and instruments as may be requested by the Agent or any Lender. All corporate and other

proceedings, and all documents, instruments and other matters in connection with the transactions contemplated by this Agreement and the other Loan Documents shall be satisfactory in form and substance to the Agent.

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4.02. Conditions to All Loans. The obligation of each Lender to make any Loan is subject to performance by each of the Loan Parties of their respective obligations to be performed hereunder or under the other Loan Documents on or before the date of such Loan, satisfaction of the conditions precedent set forth herein and in the other Loan Documents (including without limitation the conditions precedent to the effectiveness of this Agreement set forth in Section 4.01 hereof) and to satisfaction of the following further conditions precedent:

(a) Notice. Appropriate notice of such Loan shall have been given by the Borrower as provided in Article II hereof.

(b) Representations and Warranties. Each of the representations and warranties made by each Loan Party herein and in each other Loan Document shall be true and correct in all material respects on and as of such date as if made on and as of such date, both before and after giving effect to the Loans requested to be made on such date.

(c) No Defaults. No Event of Default or Potential Default shall have occurred and be continuing on such date or after giving effect to the Loans requested to be made on such date.

(d) No Violations of Law, etc. Neither the making nor use of the Loans shall cause any Lender to violate or conflict with any Law.

Each request by the Borrower for any Loan shall constitute a representation and warranty by the Borrower that the conditions set forth in this Section 4.02 have been satisfied as of the date of such request. Failure of the Agent to receive notice from the Borrower to the contrary before such Loan is made shall constitute a further representation and warranty by the Borrower that the conditions referred to in this Section 4.02 have been satisfied as of the date such Loan is made.

## ARTICLE V

### AFFIRMATIVE COVENANTS

The Borrower hereby covenants to the Agent and each Lender as follows:

5.01. Basic Reporting Requirements.

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(a) Annual Audit Reports. As soon as practicable, and in any event within 90 days after the close of each fiscal year of the Borrower and the Guarantor, the Borrower shall furnish or cause to be furnished to the Agent, with a copy for each Lender, consolidated statements of income, cash flows and changes in stockholders' equity of the Borrower and the Guarantor and their consolidated Subsidiaries for such fiscal year and a consolidated balance sheet of the Borrower and the Guarantor and their consolidated Subsidiaries as of the close of such fiscal year, and notes to each, all in reasonable detail, setting forth in comparative form the corresponding figures for the preceding fiscal year. In the case of both the Borrower and the Guarantor, such financial statements shall be accompanied by an opinion of independent certified public accountants of recognized national standing selected by the Borrower. Such opinion shall be free of exceptions or qualifications not acceptable to the Required Lenders and in any event shall be free of any exception or qualification which is of "going concern" or like nature or which relates to a limited scope of examination. Such opinion in any event shall contain a written statement of such accountants substantially to the effect that (i) such accountants examined such financial statements in accordance with generally accepted auditing standards and accordingly made such tests of accounting records and such other auditing procedures as such accountants considered

necessary under the circumstances and (ii) in the opinion of such accountants such financial statements present fairly the financial position of the Borrower and the Guarantor and their consolidated Subsidiaries as of the end of such fiscal year and the results of their operations and their cash flows and changes in stockholders' equity for such fiscal year, in conformity with GAAP.

(b) Quarterly Consolidated Reports. As soon as practicable, and in any event within 45 days after the close of each of the first three fiscal quarters of each fiscal year of the Borrower and Guarantor, the Borrower shall furnish or cause to be furnished to the Agent, with a copy for each Lender, unaudited consolidated statements of income, cash flows and changes in stockholders' equity of the Borrower and the Guarantor and their consolidated Subsidiaries for such fiscal quarter and for the period from the beginning of such fiscal year to the end of such fiscal quarter and an unaudited consolidated balance sheet of the Borrower and the Guarantor and their consolidated Subsidiaries as of the close of such fiscal quarter, and notes to each, all in reasonable detail, setting forth in comparative form the

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corresponding figures for the same periods or as of the same date during the preceding fiscal year (except for the consolidated balance sheet, which shall set forth in comparative form the corresponding balance sheet as of the prior fiscal year end). In the case of both the Borrower and the Guarantor, such financial statements shall be certified by a Responsible Officer of the Borrower and Guarantor as presenting fairly the financial position of the Borrower and Guarantor and their consolidated Subsidiaries as of the end of such fiscal quarter and the results of their operations and their cash flows and changes in stockholders' equity for such fiscal year, in conformity with GAAP, subject to normal and recurring year-end audit adjustments.

(c) Consolidating Reports. As soon as practicable, and in any event within 45 days after the close of each of the first three fiscal quarters of each Fiscal Year of the Borrower and the Guarantor and 90 days after the close of each Fiscal Year of the Borrower and the Guarantor, the Borrower shall furnish to the Agent, with a copy for each Lender, unaudited consolidating statements of income of the Borrower and the Guarantor which include each Subsidiary of the Borrower and the Guarantor for such fiscal quarter or Fiscal Year, as the case may be, and unaudited consolidating balance sheets of the Borrower and the Guarantor which include each such Subsidiary as of the close of such fiscal quarter or Fiscal Year, as the case may be, all in reasonable detail as shall be reasonably requested by any Lender. Such statements shall be certified by a Responsible Officer of the Borrower and Guarantor as presenting fairly the financial position of each such Subsidiary as of the end of such fiscal quarter or Fiscal Year, as the case may be, and the results of their operations for such fiscal quarter or Fiscal Year, as the case may be, in conformity with GAAP (exclusive of principles of consolidation), subject (in the case of quarterly reports) to normal and recurring year-end audit adjustments.

(d) Receivables Report. As soon as practicable, and in any event within 45 days after the close of each fiscal quarter of the Borrower, the Borrower shall furnish or cause to be furnished to the Agent, with a copy for each Lender, a report in a form substantially similar to Exhibit D attached hereto. Such reports shall be certified by a Responsible Officer of the Borrower as presenting fairly the delinquencies and other information required to be set forth regarding the Borrower's portfolio of receivables as of the end of such fiscal quarter or Fiscal Year, as the case may be, in conformity with GAAP (exclusive of principles of consolidation), subject (in the case of quarterly reports) to normal and recurring year-end audit adjustments.

(e) Quarterly Compliance Certificates. The Borrower shall deliver to the Agent, with a copy for each Lender, Quarterly Compliance Certificates in substantially the form set forth as Exhibit E hereto, duly completed and signed by a Responsible

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Officer of the Borrower and the Guarantor concurrently with the delivery of the financial statements referred to in subsections (a), (b), (c) and (d) of this Section 5.01.

(f) Certain Other Reports and Information. Promptly upon their

becoming available to any Loan Party, such Loan Party shall deliver to the

Agent, with a copy for each Lender, a copy of (i) all regular or special reports, registration statements and amendments to the foregoing which such Loan Party or any Subsidiary shall file with the Securities and Exchange Commission (or any successor thereto) or any securities exchange and (ii) all reports, proxy statements, financial statements and other information distributed by such Loan Party to its stockholders, bondholders or the financial community generally.

(g) Further Information. Each Loan Party will promptly furnish to the Agent, with a copy for each Lender, such other information and in such form as the Agent or any Lender may reasonably request from time to time.

(h) Notice of Certain Events. Promptly upon becoming aware of any of the following, each Loan Party shall give the Agent notice thereof, together with a written statement of a Responsible Officer of such Loan Party setting forth the details thereof and any action with respect thereto taken or proposed to be taken by such Loan Party:

(i) Any Event of Default or Potential Default.

(ii) Any material adverse change in the business, operations or condition (financial or otherwise) or prospects of the Guarantor and its Subsidiaries taken as a whole.

(iii) Any pending or threatened action, suit, proceeding or investigation by or before any Governmental Authority against or affecting any Loan Party or any Subsidiary of any Loan Party, except for matters that if adversely decided, individually or in the aggregate, could not have a Material Adverse Effect.

(iv) Any material violation, breach or default by any party of or under any of the RAL Program Documents or any other agreement or instrument material to the business, operations, condition (financial or otherwise) or prospects of the Guarantor and its Subsidiaries taken as a whole.

(v) Any Pension-Related Event. Such notice shall be accompanied by: (A) a copy of any notice, request, return, petition or other document received by any Loan Party or any

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Controlled Group Member from any Person, or which has been or is to be filed with or provided to any Person (including without limitation the Internal Revenue Service, PBGC or any Plan participant, beneficiary, alternate payee or employer representative), in connection with such Pension-Related Event, and (B) in the case of any Pension-Related Event with respect to a Plan, the most recent Annual Report (5500 Series), with attachments thereto, and the most recent actuarial valuation report, for such Plan.

(vi) Any change in, or withdrawal, suspension, termination or expiration of, any rating provided by S&P or Moody's with regard to commercial paper of the Borrower, or any cessation of S&P or Moody's providing a rating with regard to commercial paper of the Borrower (whether by reason of there being no commercial paper of the Borrower outstanding or otherwise).

(i) Visitation; Verification. Each Loan Party shall permit such Persons as the Agent or any Lender may designate from time to time to visit and inspect any of the properties of such Loan Party and of any Subsidiary, to examine their respective books and records and take copies and extracts therefrom and to discuss their respective affairs with their respective directors, officers, employees and independent accountants at such times and as often as the Agent or any Lender reasonably may request. Each Loan Party authorizes such officers, employees and independent accountants to discuss with the Agent or any Lender the affairs of such Loan Party and its Subsidiaries.

5.02. Insurance. Each Loan Party shall, and shall cause each Subsidiary to, maintain with financially sound and reputable insurers insurance with respect to its properties and business and against such liabilities,

casualties and contingencies and of such types and in such amounts as is customary in the case of corporations engaged in the same or similar businesses or having similar properties similarly situated.

5.03. Payment of Taxes and Other Potential Charges and Priority Claims. Each Loan Party shall, and shall cause each of its Subsidiaries to, pay or discharge

(a) on or prior to the date on which penalties attach thereto, all taxes, assessments and other governmental charges imposed upon it or any of its properties;

(b) on or prior to the date when due, all lawful claims of materialmen, mechanics, carriers, warehousemen, landlords and

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other like Persons which, if unpaid, might result in the creation of a Lien upon any such property; and

(c) on or prior to the date when due, all other lawful claims which, if unpaid, might result in the creation of a Lien upon any such property or which, if unpaid, might give rise to a claim entitled to priority over general creditors of such Loan Party or such Subsidiary in a case under Title 11 (Bankruptcy) of the United States Code, as amended;

provided, that unless and until foreclosure, distraint, levy, sale or similar proceedings shall have been commenced such Loan Party or such Subsidiary need not pay or discharge any such tax, assessment, charge or claim so long as (x) the validity thereof is contested in good faith and by appropriate proceedings diligently conducted, and (y) such reserves or other appropriate provisions as may be required by GAAP shall have been made therefor.

5.04. Preservation of Corporate Status. Each Loan Party shall, and shall cause each of its Subsidiaries to, maintain its status as a

corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, and to be duly qualified to do business as a foreign corporation and in good standing in all jurisdictions in which the ownership of its properties or the nature of its business or both make such qualification necessary or advisable, except for matters that, individually or in the aggregate, could not have a Material Adverse Effect.

5.05. Governmental Approvals and Filings. Each Loan Party shall, and shall cause each of its Subsidiaries to, keep and maintain in full force and effect all Governmental Actions necessary or advisable in connection with execution and delivery of any Loan Document by any Loan Party, consummation by any Loan Party of the transactions herein or therein contemplated, performance of or compliance with the terms and conditions hereof or thereof by any Loan Party or to ensure the legality, validity, binding effect, enforceability or admissibility in evidence hereof or thereof.

5.06. Maintenance of Properties. Each Loan Party shall, and shall cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition the properties now or hereafter owned, leased or otherwise possessed by it and shall make or cause to be made all needful and proper repairs, renewals, replacements and improvements thereto so that the business carried on in connection therewith may be properly and advantageously conducted at all times.

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5.07. Avoidance of Other Conflicts. Each Loan Party shall not, and shall not permit any of its Subsidiaries to, violate or conflict with, be in violation of or conflict with, or be or remain subject to any liability (contingent or otherwise) on account of any violation or conflict with

(a) any Law,

(b) its articles of incorporation or by-laws (or other constituent documents), or

(c) any agreement or instrument to which it is party or by

which any of them or any of their respective Subsidiaries is a party or by which any of them or any of their respective properties (now owned or hereafter acquired) may be subject or bound,

except for matters that could not, individually or in the aggregate, have a Material Adverse Effect.

5.08. Financial Accounting Practices. Each Loan Party shall, and shall cause each of its Subsidiaries to, make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect its transactions and dispositions of its assets and maintain a system of internal accounting controls sufficient to provide reasonable assurances that (a) transactions are executed in accordance with management's general or specific authorization, (b) transactions are recorded as necessary (i) to permit preparation of financial statements in conformity with GAAP and (ii) to maintain accountability for assets, (c) access to assets is permitted only in accordance

with management's general or specific authorization and (d) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

5.09. Use of Proceeds. The Borrower shall apply the proceeds of all Loans hereunder only for the purpose of paying at maturity commercial paper issued by the Borrower from time to time. The Borrower shall not use the proceeds of any Loans hereunder directly or indirectly for any unlawful purpose, in any manner inconsistent with Section 3.12 hereof, or inconsistent with any other provision of any Loan Document.

5.10. Continuation of Businesses. The Loan Parties and each of their Subsidiaries shall continue to engage in their businesses substantially as conducted and operated during the present and preceding fiscal year, and the Loan Parties shall not,

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and shall not permit any Subsidiary to, engage in any other businesses except as set forth in Schedule 5.10 attached hereto.

5.11. Ownership by Guarantor. All shares of outstanding capital stock of the Borrower shall at all times continue to be owned beneficially and of record by Guarantor, either directly or indirectly through one or more wholly-owned Subsidiaries of Guarantor.

#### ARTICLE VI

##### NEGATIVE COVENANTS

The Borrower hereby covenants to the Agent and each Lender as follows:

###### 6.01. Financial Covenants.

###### (a) Consolidated Net Worth of Guarantor Without CompuServe.

(i) As of the Closing Date, Consolidated Net Worth of Guarantor Without CompuServe shall not be less than \$250,000,000.

(ii) As of January 31, 1997, Consolidated Net Worth of Guarantor Without CompuServe shall not be less than \$200,000,000.

(iii) As of April 30, 1997, Consolidated Net Worth of Guarantor Without CompuServe shall not be less than \$400,000,000.

(iv) As of July 31, 1997, Consolidated Net Worth of Guarantor Without CompuServe shall not be less than \$300,000,000.

(v) As of October 31, 1997, Consolidated Net Worth of Guarantor Without CompuServe shall not be less than \$250,000,000.

(vi) At all times from and after November 1, 1997, Consolidated Net Worth of Guarantor Without CompuServe shall not be less than \$200,000,000.

(b) Rating of Commercial Paper Notes. The Borrower shall not permit or suffer any commercial paper which is issued by

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the Borrower (x) to be rated lower than P-3 by Moody's or lower than A-3 by S&P or (y) to be unrated by either Moody's or S&P.

6.02. CompuServe Loans, Advances, Investments, Guarantees, Indemnitees, etc.. The Loan Parties shall not, and shall not permit any Subsidiary to, at any time be or become subject to or bound by any Guaranty Equivalent with respect to any obligation of, or make or suffer to exist or remain outstanding any loan or advance to, or purchase, acquire or own (beneficially or of record) any stock, bonds, notes or securities of, or any partnership interest (whether general or limited) in, or any other interest in, or make any capital contribution to or other investment in, CompuServe, or agree, become or remain liable (contingently or otherwise) to do any of the foregoing, except:

(a) Loans, investments and Guaranty Equivalents existing on April 30, 1996 and listed in Schedule 6.02(a) hereof; and

(b) Loans, investments and Guaranty Equivalents not exceeding in the aggregate at any time an additional \$25,000,000,

provided, that any agreement, loan, investment, Guaranty Equivalent or other arrangement between the Loan Parties or any of their Subsidiaries and CompuServe (including but not limited to any tax sharing arrangements) shall be on terms that are fair to such Loan Party or such Subsidiary and no less favorable to such Loan Party or such Subsidiary than those in any such agreement, loan, investment, Guaranty Equivalent or other arrangement between the Loan Parties or any of their Subsidiaries and an unrelated third party.

6.03. Mergers, Acquisitions, etc. The Loan Parties shall not, and shall not permit any Subsidiary of either of them to, (v) merge with or into or consolidate with any other Person, (w) liquidate, wind-up or dissolve, (x) acquire all or any substantial portion of the properties of any going concern or going line of business, or (y) acquire all or any substantial portion of the properties of any other Person other than in the ordinary course of business, or (z) agree, become or remain liable (contingently or otherwise) to do any of the foregoing, except:

(a) A wholly-owned Subsidiary (except CompuServe and its Subsidiaries) may merge with or into or consolidate with any other wholly-owned Subsidiary (except CompuServe and its Subsidiaries), provided that no Event of

Default or Potential Default shall occur and be continuing or shall exist at such time or after giving effect to such transaction; and

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(b) Either Loan Party or any Subsidiary of a Loan Party may acquire all or any substantial portion of the properties of or equity interests in any going concern, the line of business of which is the same as a line of business engaged in by any Loan Party or any Subsidiary of any Loan Party or permitted under Section 5.10 hereof (except, in each case, the line of business engaged in by CompuServe and its Subsidiaries).

6.04. Disposition of Properties. The Loan Parties shall not, and shall not permit any Subsidiary to (except in each case transactions between or among Loan Parties or Subsidiaries of a Loan Party, but subject to the proviso to Section 6.02), sell, convey, assign, lease, transfer, abandon or otherwise dispose of, voluntarily or involuntarily, any of its properties, or agree, become or remain liable (contingently or otherwise) to do any of the foregoing, except:

(a) Guarantor may sell or otherwise dispose of all of its right, title and interest in CompuServe and the Subsidiaries of CompuServe, and

CompuServe and such Subsidiaries may sell or otherwise dispose of any of their respective assets;

(b) The Loan Parties and each Subsidiary may sell receivables in connection with securitizations, whole-loan sales or sales of credit card receivables, provided that (i) except in the case of such sales as to which the sales price is at least equal to the face amount of the receivables sold (or as to which the sales price, in the aggregate, does not exceed \$1,000,000 in any one calendar year), the Borrower shall have provided written notice of the terms of such sale to the Lenders and to the Agent and the Required Lenders shall not have advised the Borrower within five days after such notice that, in their judgment, such terms are indicative of a distress sale and (ii) such Loan Party or Subsidiary is not and would not thereby be rendered insolvent as defined in, or otherwise in a condition which could in any circumstances then or subsequently render any transfer, conveyance, obligation or act then made, incurred or performed by it avoidable or fraudulent pursuant to, any Law that may be applicable to such Loan Party or Subsidiary pertaining to bankruptcy, insolvency or creditors' rights (including but not limited to the Bankruptcy Code of 1978, as amended, and, to the extent applicable to such Person, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act, or any other applicable Law pertaining to fraudulent conveyances or fraudulent transfers or preferences); and

(c) The Loan Parties and any Subsidiary may from time to time sell property; provided, that no property may be sold

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under this Section 6.04(c) if the aggregate value of all such property previously sold, exclusive of the value of any property sold pursuant to

Section 6.04(a) and Section 6.04(b), exceeds 10% of the Consolidated Net Worth of Guarantor as measured immediately prior to any proposed sale.

By way of illustration, and without limitation, it is understood that the following are dispositions of property subject to this Section 6.04(c): any disposition of accounts, chattel paper or general intangibles, with or without recourse; any disposition of any leasehold interest; and any disposition of any capital stock in or indebtedness of any Subsidiary. Nothing in this Section 6.04(c) shall be construed to limit any other restriction on dispositions of property imposed otherwise in the Loan Documents.

6.05. Indebtedness. The Loan Parties shall not, and shall not permit any Subsidiary of any Loan Party to, at any time create, incur, assume or suffer to exist any Indebtedness or become subject to or bound by any Guaranty Equivalent, except for the Indebtedness and Guaranty Equivalents listed on Schedule 6.05 attached hereto.

## ARTICLE VII

### DEFAULTS

7.01. Events of Default. An Event of Default shall mean the occurrence or existence of one or more of the following events or conditions (for any reason, whether voluntary, involuntary or effected or required by Law):

(a) Principal of any Loan shall not have been paid when due.

(b) Interest on any Loan, any fees, indemnity or expenses, or any other amount due hereunder or under any other Loan Document shall not have been paid when due and such failure shall have continued for a period of three Business Days.

(c) Any representation or warranty made or deemed made by any Loan Party or any Subsidiary of any Loan Party in or pursuant to or in connection with any Loan Document, or any statement made by any Loan Party or any Subsidiary of any Loan Party in any financial statement, certificate, report, exhibit or document furnished by any Loan Party or any Subsidiary of any Loan Party to the Agent or any Lender

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pursuant to or in connection with any Loan Document, shall prove to have been false or misleading in any material respect as of the time when made or deemed made (including by omission of material information necessary to make such representation, warranty or statement not misleading).

(d) Any Loan Party shall default in the performance or observance of any of the covenants contained in (or incorporated into the Guaranty by reference to) Section 5.01(h)(i) hereof, Section 5.11 or Article 6 hereof.

(e) Any Loan Party shall default in the performance or observance of any other covenant, agreement or duty under this Agreement or any other Loan Document and such default shall have continued for a period of thirty days.

(f) Any Cross-Default Event shall occur with respect to any Cross-Default Obligation; provided, that if a Cross-Default Event would have occurred with respect to a Cross-Default Obligation but for the grant of a waiver or similar indulgence, a Cross-Default Event shall nevertheless be deemed to have occurred if a Loan Party directly or indirectly gave or agreed to give any consideration for such waiver or indulgence (including but not limited to a reduction in maturity, an increase in rates or the granting of collateral). As used herein, "Cross-Default Obligation" shall mean any obligation (or set of related obligations) of any Loan Party or any Subsidiary of any Loan Party, whether as principal or as guarantor or other surety, in respect of Indebtedness in excess of \$10,000,000 in aggregate amount. As used herein, "Cross-Default Event" with respect to a Cross-Default Obligation shall mean the occurrence of any default, event or condition which causes or which would permit any Person or Persons to cause or which would with the giving of notice or the passage of time or both would permit any Person or Persons to cause all or any part of such Cross-Default Obligation to become due (by acceleration, mandatory prepayment or repurchase, or otherwise) before its otherwise stated maturity, or failure to pay all or any part of such Cross-Default Obligation at its stated maturity.

(g) One or more judgments for the payment of money shall have been entered against any Loan Party, which judgment or judgments exceed \$10,000,000 in the aggregate for all of the Loan Parties combined, and such judgment or judgments shall have remained undischarged and unstayed for a period of thirty consecutive days.

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(h) One or more writs or warrants of attachment, garnishment, execution, distraint or similar process exceeding in value the aggregate amount of \$10,000,000 for all of the Loan Parties combined shall have been issued against any Loan Party or any of their respective properties and shall have remained undischarged and unstayed for a period of thirty consecutive days.

(i) Any Governmental Action now or hereafter made by or with any Governmental Authority in connection with any Loan Document is not obtained or shall have ceased to be in full force and effect or shall have been modified or amended or shall have been held to be illegal or invalid, and the Required Lenders shall have determined in good faith (which determination shall be conclusive) that such event or condition could have a Material Adverse Effect.

(j) Any Loan Document or term or provision thereof shall cease to be in full force and effect (except in accordance with the express terms of such Loan Document); or any Loan Party shall, or shall purport to, terminate (except in accordance with the terms of such Loan Document), repudiate, declare voidable or void or otherwise contest, any Loan Document or term or provision thereof or any obligation or liability of any Loan Party thereunder.

(k) Any one or more Pension-Related Events referred to in subsection (a)(ii), (b) or (e) of the definition of "Pension-Related Event" shall have occurred; or any one or more other Pension-Related

Events shall have occurred and the Required Lenders shall determine in good faith (which determination shall be conclusive) that such other Pension-Related Events, individually or in the aggregate, could have a Material Adverse Effect.

(l) Any one or more of the events or conditions set forth in the following clauses (i) or (ii) shall have occurred in respect of any Loan Party or any Subsidiary of any Loan Party or any of their respective Environmental Affiliates, and the Required Lenders shall determine in good faith (which determination shall be conclusive) that such events or conditions, individually or in the aggregate, could have a Material Adverse Effect: (i) any past or present violation of any Environmental Law by such Person, or (ii) the existence of any pending or threatened Environmental Claim against any such Person, or the existence of any past or present acts, omissions, events or circumstances that could form the basis of any Environmental Claim against any such Person.

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(m) A Change of Control shall have occurred.

(n) Any of the RAL Program Documents or any material term or provision thereof shall cease to be in full force and effect; or any party thereto shall, or shall purport to, terminate, repudiate, declare voidable or void or otherwise contest, any of the RAL Program Documents or any material term or provision thereof or any material obligation or liability of any party thereunder; or any party thereto shall default beyond any applicable grace or cure period in the observance or performance of any material term, provision or condition thereof.

(o) A proceeding shall have been instituted in respect of any Loan Party or any Subsidiary of any Loan Party

(i) seeking to have an order for relief entered in respect of such Person, or seeking a declaration or entailing a finding that such Person is insolvent or a similar declaration or finding, or seeking dissolution, winding-up, charter revocation or forfeiture, liquidation, reorganization, arrangement, adjustment, composition or other similar relief with respect to such Person, its assets or its debts under any Law relating to bankruptcy, insolvency, relief of debtors or protection of creditors, termination of legal entities or any other similar Law now or

hereafter in effect, or

(ii) seeking appointment of a receiver, trustee, liquidator, assignee, sequestrator or other custodian for such Person or for all or any substantial part of its property,

and such proceeding shall result in the entry, making or grant of any such order for relief, declaration, finding, relief or appointment, or such proceeding shall remain undismitted and unstayed for a period of thirty consecutive days.

(p) Any Loan Party or any Subsidiary of any Loan Party shall become insolvent; shall fail to pay, become unable to pay, or state that it is or will be unable to pay, its debts as they become due; shall voluntarily suspend transaction of its or his business; shall make a general assignment for the benefit of creditors; shall institute (or fail to controvert in a timely and appropriate manner) a proceeding described in

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Section 7.01(o) (i) hereof, or (whether or not any such proceeding has been instituted) shall consent to or acquiesce in any such order for relief, declaration, finding or relief described therein; shall institute (or fail to controvert in a timely and appropriate manner) a proceeding described in Section 7.01(o) (ii) hereof, or (whether or

not any such proceeding has been instituted) shall consent to or acquiesce in any such appointment or to the taking of possession by any such custodian of all or any substantial part of its or his property; shall dissolve, wind-up, revoke or forfeit its charter (or other constituent documents) or liquidate itself or any substantial part of its property; or shall take any action in furtherance of any of the foregoing.

#### 7.02. Consequences of an Event of Default.

(a) If an Event of Default specified in subsections (a) through (n) of Section 7.01 hereof shall occur and be continuing or shall exist, then, in addition to all other rights and remedies which the Agent or any Lender may have hereunder or under any other Loan Document, at law, in equity or otherwise, the Lenders shall be under no further obligation to make Loans hereunder, and the Agent may, and upon written request of the Required Lenders shall, by notice to the Borrower, from time to time do any or all of the following:

(i) Declare the Commitments terminated, whereupon the Commitments will terminate and any fees hereunder shall be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby waived, and an action therefor shall immediately accrue.

(ii) Declare the unpaid principal amount of the Loans, interest accrued thereon and all other Obligations to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby waived, and an action therefor shall immediately accrue.

(b) If an Event of Default specified in subsection (o) or (p) of Section 7.01 hereof shall occur or exist, then, in addition to all other rights and remedies which the Agent or any Lender may have hereunder or under any other Loan Document, at law, in equity or otherwise, the Commitments shall automatically terminate and the Lenders shall be under no further obligation to make Loans, and the unpaid principal amount of the Loans, interest accrued thereon and all other Obligations shall become immediately due and payable without presentment, demand, protest or notice of

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any kind, all of which are hereby waived, and an action therefor shall immediately accrue.

### ARTICLE VIII

#### THE AGENT

8.01. Appointment. Each Lender hereby irrevocably, subject to Section 8.10 hereof, appoints Mellon to act as Agent for such Lender under this Agreement and the other Loan Documents. Each Lender hereby irrevocably, subject to Section 8.10 hereof, authorizes the Agent to take such action on behalf of such Lender under the provisions of this Agreement and the other Loan Documents, and to exercise such powers and to perform such duties, as are expressly delegated to or required of the Agent by the terms hereof or thereof, together with such powers as are reasonably incidental thereto. Mellon hereby agrees to act as Agent on behalf of the Lenders on the terms and conditions set forth in this Agreement and the other Loan Documents, subject to its right to resign as provided in Section 8.10 hereof. Each Lender hereby irrevocably, subject to Section 8.10 hereof, authorizes the Agent to execute and deliver each of the Loan Documents and to accept delivery of such of the other Loan Documents as may not require execution by the Agent. Each Lender agrees that the rights and remedies granted to the Agent under the Loan Documents shall be exercised exclusively by the Agent, and that no Lender shall have any right individually to exercise any such right or remedy, except to the extent expressly provided herein or therein.

8.02. General Nature of Agent's Duties. Notwithstanding anything to the contrary elsewhere in this Agreement or in any other Loan Document:

(a) The Agent shall have no duties or responsibilities except

those expressly set forth in this Agreement and the other Loan Documents, and no implied duties or responsibilities on the part of the Agent shall be read into this Agreement or any Loan Document or shall otherwise exist.

(b) The duties and responsibilities of the Agent under this Agreement and the other Loan Documents shall be mechanical and administrative in nature, and the Agent shall not have a fiduciary relationship in respect of any Lender.

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(c) The Agent is and shall be solely the agent of the Lenders. The Agent does not assume, and shall not at any time be deemed to have, any relationship of agency or trust with or for, or any other duty or responsibility to, any Loan Party or any other Person (except only for its relationship as agent for, and its express duties and responsibilities to, the Lenders as provided in this Agreement and the other Loan Documents).

(d) The Agent shall be under no obligation to take any action hereunder or under any other Loan Document if the Agent believes in good faith that taking such action may conflict with any Law or any provision of this Agreement or any other Loan Document, or may require the Agent to qualify to do business in any jurisdiction where it is not then so qualified.

8.03. Exercise of Powers. The Agent shall take any action of the type specified in this Agreement or any other Loan Document as being within the Agent's rights, powers or discretion in accordance with directions from the Required Lenders (or, to the extent this Agreement or such Loan Document expressly requires the direction or consent of some other Person or set of Persons, then instead in accordance with the directions of such other Person or set of Persons). In the absence of such directions, the Agent shall have the authority (but under no circumstances shall be obligated), in its sole discretion, to take any such action, except to the extent this Agreement or such Loan Document expressly requires the direction or consent of the Required Lenders (or some other Person or set of Persons), in which case the Agent shall not take such action absent such direction or consent. Any action or inaction pursuant to such direction, discretion or consent shall be binding on all the Lenders. The Agent shall not have any liability to any Person as a result of (x) the Agent acting or refraining from acting in accordance with the directions of the Required Lenders (or other applicable Person or set of Persons), (y) the Agent refraining from acting in the absence of instructions to act from the Required Lenders (or other applicable Person or set of Persons), whether or not the Agent has discretionary power to take such action, or (z) the Agent taking any discretionary action it is authorized to take under this Section (subject, in the case of this clause (z), to the provisions of Section 8.04(a) hereof).

8.04. General Exculpatory Provisions. Notwithstanding anything to the contrary elsewhere in this Agreement or any other Loan Document:

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(a) The Agent shall not be liable for any action taken or omitted to be taken by it under or in connection with this Agreement or any other Loan Document, unless caused by its own gross negligence or willful misconduct.

(b) The Agent shall not be responsible for (i) the execution, delivery, effectiveness, enforceability, genuineness, validity or adequacy of this Agreement or any other Loan Document, (ii) any recital, representation, warranty, document, certificate, report or statement in, provided for in, or received under or in connection with, this Agreement or any other Loan Document, (iii) any failure of any Loan Party or Lender to perform any of their respective obligations under this Agreement or any other Loan Document, (iv) the existence, validity, enforceability, perfection, recordation, priority, adequacy or value, now or hereafter, of any Lien or other direct or indirect security afforded or purported to be afforded by any of the Loan Documents or otherwise from time to time, or (v) caring for,

protecting, insuring, or paying any taxes, charges or assessments with respect to any collateral.

(c) The Agent shall not be under any obligation to ascertain, inquire or give any notice relating to (i) the performance or observance of any of the terms or conditions of this Agreement or any other Loan Document on the part of any Loan Party, (ii) the business, operations, condition (financial or otherwise) or prospects of any Loan Party or any other Person, or (iii) except to the extent set forth in Section 8.05(f) hereof, the existence of any Event of Default or Potential Default.

(d) The Agent shall not be under any obligation, either initially or on a continuing basis, to provide any Lender with any notices, reports or information of any nature, whether in its possession presently or hereafter, except for items furnished to the Agent with copies for each Lender pursuant to Section 5.01 hereof and for other notices, reports and other information expressly required by this Agreement or any other Loan Document to be furnished by the Agent to such Lender.

#### 8.05. Administration by the Agent.

(a) The Agent may rely upon any notice or other communication of any nature (written or oral, including but not limited to telephone conversations, whether or not such notice or other communication is made in a manner permitted or required by this Agreement or any Loan Document) purportedly made by or on

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behalf of the proper party or parties, and the Agent shall not have any duty to verify the identity or authority of any Person giving such notice or other communication.

(b) The Agent may consult with legal counsel (including, without limitation, in-house counsel for the Agent or in-house or other counsel for any Loan Party), independent public accountants and any other experts selected by it from time to time, and the Agent shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts.

(c) The Agent may conclusively rely upon the truth of the statements and the correctness of the opinions expressed in any certificates or opinions furnished to the Agent in accordance with the requirements of this Agreement or any other Loan Document. Whenever the Agent shall deem it necessary or desirable that a matter be proved or established with respect to any Loan Party or Lender, such matter may be established by a certificate of such Loan Party or Lender, as the case may be, and the Agent may conclusively rely upon such certificate (unless other evidence with respect to such matter is specifically prescribed in this Agreement or another Loan Document).

(d) The Agent may fail or refuse to take any action unless it shall be indemnified to its satisfaction from time to time against any and all amounts, liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature which may be imposed on, incurred by or asserted against the Agent by reason of taking or continuing to take any such action.

(e) The Agent may perform any of its duties under this Agreement or any other Loan Document by or through agents or attorneys-in-fact. The Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

(f) The Agent shall not be deemed to have any knowledge or notice of the occurrence of any Event of Default or Potential Default unless the Agent has received notice from a Lender or any Loan Party referring to this Agreement, describing such Event of Default or Potential Default, and expressly stating that such notice is a "notice of default". If the Agent receives such a notice, the Agent shall give prompt notice thereof to each Lender.

8.06. Lender Not Relying on Agent or Other Lenders. Each Lender acknowledges as follows: (a) Neither the Agent nor any other Lender has

made any representations or warranties to it, and no act taken hereafter by the Agent or any other Lender shall

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be deemed to constitute any representation or warranty by the Agent or such other Lender to it. (b) It has, independently and without reliance upon the Agent or any other Lender, and based upon such documents and information as it has deemed appropriate, made its own credit and legal analysis and decision to enter into this Agreement and the other Loan Documents. (c) It will, independently and without reliance upon the Agent or any other Lender, and based upon such documents and information as it shall deem appropriate at the time, make its own decisions to take or not take action under or in connection with this Agreement and the other Loan Documents.

8.07. Indemnification. Each Lender agrees to reimburse and indemnify the Agent and its directors, officers, employees and agents (to the extent not reimbursed by a Loan Party and without limitation of the obligations of the Loan Parties to do so), Pro Rata, from and against any and all amounts, losses, liabilities, claims, damages, obligations, penalties, actions,

judgments, suits, costs or reasonable out-of-pocket disbursements or expenses of any kind or nature (including, without limitation, the reasonable fees and disbursements of counsel for the Agent or such other Person in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not the Agent or such other Person shall be designated a party thereto) that may at any time be imposed on, incurred by or asserted against the Agent or such other Person as a result of, or arising out of, or in any way related to or by reason of, this Agreement, any other Loan Document, any transaction from time to time contemplated hereby or thereby, or any transaction financed in whole or in part or directly or indirectly with the proceeds of any Loan, provided that no Lender shall be liable for any portion of such amounts, losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements resulting solely from the gross negligence or willful misconduct of the Agent or such other Person, as finally determined by a court of competent jurisdiction.

8.08. Agent in its Individual Capacity. With respect to its Commitments and the Obligations owing to it, the Agent shall have the same rights, powers and obligations under this Agreement and each other Loan Document as any other Lender and may exercise the same as though it were not the Agent, and the terms "Lenders," "holders of Notes" and like terms shall include the Agent in its individual capacity as such. The Agent and its affiliates may, without liability to account, make loans to, accept deposits from, acquire debt or equity interests in, act as trustee under indentures of, and engage in any other business with, any Loan Party and any stockholder, subsidiary or affiliate

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of any Loan Party, as though the Agent were not the Agent hereunder.

8.09. Holders of Notes. The Agent may deem and treat the Lender which is payee of a Note as the owner and holder of such Note for all purposes hereof unless and until a Transfer Supplement with respect to the assignment or transfer thereof shall have been filed with the Agent in accordance with Section 9.14 hereof. Any authority, direction or consent of any Person who at the time of giving such authority, direction or consent is shown in the Register as being a Lender shall be conclusive and binding on each present and subsequent holder, transferee or assignee of any Note or Notes payable to such Lender or of any Note or Notes issued in exchange therefor.

8.10. Successor Agent. The Agent may resign at any time by giving written notice thereof to the Lenders and the Borrower. The Agent may be removed by the Required Lenders at any time by giving 10 days' prior written notice thereof to the Agent, the other Lenders and the Borrower. Upon any such resignation or removal, the Required Lenders shall have the right to appoint a successor Agent. If no successor Agent shall have been so appointed and consented to, and shall have accepted such appointment, within 30 days after such notice of resignation or removal, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent. Each successor Agent shall be a commercial bank or trust company organized under the laws of the United States of America or any State thereof and having a combined capital and surplus of at least \$500,000,000. Upon the acceptance by a successor Agent of its appointment

as Agent hereunder, such successor Agent shall thereupon succeed to and become vested with all the properties, rights, powers, privileges and duties of the former Agent, without further act, deed or conveyance. Upon the effective date of resignation or removal of a retiring Agent, such Agent shall be discharged from its duties under this Agreement and the other Loan Documents, but the provisions of this Agreement shall inure to its benefit as to any actions taken or omitted by it while it was Agent under this Agreement. If and so long as no successor Agent shall have been appointed, then any notice or other communication required or permitted to be given by the Agent shall be sufficiently given if given by the Required Lenders, all notices or other communications required or permitted to be given to the Agent shall be given to each Lender, and all payments to be made to the Agent shall be made directly to the Loan Party or Lender for whose account such payment is made.

8.11. Additional Agents. If the Agent shall from time to time deem it necessary or advisable, for its own protection in

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the performance of its duties hereunder or in the interest of the Lenders, the Agent and the Borrower shall (and the Borrower shall cause the other Loan Parties to) execute and deliver a supplemental agreement and all other instruments and agreements necessary or advisable, in the opinion of the Agent, to constitute another commercial bank or trust company, or one or more other Persons approved by the Agent, to act as co-Agent or agent with respect to any part of the Collateral, with such powers of the Agent as may be provided in such supplemental agreement, and to vest in such bank, trust company or Person as such co-Agent or separate agent, as the case may be, any properties, rights, powers, privileges and duties of the Agent under this Agreement or any other Loan Document.

8.12. Calculations. The Agent shall not be liable for any calculation, apportionment or distribution of payments made by it in good faith. If such calculation, apportionment or distribution is subsequently determined to have been made in error, the sole recourse of any Lender to whom payment was due but not made shall be to recover from the other Lenders any payment in excess of the amount to which they are determined to be entitled or, if the amount due was not paid by the appropriate Loan Party, to recover such amount from the appropriate Loan Party.

8.13. Agent's Fee. The Borrower agrees to pay to the Agent, for its individual account, a nonrefundable Agent's fee in an amount separately agreed upon by the Agent and the Borrower, payable in full on the Closing Date.

8.14. Funding by Agent. Unless the Agent shall have been notified in writing by any Lender not later than the close of business on the day before the day on which any Euro-Rate Loans or CD Rate Loans are requested by the Borrower to be made (or, in the case of any Base Rate Loans, not later than 12 o'clock, Noon, Pittsburgh time on the day on which Loans are requested by the Borrower to made) that such Lender will not make its ratable share of such Loans, the Agent may assume that such Lender will make its ratable share of the Loans, and in reliance upon such assumption the Agent may (but in no circumstances shall be required to) make available to the Borrower a

corresponding amount. If and to the extent that any Lender fails to make such payment to the Agent on such date, such Lender shall pay such amount on demand (or, if such Lender fails to pay such amount on demand, the Borrower shall pay such amount on demand), together with interest, for the Agent's own account, for each day from and including the date of the Agent's payment to and including the date of repayment to the Agent (before and after judgment) at the rate or rates per annum applicable to such Loans. All payments to the Agent under this Section shall be made to the Agent at its Office in Dollars in

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funds immediately available at such Office, without set-off, withholding, counterclaim or other deduction of any nature.

ARTICLE IX

MISCELLANEOUS

9.01. Holidays. Whenever any payment or action to be made or taken hereunder or under any other Loan Document shall be stated to be due on a day which is not a Business Day, such payment or action shall be made or taken on the next following Business Day and such extension of time shall be included in computing interest or fees, if any, in connection with such payment or action.

9.02. Records. The unpaid principal amount of the Loans owing to each Lender, the unpaid interest accrued thereon, the interest rate or rates applicable to such unpaid principal amount, the duration of such applicability, each Lender's Committed Amount and the accrued and unpaid fees owing to each Lender or the Agent shall at all times be ascertained from the records of the Agent, which shall be conclusive absent demonstrable error.

9.03. Amendments and Waivers. Neither this Agreement nor any Loan Document may be waived, amended, modified or supplemented except in accordance with the provisions of this Section. The Agent, the Required Lenders and each Loan Party may from time to time amend, modify or supplement the provisions of this Agreement or any other Loan Document for the purpose of amending, adding to, or waiving any provisions, releasing any provisions, or changing in any manner the rights and duties of any Loan Party, the Agent or any Lender. Any such waiver, amendment, modification or supplement made by the applicable Loan Party, the Required Lenders and the Agent in accordance with the provisions of this Section shall be binding upon such Loan Party, each Lender and the Agent. The Agent shall enter into such waivers, amendments, modifications or supplements from time to time as directed by the Required Lenders in writing, and only as so directed, provided, that no such waiver, amendment, modification or supplement may be made which will:

(a) Increase the Committed Amount of any Lender over the amount thereof then in effect, or extend the Maturity Date, without the written consent of each Lender affected thereby;

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(b) Reduce the principal amount of or extend the time for any required payment of principal of any Loan, or reduce the rate of interest or extend the time for payment of interest borne by any Loan, or extend the time for payment of or reduce the amount of any Facility Fees, without the written consent of each Lender affected thereby;

(c) Change the definition of "Required Lenders" or amend this Section 9.03, without the written consent of all of the Lenders;

(d) Amend or waive any of the provisions of Article VIII hereof, or impose additional duties upon the Agent or otherwise adversely affect the rights, interests or obligations of the Agent, without the written consent of the Agent; or

(e) Release or terminate the Guaranty, without the written consent of all the Lenders;

and provided further, that Transfer Supplements may be entered into in the manner provided in Section 9.14 hereof. Any such amendment, modification or supplement must be in writing and shall be effective only to the extent set forth in such writing. Any Event of Default or Potential Default waived or consented to in any such amendment, modification or supplement shall be deemed to be cured and not continuing to the extent and for the period set forth in such waiver or consent, but no such waiver or consent shall extend to any other or subsequent Event of Default or Potential Default or impair any right consequent thereto.

9.04. No Implied Waiver; Cumulative Remedies. No course of dealing and no delay or failure of the Agent or any Lender in exercising any right, power or privilege under this Agreement or any other Loan Document shall affect any other or future exercise thereof or exercise of any other right, power or privilege; nor shall any single or partial exercise of any such right, power or privilege or any abandonment or discontinuance of steps to enforce such a right, power or privilege preclude any further exercise thereof or of any other right, power or privilege. The rights and remedies of the Agent and the Lenders under this Agreement and any other Loan Document are cumulative and not exclusive of any rights or remedies which the Agent or any Lender would



otherwise have hereunder or thereunder, at law, in equity or otherwise.

9.05. Notices.

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(a) Except to the extent otherwise expressly permitted hereunder or thereunder, all notices, requests, demands, directions and other communications (collectively "notices") under this Agreement or any Loan Document shall be in writing (including telexed, telecopied and facsimile communication) and shall be sent by first-class mail, or by nationally-recognized overnight courier, or by telex, telecopier or facsimile

(with confirmation in writing mailed first-class or sent by such an overnight courier), or by facsimile (with confirmation in writing mailed by first class or sent by such overnight courier), or by personal delivery. All notices shall be sent to the applicable party at the address stated on the signature pages hereof or in accordance with the last unrevoked written direction from such party to the other parties hereto, in all cases with postage or other charges prepaid. Any such properly given notice to the Agent or any Lender shall be effective when received. Any such properly given notice to the Borrower shall be effective on the earliest to occur of receipt, telephone confirmation of receipt of telex, telecopy or facsimile communication, one Business Day after delivery to a nationally-recognized overnight courier, or three Business Days after deposit in the mail.

(b) Any Lender giving any notice to the Borrower or any other party to a Loan Document shall simultaneously send a copy thereof to the Agent, and the Agent shall promptly notify the other Lenders of the receipt by it of any such notice.

(c) The Agent and each Lender may rely on any notice (whether or not such notice is made in a manner permitted or required by this Agreement or any Loan Document) purportedly made by or on behalf of the Borrower or any other Loan Party, and neither the Agent nor any Lender shall have any duty to verify the identity or authority of any Person giving such notice.

9.06. Expenses; Taxes; Indemnity.

(a) The Borrower agrees to pay or cause to be paid and to save the Agent harmless against liability for the payment of all reasonable out-of-pocket costs and expenses (including but not limited to reasonable fees and expenses of Reed Smith Shaw and McClay as counsel for the Agent, and such other counsel, including local counsel, auditors, consulting engineers, appraisers, and all other professional, accounting, evaluation and consulting costs) incurred by the Agent from time to time arising from or relating to (i) the negotiation, preparation, execution, delivery, administration and performance of this Agreement and the other Loan Documents, (ii) any requested amendments, modifications, supplements, waivers or consents (whether or not ultimately entered into or granted) to this Agreement or any Loan Document,

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and (iii) the making or the administration of the Loans. The Borrower also agrees to pay or cause to be paid and to save the Agent and each of the Lenders harmless against liability for the payment of all reasonable out-of-pocket costs and expenses (including but not limited to reasonable fees and expenses of Reed Smith Shaw and McClay as counsel for the Agent, and such other counsel, including local counsel, auditors, consulting engineers, appraisers, and all other professional, accounting, evaluation and consulting costs) incurred by the Agent or any Lender from time to time arising from or relating to the enforcement or preservation of rights under this Agreement or any Loan Document (including but not limited to any such costs or expenses arising from or relating to (A) collection or enforcement of an outstanding Loan or any other amount owing hereunder or thereunder by the Agent or any Lender, and (B) any litigation, proceeding, dispute, work-out, restructuring or rescheduling related in any way to this Agreement or the Loan Documents).

(b) The Borrower hereby agrees to pay all stamp, document,

transfer, recording, filing, registration, search, sales and excise fees and taxes and all similar impositions now or hereafter determined by the Agent or any Lenders to be payable in connection with this Agreement or any other Loan Documents or any other documents, instruments or transactions pursuant to or in connection herewith or therewith, and the Borrower agrees to save the Agent and each Lender harmless from and against any and all present or future claims, liabilities or losses with respect to or resulting from any omission to pay or delay in paying any such fees, taxes or impositions.

(c) The Borrower hereby agrees to reimburse and indemnify each of the Indemnified Parties from and against any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever (including, without limitation, the fees and disbursements of counsel for such Indemnified Party in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnified Party shall be designated a party thereto) that may at any time be imposed on, asserted against or incurred by such Indemnified Party as a result of, or arising out of, or in any way related to or by reason of, this Agreement or any other Loan Document, any transaction from time to time contemplated hereby or thereby, or any transaction financed in whole or in part or directly or indirectly with the proceeds of any Loan (and without in any way limiting the generality of the foregoing, including any violation or breach of any Environmental Law or any other Law by any Loan Party or any Subsidiary of any Loan Party or any Environmental Affiliate of any of them; any Environmental Claim

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arising out of the management, use, control, ownership or operation of property by any of such Persons, including all on-site and off-site activities involving Environmental Concern Materials; or any exercise by the Agent or any Lender of any of its rights or remedies under this Agreement or any other Loan Document); but excluding any such losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements resulting solely from the gross negligence or willful misconduct of such Indemnified Party, as finally determined by a court of competent jurisdiction. If and to the extent that the foregoing obligations of the Borrower under this subsection (c), or any other indemnification obligation of the Borrower hereunder or under any other Loan Document, are unenforceable for any reason, the Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of such obligations which is permissible under applicable Law.

9.07. Severability. The provisions of this Agreement are intended to be severable. If any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

9.08. Prior Understandings. This Agreement and the other Loan Documents supersede all prior and contemporaneous understandings and agreements, whether written or oral, among the parties hereto relating to the transactions provided for herein and therein.

9.09. Duration; Survival. All representations and warranties of the each Loan Party contained herein or in any other in the Loan Document or made in connection herewith or therewith shall survive the making of, and shall not be waived by the execution and delivery, of this Agreement or any other Loan Document, any investigation by or knowledge of the Agent or any Lender, the making of any Loan, or any other event or condition whatever. All covenants and agreements of each Loan Party contained herein or in any other Loan Document shall continue in full force and effect from and after the date hereof so long as the Borrower may borrow hereunder and until payment in full of all Obligations. Without limitation, all obligations of the Borrower hereunder or under any other Loan Document to make payments to or indemnify the Agent or any Lender shall survive the payment in full of all other Obligations, termination of the Borrower's right to borrow hereunder, and all other events and conditions whatever. In addition, all obligations of each Lender to make payments to

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or indemnify the Agent shall survive the payment in full by the Borrower of all Obligations, termination of the Borrower's right to borrow hereunder, and all other events or conditions whatever.

9.10. Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

9.11. Limitation on Payments. The parties hereto intend to conform to all applicable Laws in effect from time to time limiting the maximum rate of interest that may be charged or collected. Accordingly, notwithstanding any other provision hereof or of any other Loan Document, the Borrower shall not be required to make any payment to or for the account of any Lender, and each Lender shall refund any payment made by the Borrower, to the extent that such requirement or such failure to refund would violate or conflict with nonwaivable provisions of applicable Laws limiting the maximum amount of interest which may be charged or collected by such Lender.

9.12. Set-Off. The Borrower hereby agrees that if any Obligation of the Borrower shall be due and payable (by acceleration or otherwise), each Lender shall have the right, without notice to the Borrower, to set-off against and to appropriate and apply to such Obligation any indebtedness, liability or obligation of any nature owing to the Borrower by such Lender, including but not limited to all deposits (whether time or demand, general or special, provisionally credited or finally credited, whether or not evidenced by a certificate of deposit) now or hereafter maintained by the Borrower with such Lender. Such right shall be absolute and unconditional in all circumstances and, without limitation, shall exist whether or not such Lender or any other Person shall have given notice or made any demand to the Borrower or

any other Person, whether such indebtedness, obligation or liability owed to the Borrower is contingent, absolute, matured or unmatured (it being agreed that such Lender may deem such indebtedness, obligation or liability to be then due and payable at the time of such setoff), and regardless of the existence or adequacy of any collateral, guaranty or any other security, right or remedy available to any Lender or any other Person. The Borrower hereby agrees that any Participant and any branch, subsidiary or affiliate of any Lender or any Participant shall have the same rights of set-off as a Lender as provided in this Section (regardless of whether such Participant, branch, subsidiary or affiliate would otherwise be deemed in privity with or a direct creditor of the Borrower). The rights provided by this Section are in addition to all other

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rights of set-off and banker's lien and all other rights and remedies which any Lender (or any such Participant, branch, subsidiary or affiliate) may otherwise have under this Agreement, any other Loan Document, at law or in equity, or otherwise, and nothing in this Agreement or any Loan Document shall be deemed a waiver or prohibition of or restriction on the rights of set-off or bankers' lien of any such Person.

9.13. Sharing of Collections. The Lenders hereby agree among themselves that if any Lender shall receive (by voluntary payment, realization upon security, set-off or from any other source) any amount on account of the Loans, interest thereon, or any other Obligation contemplated by this Agreement or the other Loan Documents to be made by any Loan Party Pro Rata to all Lenders in greater proportion than any such amount received by any other Lender, then the Lender receiving such proportionately greater payment shall notify each other Lender and the Agent of such receipt, and equitable adjustment will be made in the manner stated in this Section so that, in effect, all such excess amounts will be shared Pro Rata among all of the Lenders. The Lender receiving such excess amount shall purchase (which it shall be deemed to have done simultaneously upon the receipt of such excess amount) for cash from the other applicable Lenders a participation in the applicable Obligations owed to such other Lenders in such amount as shall result in a Pro Rata sharing by all applicable Lenders of such excess amount (and to such extent the receiving Lender shall be a Participant). If all or any portion of such excess amount is thereafter recovered from the Lender making such purchase, such purchase shall be rescinded and the purchase price restored to the extent of such recovery, together with interest or other amounts, if any, required by Law to be paid by the Lender making such purchase. The Borrower hereby consents to and confirms the foregoing arrangements. Each Participant shall be bound by this Section as

fully as if it were a Lender hereunder.

9.14. Successors and Assigns; Participations; Assignments.

(a) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Borrower, the Lenders, all future holders of the Notes, the Agent and their respective successors and assigns, except that the Borrower may not assign or transfer any of its rights hereunder or interests herein without the prior written consent of all the Lenders and the Agent, and any purported assignment without such consent shall be void.

(b) Participations. Any Lender may, in the ordinary course of its commercial banking business and in accordance with

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applicable Law, at any time sell participations to one or more commercial banks or other Persons (each a "Participant") in all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including, without limitation, all or a portion of its Commitments and the Loans owing to it and any Note held by it); provided, that

(i) any such Lender's obligations under this Agreement and the other Loan Documents shall remain unchanged,

(ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations,

(iii) the parties hereto shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and each of the other Loan Documents,

(iv) such Participant shall be bound by the provisions of Section 9.13 hereof, and

(v) no Participant (unless such Participant is an affiliate of such Lender, or is itself a Lender) shall be entitled to require such Lender to take or refrain from taking action under this Agreement or under any other Loan Document, except that such Lender may agree with such Participant that such Lender will not, without such Participant's consent, take action of the type described in subsections (a), (b), (c) or (e) of Section 9.03 hereof.

The Borrower agrees that any such Participant shall be entitled to the benefits of Sections 2.09, 2.10 and 9.06 with respect to its participation in the Commitments and the Loans outstanding from time to time; provided, that no such Participant shall be entitled to receive any greater amount pursuant to such Sections than the transferor Lender would have been entitled to receive in respect of the amount of the participation transferred to such Participant had no such transfer occurred.

(c) Assignments. Any Lender may, in the ordinary course of its commercial banking business and in accordance with applicable Law, at any time assign all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including, without limitation, all or any portion of its Commitments and Loans owing to it and any Note held by it) to any Lender, any affiliate of a Lender or to one or more additional commercial banks or other Persons (each a "Purchasing Lender"); provided, that

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(i) any such assignment to a Purchasing Lender which is not a Lender or an affiliate of a Lender shall be made only with the consent of the Borrower and the Agent (which consent, in each case, shall not be unreasonably withheld),

(ii) if a Lender makes such an assignment of less than all of its then remaining rights and obligations under this Agreement and the other Loan Documents, such transferor Lender shall retain, after such

assignment, a minimum principal amount of \$50,000,000 of the Commitments and Loans then outstanding, and such assignment shall be in a minimum aggregate principal amount of \$25,000,000 of the Commitments and Loans then outstanding,

(iii) each such assignment shall be of a constant, and not a varying, percentage of each Commitment of the transferor Lender and of all of the transferor Lender's rights and obligations under this Agreement and the other Loan Documents, and

(iv) each such assignment shall be made pursuant to a Transfer Supplement in substantially the form of Exhibit F to this Agreement, duly completed (a "Transfer Supplement").

In order to effect any such assignment, the transferor Lender and the Purchasing Lender shall execute and deliver to the Agent a duly completed Transfer Supplement (including the consents required by clause (i) of the preceding sentence) with respect to such assignment, together with any Note or Notes subject to such assignment (the "Transferor Lender Notes") and a processing and recording fee of \$2,000; and, upon receipt thereof, the Agent shall accept such Transfer Supplement. Upon receipt of the Purchase Price Receipt Notice pursuant to such Transfer Supplement, the Agent shall record such acceptance in the Register. Upon such execution, delivery, acceptance and recording, from and after the close of business at the Agent's Office on the Transfer Effective Date specified in such Transfer Supplement

(x) the Purchasing Lender shall be a party hereto and, to the extent provided in such Transfer Supplement, shall have the rights and obligations of a Lender hereunder, and

(y) the transferor Lender thereunder shall be released from its obligations under this Agreement to the extent so transferred (and, in the case of an Transfer Supplement covering all or the remaining portion of a transferor Lender's rights and obligations under this Agreement, such

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transferor Lender shall cease to be a party to this Agreement) from and after the Transfer Effective Date.

On or prior to the Transfer Effective Date specified in any Transfer Supplement, the Borrower, at its expense, shall execute and deliver to the Agent (for delivery to the Purchasing Lender) a new Note evidencing such Purchasing Lender's assigned Commitments or Loans and (for delivery to the transferor

Lender) a replacement Note in the principal amount of the Loans or Commitments retained by the transferor Lender (such Note to be in exchange for, but not in payment of, the Note then held by such transferor Lender). Each such Note shall be dated the date and be substantially in the form of the predecessor Note. The Agent shall mark the predecessor Note "exchanged" and deliver it to the Borrower. Accrued interest and accrued fees shall be paid to the Purchasing Lender at the same time or times provided in the predecessor Note and this Agreement.

(d) Register. The Agent shall maintain at its office a copy of each Transfer Supplement delivered to it and a register (the "Register") for the recordation of the names and addresses of the Lenders and the Commitment of, and principal amount of the Loans owing to, each Lender from time to time. The entries in the Register shall be conclusive absent manifest error and the Borrower, the Agent and the Lenders may treat each person whose name is recorded in the Register as a Lender hereunder for all purposes of the Agreement. The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice.

(e) Financial and Other Information. Subject to Section 9.14(g), the Borrower authorizes the Agent and each Lender to disclose to any Participant or Purchasing Lender (each, a "transferee") and any prospective transferee any and all financial and other information in such Person's possession concerning any Loan Party and their respective Subsidiaries and affiliates which has been or may be delivered to such Person by or on behalf of any Loan Party in connection with this Agreement or any other Loan Document or such Person's credit evaluation of any Loan Party and their respective Subsidiaries and affiliates. At the request of any Lender, the Borrower, at the

Borrower's expense, shall provide to each prospective transferee the conformed copies of documents referred to in Section 4 of the form of Transfer Supplement.

(f) Assignments to Federal Reserve Bank. Any Lender may at any time assign all or any portion of its rights under this Agreement, including without limitation any Loans owing to it, and any Note held by it to a Federal Reserve Bank. No such

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assignment shall relieve the transferor Lender from its obligations hereunder.

(g) Confidentiality. Any other provision of this Agreement to the contrary notwithstanding, neither the Agent nor any Lender shall disclose to any prospective Participant or Purchasing Lender any information with respect to the RAL Program Documents or any of the transactions or arrangements provided for therein without the prior express written consent of the Borrower. In addition, the Agent and each Lender agree to take reasonable precautions to maintain the confidentiality of such information with respect to the RAL Program Documents and the transactions and arrangements provided for therein and any other information designated in writing as confidential and provided to it by any Loan Party in connection with any of the Loan Documents; provided, however, that the Agent or any Lender may disclose such information (i) at the request of any bank regulatory authority or other Governmental Authority or in connection with an examination of the Agent or any such Lender by any such Governmental

Authority, (ii) pursuant to subpoena or other court process, (iii) to the extent the Agent or any such Lender is required to do so in accordance with applicable Law, (iv) to the Agent's or any such Lender's independent auditors or other professional advisors, (v) in connection with the enforcement of any of its rights under or in connection with any Loan Document and (vi) subject to the first sentence of this Section 9.14(g), to any actual or potential Participant or Purchasing Lender, so long as, in the case of this clause (vi), such actual or potential Participant or Purchasing Lender agrees to comply with the provisions of this Section 9.14(g).

9.15. Governing Law; Submission to Jurisdiction: Waiver of Jury Trial; Limitation of Liability.

(a) Governing Law. THIS AGREEMENT AND ALL OTHER LOAN DOCUMENTS (EXCEPT TO THE EXTENT, IF ANY, OTHERWISE EXPRESSLY STATED IN SUCH OTHER LOAN DOCUMENTS) SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA, WITHOUT REGARD TO CHOICE OF LAW PRINCIPLES.

(b) Certain Waivers. THE BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY:

(i) AGREES THAT ANY ACTION, SUIT OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY STATEMENT, COURSE OF CONDUCT, ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION HEREWITH OR THEREWITH (COLLECTIVELY, "RELATED LITIGATION") MAY BE BROUGHT

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IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN ALLEGHENY COUNTY, PENNSYLVANIA, SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND TO THE FULLEST EXTENT PERMITTED BY LAW AGREES THAT IT WILL BRING ANY RELATED LITIGATION IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE AGENT OR ANY LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM);

(ii) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY RELATED LITIGATION BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY SUCH RELATED LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM, AND WAIVES ANY RIGHT TO OBJECT, WITH RESPECT TO ANY RELATED LITIGATION BROUGHT IN ANY SUCH COURT, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER THE BORROWER;

(iii) CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY RELATED LITIGATION BY REGISTERED OR

CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO THE BORROWER AT THE ADDRESS FOR NOTICES DESCRIBED IN SECTION 9.05 HEREOF, AND CONSENTS AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW); AND

(iv) WAIVES THE RIGHT TO TRIAL BY JURY IN ANY RELATED LITIGATION.

(c) Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY LAW, NO CLAIM MAY BE MADE BY THE BORROWER AGAINST THE AGENT, ANY LENDER OR ANY AFFILIATE, DIRECTOR, OFFICER, EMPLOYEE, ATTORNEY OR AGENT OF ANY OF THEM FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM ARISING FROM OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY STATEMENT, COURSE OF CONDUCT, ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION HEREWITH OR THEREWITH (WHETHER FOR BREACH OF CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY). THE BORROWER HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE UPON ANY CLAIM FOR ANY SUCH DAMAGES, WHETHER SUCH CLAIM PRESENTLY EXISTS OR ARISES HEREAFTER AND WHETHER OR NOT SUCH CLAIM IS KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

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IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Agreement as of the date first above written.

ATTEST:

BLOCK FINANCIAL CORPORATION

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

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

[Corporate Seal]

Address for Notices:  
-----  
Block Financial Corporation  
4435 Main Street  
Kansas City, MO 64111

Attn: William P. Anderson

Telephone: 816-751-6000  
Facsimile: 816-561-0673

MELLON BANK, N.A., individually  
and as Agent

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

Initial

Committed Amount: \$125,000,000

Commitment Percentage: 10.00%

Address for Notices:  
-----  
Mellon Bank, N.A.  
Loan Administration  
Three Mellon Bank Center - 23rd Floor  
Pittsburgh, PA 15259

Attn: Jane Meihl  
and  
Steve Ceurvorst

Telephone: 412-234-8900/4183  
Facsimile: 412-236-5822

With a Copy to:

Mellon Financial Services  
55 West Monroe Street  
Chicago, Illinois 60603

Attn: M. James Barry

Telephone: 312-357-3407  
Facsimile: 312-357-3414



FIRST AMENDMENT TO  
CREDIT AGREEMENT

FIRST AMENDMENT, dated as of April 10, 1997 (this "First Amendment"), to Credit Agreement, dated as of December 10, 1996, among BLOCK FINANCIAL CORPORATION, a Delaware corporation (the "Borrower"), the lenders parties thereto from time to time (individually, a "Lender," and collectively, the "Lenders") and MELLON BANK, N. A., a national banking association, as agent for the Lenders (in such capacity, the "Agent") (the "Agreement");

W I T N E S S E T H:

WHEREAS, the Borrower, the Lenders and the Agent desire to make certain amendments to the Agreement, including establishment of a commitment of Mellon Bank, N. A. to make swing line advances to the Borrower and a commitment of each Lender to purchase participations in such advances under certain circumstances;

NOW, THEREFORE, for and in consideration of the premises and intending to be legally bound, the parties hereto agree as follows:

ARTICLE I

Amendments

Section 1.01. Article 1.01 of the Agreement is hereby amended by adding thereto, in appropriate alphabetical sequence, the following definitions:

"Cost of Funds Rate" for any day shall mean the arithmetic average of the per annum rates at which Dollar deposits in an amount approximately equal to a Swing Line Advance requested by the Borrower are offered to the Swing Line Lender on such day by prime banks in the New York interbank market, as determined by the Swing Line Lender in good faith in accordance with its usual procedures (which determination shall be conclusive).

"Revolving Credit Loan" shall mean any of the loans made by a Lender to the Borrower pursuant to Section 2.01 hereof and "Revolving Credit Loans" shall

mean all of the loans made by the Lenders to the Borrower pursuant to Section 2.01 hereof.

"Swing Line Advance" shall have the meaning set forth in Section 2.14 hereof.

"Swing Line Advance Commitment" shall have the meaning set forth in Section 2.14 hereof.

"Swing Line Advance Maturity Date" shall have the meaning set forth in Section 2.14 hereof.

"Swing Line Advance Note" shall have the meaning set forth in Section 2.14(c) hereof.

"Swing Line Advance Participating Interest" shall have the meaning set forth in Section 2.14(f) hereof.

"Swing Line Lender" shall mean Mellon Bank, N. A.

"Swing Line Outstandings" at any time shall mean (i) in the case of the Swing Line Lender, the aggregate net outstanding amount of its Swing Line Advances for which it has not received payment from other Lenders on account of

Swing Line Advance Participating Interests and (ii) in the case of each other Lender, the aggregate outstanding principal amount which it has paid on account of Swing Line Advance Participating Interests.

Section 1.02. The definition of the term "Loans" in Section 1.01 of the Agreement is hereby amended to read as follows:

"Loans" shall mean all Revolving Credit Loans and Swing Line Advances made to the Borrower under this Agreement and "Loan" shall mean any Revolving Credit Loan or Swing Line Advance.

Section 1.03. The definition of the term "Lender" in Section 1.01 of the Agreement is hereby amended by adding thereto, as a second sentence, the following:

The term "Lender" shall include Mellon Bank, N. A., in its capacity as Swing Line Lender.

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Section 1.04. The definition of the terms "Note" and "Notes" in Section 1.01 of the Agreement is hereby amended by inserting, immediately preceding the period at the end thereof, the following: "and the Swing Line Note, together with all extensions, renewals, refinancings or refundings thereof in whole or in part".

Section 1.05. The definition of the term "Required Lenders" in Section 1.01 of the Agreement is hereby amended to read in its entirety as follows:

"Required Lenders" shall mean, as of any date, Lenders which have Committed Amounts constituting, in the aggregate, at least 66 2/3% of the total Committed Amounts of the Lenders on such date or, if the Commitments shall have terminated, Lenders whose Revolving Credit Loans and Swing Line Outstandings constitute, in the aggregate, at least 66 2/3% of the total aggregate outstanding amount of Revolving Credit Loans and Swing Line Outstandings on such date.

Section 1.06. The first sentence of Section 2.01(a) of the Agreement is hereby amended by deleting the clause "(the 'Loans')" appearing therein and inserting in lieu thereof the clause "(the 'Revolving Credit Loans')".

Section 1.07. The second sentence of Section 2.01(a) of the Agreement is hereby amended to read as follows:

A Lender shall have no obligation to make any Loan at any time to the extent, after giving effect to such Loan, that the sum of the aggregate principal amount of such Lender's Revolving Credit Loans at such time plus such Lender's Swing Line Outstandings at such time would exceed such Lender's Committed Amount at such time.

Section 1.08. Section 2.01(c) of the Agreement is hereby amended by deleting the phrase "(the 'Notes')" appearing therein and inserting in lieu thereof the phrase "(such promissory notes, together with the Swing Line Advance Note, being herein referred to as the 'Notes')".

Section 1.09. The Agreement is hereby amended by substituting the phrase "Revolving Credit Loans" for the word "Loans" at each place it occurs in the following sections: 2.01(b), 2.01(c), 2.01(d), 2.03, 2.04, 2.05, 2.06 and 2.07.

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Section 1.10. The first sentence of Section 2.08(a) of the Agreement is hereby amended by adding thereto, immediately preceding the period at the end thereof, the following: "and except for borrowings of and payments of or with respect to Swing Line Advances".

Section 1.11. The Agreement is hereby amended by adding thereto a new Section 2.14, to read as follows:

2.14. Swing Line Advances.

(a) Swing Line Advances. Subject to the terms and conditions set forth in this Agreement and relying upon the representations and warranties herein set forth, the Swing Line Lender agrees (such agreement being herein called the Swing Line Lender's "Swing Line Advance

Commitment") to make loans (the "Swing Line Advances") to the Borrower from time to time on or after the date hereof and to but not including the Revolving Credit Maturity Date. The Swing Line Lender shall have no obligation to make any Swing Line Advance to the extent that the aggregate principal amount of the Swing Line Lender's Swing Line Advances at any time outstanding would exceed \$10,000,000. Swing Line Advances may be requested by the Borrower in any principal amount up to \$10,000,000. The Swing Line Lender shall have no obligation to make any Swing Line Advance to the extent that doing so would cause the aggregate amount of its outstanding Revolving Credit Loans and its Swing Line Outstandings to exceed its Committed Amount.

(b) Nature of Credit. Within the limits of time and amount set forth in this Section 2.14, and subject to the provisions of this Agreement, the Borrower may borrow, repay and reborrow Swing Line Advances hereunder. The Borrower may prepay the Swing Line Advances at any time without penalty.

(c) Swing Line Advance Note. The obligation of the Borrower to repay the unpaid principal amount of the Swing Line Advances made to it by the Swing Line Lender and to pay interest thereon shall be evidenced in part by promissory note of the Borrower, dated on or about the effective date of the First Amendment to this Agreement, (the "Swing Line Advance Note") in substantially the form attached to the First Amendment to this Agreement as Exhibit A, with the blanks

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appropriately filled, payable to the order of the Swing Line Lender in a face amount equal to \$10,000,000.

(d) Maturity. To the extent not due and payable earlier, each Swing Line Advance shall be due and payable on the third Business Day after such Swing Line Advance is made to the Borrower hereunder. The Borrower shall request Revolving Credit Loans to the extent necessary to pay each Swing Line Advance at its maturity.

(e) Interest Rate. The unpaid amount of each Swing Line Advance shall bear interest for each day until due at a rate per annum equal to either (at the option of the Borrower specified at the time of the request therefor) the Base Rate for such day or 1.25% per annum in excess of the Cost of Funds Rate for such day. After maturity of a Swing Line Advance, the unpaid amount thereof shall bear interest for each day at a rate per annum equal to 2.00% per annum in excess of the Base Rate for such day. Interest on

each Swing Line Advance shall be payable at the maturity thereof and, after maturity, on demand.

(f) Swing Line Advance Participating Interests.

(i) Generally. At the discretion of the Swing Line Lender at any time when one or more Swing Line Advances have not been paid at their maturity, on one Business Day's notice to each Lender, the Swing Line Lender may require each other Lender to purchase, acquire, accept and assume from the Swing Line Lender, without recourse to, or representation or warranty by, the Swing Line Lender, an undivided interest, in a proportion equal to such Lender's Pro Rata share, in all of the Swing Line Lender's rights and obligations in, to or under the Swing Line Lender's outstanding Swing Line Advances, together with accrued and unpaid interest thereon (such interest of each Lender being referred to herein as a "Swing Line Advance Participating Interest"). On the date that any Purchasing Lender becomes a party to this Agreement in accordance with Section 9.14 hereof, Swing Line Advance Participating Interests in any outstanding Swing Line Advances held by the Lender from which such Purchasing Lender acquired its interest hereunder shall be proportionately reallocated between such

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Purchasing Lender and such transferor Lender (and, to the extent such transferor Lender is a Swing Line Lender, the Purchasing Lender shall be deemed to have acquired a Swing Line Advance Participating Interest from such transferor Lender to such extent).

(ii) Obligations Absolute. Notwithstanding any other provision hereof, each Lender hereby agrees that its obligation to participate in each Swing Line Advance issued in accordance herewith, and its obligation to make the payments specified in Section 2.14(f)(iii) hereof, are each absolute, irrevocable and unconditional and shall not be affected by any event, condition or circumstance whatever, provided, that a Lender shall have no obligation to make any such payment at any time to the extent, after giving effect to such such payment, that the sum of the aggregate principal amount of such Lender's Revolving Credit Loans at such time plus such Lender's Swing Line Outstandings at such time would exceed such Lender's Committed Amount at such time. The failure of any Lender to make any such payment shall not relieve any other Lender of its funding obligation hereunder on the date due, but no

Lender shall be responsible for the failure of any other Lender to meet its funding obligations hereunder.

(iii) Payment by Lenders on Account of Swing Line Advances. If the Swing Line Lender desires to sell Swing Line Advance Participating Interests to the Lenders, the Swing Line Lender will promptly notify the Agent thereof and the Agent shall forthwith notify each Lender (which notice may be by telephone promptly confirmed in writing) thereof. No later than the Agent's close of business on the date such notice is given by the Agent (if such notice is given by the Agent before 12:00 p.m., Pittsburgh time on such date), each such Lender will pay to the Agent, for the account of the Swing Line Lender, in immediately available funds, an amount equal to such Lender's Pro Rata share of the outstanding principal amount of the Swing Line Advances and accrued and unpaid interest thereon. If and to the extent that any Lender fails to make such payment for the account of the Swing Line Lender on such date, such Lender shall pay such amount on demand, together with interest, for the Swing Line Lender's own account, for each day from and including the date of the Swing Line Lender's payment to and

including the date of repayment to the Swing Line Lender (before and after judgment) at the following rates per annum: (x) for each day from and including the date of such payment by the Swing Line Lender to and including the second Business Day thereafter, at the Federal Funds Effective Rate for such day, and (y) for each day thereafter, at the rate applicable to the Swing Line Advances for such day.

(iv) Distributions to Participants. If, at any time after the Swing Line Lender has made a Swing Line Advance and has received from any Lender such Lender's share of such Swing Line Advance, the Swing Line Lender receives any payment or makes any application of funds on account of such Swing Line Advance, the Swing Line Lender will pay on the same day as received or deemed to be received to the Agent, for the account of such Lender, such Lender's ratable share of such payment.

(v) Rescission. If any amount received by the Swing Line Lender on account of any Swing Line Advance or interest thereon shall be avoided, rescinded or otherwise returned or paid over by the Swing Line Lender for any reason at any time, whether before or after the termination of this Agreement (or the Swing Line Lender believes in good faith that such avoidance, rescission, return or payment is required, whether or not such matter has been adjudicated),

each such Lender will, promptly upon notice from the Agent or the Swing Line Lender, pay over to the Agent for the account of the Swing Line Lender its ratable share of such amount.

(vi) Equalization. If any Lender receives any payment or makes any application on account of its Swing Line Advance Participating Interest, such Lender shall forthwith pay over to the Swing Line Lender, in like kind of funds received or applied by it, the amount in excess of such Lender's ratable share of the amount so received or applied.

Section 1.12. Section 5.01(c) of the Agreement is hereby amended by deleting, in each of the six places it appears therein, the phrase "the Borrower and".

Section 1.13. Paragraph (b) of Section 6.04 of the Agreement is hereby amended by deleting the phrase "may sell

receivables" appearing therein and inserting in lieu thereof the phrase "may sell mortgage loans and other receivables".

Section 1.14. Schedule 6.05 to the Agreement, entitled Permitted Indebtedness and Guarantees, is hereby amended by adding thereto the following:

9. Guarantee Equivalents of a Loan Party or a Subsidiary of a Loan Party which are given or made as representations and warranties, indemnities or assurances of the payment or performance of Assured Obligations in connection with securitization transactions or other disposition transactions permitted by Section 6.04(b) hereof, as to which Assured Obligations the Deemed Obligor is a Loan Party or a Subsidiary of a Loan Party.

10. Operating and Capital Maintenance Agreements issued

by a Loan Party, as required by the Federal Deposit Insurance Corporation, with respect to Subsidiaries of such Loan Party which are Utah Industrial Loan Companies.

Section 1.15. Paragraph (c) of Section 9.03 of the Agreement is hereby amended by inserting therein, after the words "or amend" appearing therein, the words "Section 2.14 or".

ARTICLE II

Conditions to Effectiveness

Section 2.01. This First Amendment shall become effective upon the satisfaction of the following conditions precedent:

(a) This First Amendment shall have been executed and delivered by the Borrower, the Agent and each of the Lenders. The Borrower shall have executed and delivered a Swing Line Advance Note substantially in the form of Exhibit A to this First Amendment. The Guarantor shall have executed and delivered a Consent to this First Amendment in the form of Exhibit B to this First Amendment.

(b) The Agent shall have received, with an executed counterpart for each Lender, a legal opinion of counsel to the Borrower and the Guarantor, in form satisfactory to the Agent, to substantially the effects (but with respect to this First

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Amendment, the consent of the Guaranty with respect hereto, the Swing Line Advance Note and the Agreement as amended hereby) contained in the opinion dated December 10, 1996 delivered in connection with the execution and delivery of the Agreement.

(c) The Agent shall have received, with an executed counterpart for each Lender, certificates from such officers of the Borrower and the Guarantor as to such matters as the Agent may request.

ARTICLE III

Miscellaneous

Section 3.01. (a) The Lenders hereby authorize and direct the Agent to enter into this First Amendment.

(b) Capitalized terms used and not otherwise defined herein shall have the meanings given such terms in the Agreement. Except as amended hereby, the Agreement shall remain in full force and effect. This First Amendment may be executed in one or more counterparts and all of such counterparts taken together shall constitute one and the same instrument.

(c) THIS FIRST AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA.

(d) The amendments set forth herein shall be limited precisely as provided for herein and shall not be deemed to be waivers of, amendments to, consents to or modifications of any term or provision of the Agreement or any other Loan Document or instrument referred to therein. The Agreement, as amended hereby, shall continue in full force and effect.

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

ATTEST:

BLOCK FINANCIAL CORPORATION

By \_\_\_\_\_

By \_\_\_\_\_

Title:

Title:

[Corporate Seal]

MELLON BANK, N.A., as Lender and Swing  
Line Lender and as Agent

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

THE BANK OF TOKYO-MITSUBISHI, LTD.,  
CHICAGO BRANCH

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

THE CHASE MANHATTAN BANK

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

CIBC INC.

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

COMERICA BANK

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

COMMERCE BANK, N.A.

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

CREDIT LYONNAIS CHICAGO BRANCH

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

CAISSE NATIONALE DE CREDIT AGRICOLE

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

THE FIRST NATIONAL BANK OF CHICAGO

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

THE FUJI BANK, LIMITED

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

THE LONG-TERM CREDIT BANK OF JAPAN, LTD.

By -----

Title:

ISTITUTO BANCARIO SAN PAOLO DI TORINO SPA

By -----

Title:

SOCIETE GENERALE

-11-

By -----

Title:

TORONTO DOMINION (TEXAS), INC.

By -----

Title:

THE YASUDA TRUST & BANKING CO., LTD.

By -----

Title:

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SECOND AMENDMENT TO  
CREDIT AGREEMENT

SECOND AMENDMENT, dated as of June 6, 1997 (this "Second Amendment"), to Credit Agreement, dated as of December 10, 1996, among BLOCK FINANCIAL CORPORATION, a Delaware Corporation (the "Borrower"), the Lenders parties thereto from time to time (individually, a "Lender", and collectively, the "Lenders") and MELLON BANK, N.A., a national banking association, as agent for the Lenders (in such capacity, the "Agent") (as amended by that certain First Amendment to Credit Agreement dated as of April 10, 1997, the "Agreement").

W I T N E S S E T H

WHEREAS, the Borrower, the Lenders and the Agent desire to make certain amendments to the Agreement, including increasing the Committed Amounts of the Lenders to \$1,000,000,000 and permitting Borrower to incur and become subject to certain Indebtedness and Guaranty Equivalents, in connection with consummation by the Borrower and the Guarantor of the transactions contemplated by that certain Stock Purchase Agreement entered into as of April 14, 1997, by and among Borrower, Guarantor, Fleet Holding Corp. and Fleet Financial Group, Inc.;

NOW THEREFORE, for and in consideration of the premises herein contained, and intending to be legally bound, the parties hereto agree as follows:

ARTICLE I

Amendments

Section 1.01. Section 1.01 of the Agreement is hereby amended by adding thereto, in appropriate alphabetical sequence, the following definition:

"Stock Purchase Agreement" shall mean that certain Stock Purchase Agreement entered into as of April 14, 1997, by and among Borrower, Guarantor, Fleet Holding Corp., a Rhode Island corporation, and Fleet Financial Group, Inc., a Rhode Island corporation, pursuant to which Borrower will purchase from Fleet Holding Corp. all of the outstanding shares of capital stock of Option One Mortgage Corporation, a California corporation ("Option One"), held by Fleet Holding Corp. for the consideration and on the terms and conditions set forth therein.

Section 1.02. Section 2.02 of the Agreement is hereby amended by adding thereto after existing subsection (c) a new subsection (d), such subsection (d) to read in its entirety as follows:

(d) Automatic Increase in Committed Amounts. The Committed Amount of each Lender shall be increased to the Committed Amount for each such Lender set forth on Schedule 2.02(d) hereto on the date of the closing of the transactions contemplated by the Stock Purchase Agreement pursuant to Section 3.1 of the Stock Purchase Agreement, with the effect that the aggregate of the Committed Amounts of all Lenders shall be \$1,000,000,000 as of such date.

Section 1.03. Schedule 6.05 of the Agreement is hereby amended by adding thereto the following:

11. Any Guaranty Equivalent of Borrower which is given, made, incurred or assumed pursuant to Section 7.8(c) of the Stock Purchase Agreement.

12. Any Guaranty Equivalent of Borrower with respect to any Assured Obligation of Option One or any of Option One's wholly-owned Subsidiaries.
13. Credit facility for New York licensing purposes for Option One in an aggregate principal amount of \$1,000,000.

Section 1.04. The signature pages of the Agreement are hereby amended by deleting each Committed Amount for each Lender set forth on the signature pages and replacing each such Committed Amount with the Committed Amount for each such Lender set forth on Schedule 2.02(d) to the Agreement.

Section 1.05. The Agreement is hereby amended by adding thereto Schedule 2.02(d), as forth as Schedule 2.02(d) attached to this Second Amendment.

## ARTICLE II

### Conditions to Effectiveness

Section 2.01. This Second Amendment shall become effective upon the satisfaction of the following conditions precedent:

(a) This Second Amendment shall have been executed and delivered by the Borrower, the Agent and each of the Lenders. The Guarantor shall have executed and delivered the Consent to this Second Amendment in the form of Exhibit A to this Second Amendment.

(b) The Agent shall have received, with an executed counterpart for each Lender, a legal opinion of counsel to the Borrower and the Guarantor, in form satisfactory to the Agent, to substantially the effects (but with respect to this Second

-2-

Amendment, the consent of the Guarantor with respect hereto and the Agreement as amended hereby) contained in the opinion dated December 10, 1996 delivered in connection with the execution and delivery of the Agreement.

(c) The Agent shall have received, with an executed counterpart for each Lender, certificates from such officers of the Borrower and the Guarantor as to such matters as the Agent may request.

## ARTICLE III

### Miscellaneous

Section 3.01. (a) The Lenders hereby authorize and direct the Agent to enter into this Second Amendment.

(b) Capitalized terms used and not otherwise defined herein shall have the meanings given such terms in the Agreement. Except as amended hereby, the Agreement shall remain in full force and effect. This Second Amendment may be executed in one or more counterparts and all such counterparts taken together shall constitute one and the same instrument.

(c) THIS SECOND AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA.

(d) The amendments set forth herein shall be limited precisely as provided for herein and shall not be deemed to be waivers of, amendments to, consents to or modifications of any term or provision of the Agreement or any other Loan Document or instrument referred to therein. The Agreement, as amended hereby, shall continue in full force and effect.

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

ATTEST:

BLOCK FINANCIAL CORPORATION

By-----

By-----

Title:

[Corporate Seal]

Title:

MELLON BANK, N.A., as Lender and  
Swing Line Lender and as Agent

By-----  
Title:

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THE BANK OF TOKYO-MITSUBISHI,  
LTD., CHICAGO BRANCH

By-----  
Title:

THE CHASE MANHATTAN BANK

By-----  
Title:

CIBC INC.

By-----  
Title:

COMERICA BANK

By-----  
Title:

COMMERCE BANK, N.A.

By-----  
Title:

CREDIT LYONNAIS CHICAGO BRANCH

By-----  
Title:

CAISSE NATIONALE DE CREDIT AGRICOLE

By-----  
Title:

THE FIRST NATIONAL BANK OF CHICAGO

By-----  
Title:

THE FUJI BANK, LIMITED

By-----  
Title:

THE LONG-TERM CREDIT BANK OF JAPAN, LTD.

By-----  
Title:

ISTITUTO BANCARIO SAN PAOLO DI TORINO SPA

By-----  
Title:

SOCIETE GENERALE

By-----

Title:

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TORONTO DOMINION (TEXAS), INC.

By-----

Title:

THE YASUDA TRUST & BANKING CO., LTD.

By-----

Title:

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AMENDED AND RESTATED LOAN PURCHASE AGREEMENT

THIS LOAN PURCHASE AGREEMENT (this "Agreement") is made this 19th day of December, 1995 by and among Companion Mortgage Corporation, a Delaware corporation ("Purchaser") (as successor in interest to Block Financial Corporation, a Delaware corporation), National Consumer Services Corp., L.L.C., a Georgia limited liability company ("NCS") and National Consumer Services Corp. II, L.L.C., a Georgia limited liability company ("NCS II") (which was added as a party hereto pursuant to the First Amendment to Loan Agreement dated as of January 1, 1996), and is amended and restated as of May 1, 1996 (except for Exhibit A which has been amended and shall be amended from time to time pursuant to the provisions of Section 4.3).

In consideration of the mutual agreements herein contained, each party agrees as follows:

ARTICLE I  
DEFINITIONS

1.1. Certain Definitions. In addition to other words and terms defined elsewhere in this Agreement, as used herein the following words and terms shall have the following meanings, respectively, unless the context hereof otherwise clearly requires:

"Answer" shall have the meaning set forth in Section 6.7(c)(i).

"Business Day" shall mean any day other than a Saturday, Sunday, public holiday under the laws of the State of Missouri or other day on which Purchaser is normally closed in Kansas City, Missouri.

"Closing Date" shall have the meaning set forth in Section 2.3.

"Credit Agreement" shall mean that certain Credit Agreement dated December 19, 1995 by and between Seller and Block Financial Corporation, a Delaware corporation, as amended, modified, supplemented, extended or renewed from time to time.

"Demand" shall have the meaning set forth in Section 6.7(c)(i).

"Exception Loan" shall mean a Seller Mortgage Loan that, or with respect to which, (i) is made in substantial compliance with the Underwriting Criteria, whether underwritten by either Seller or a third party, and (ii) any variance from the Underwriting Criteria is approved in writing by an executive of Seller in accordance with the policy concerning exceptions to underwriting standards as set forth in Exhibit D attached hereto (as such standards may be amended and modified in writing by the parties from time to

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time) prior to the origination of such Seller Mortgage Loan or purchase by Seller of such Seller Mortgage Loan, as the case may be.

"FNMA" shall mean the Federal National Mortgage Association, or any successor thereto.

"Governmental Authority" shall mean any government or political subdivision or any agency, authority, bureau, central bank, commission, department or instrumentality of either, or any court, tribunal, grand jury or arbitrator.

"Guide" shall mean the FNMA Multifamily Seller/Service Guide in effect as of the applicable Closing Date.

"Hazardous Materials" shall mean any dangerous, toxic or hazardous pollutants, chemicals, wastes, medical wastes, or substances, including (without limitation) those so identified pursuant to the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. ss. 9601 et seq.) or any other environmental laws or regulations now existing, and specifically

including, without limitation, asbestos and asbestos-containing materials, polychlorinated biphenyls, radon gas, petroleum and petroleum products, urea formaldehyde and any substances classified as being "in inventory," usable work in process," or similar classification that would, if classified as unusable, be included in the foregoing definition.

"Instituting Party" shall have the meaning set forth in Section 6.7(c) (i).

"Law" shall mean any law (including common law), constitution, statute, treaty, convention, regulation, rule, ordinance, order, injunction, writ, decree or award of any Governmental Authority.

"Mortgage" shall mean, with respect to a Note, the mortgage, deed of trust or other instrument creating a consensual lien on an estate in fee simple interest in Property securing the obligations of the Mortgagor(s) under such Note.

"Mortgage Documents" shall mean any and all documents (other than the Mortgage and the Note) required to be executed by the Mortgagor in connection with the Mortgage or the Note.

"Mortgagee Policy" shall mean, with respect to a Sale Loan, the ALTA Loan Policy of Title Insurance (or other form of Policy of Title Insurance) and endorsements thereto pertaining to the Property securing such Sale Loan.

"Mortgagor" shall mean the obligor(s) on a Note.

"Note" shall mean the note or other evidence of indebtedness evidencing the indebtedness of a Mortgagor under a Sale Loan.

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"Other Party" shall have the meaning set forth in Section 6.7(c) (i).

"Property" shall mean the underlying real property, including the improvements thereon, securing a Sale Loan.

"Purchase Period" shall mean the period commencing January 1, 1996 and ending on December 31, 2001.

"Purchase List" shall mean a list of Seller Mortgage Loans owned by Seller as of the close of business on the fifth Business Day prior to the date on which such list is sent to Purchaser pursuant to Section 2.2(a), which list includes (without limitation) the information specified by Section 2.2(a).

"Qualified Insurer" shall mean an insurance company or security or bonding company qualified to write the insurance policy in the relevant jurisdiction that, in the case of a fire, hazard or flood insurance policy, shall have a rating of "A" or better from A.M. Best.

"Repurchase Closing Date" shall have the meaning set forth in Section 5.3(a).

"Repurchase Event" shall mean, with respect to a Sale Loan, the occurrence or existence of one or more of the following events or conditions: (i) Purchaser shall determine that such Sale Loan was not made in accordance with and in compliance with the Underwriting Criteria (provided that this subclause (i) shall not apply to a Sale Loan that is an Exception Loan), (ii) any representation or warranty set forth in Sections 3.2 or 3.3 made or deemed made by Seller with respect to such Sale Loan shall prove to have been false or misleading in any respect as of the time when made or deemed made (including by omission of material information necessary to make such representation or warranty not misleading) (iii) the failure by Seller to make, or cause to be made, any of the deliveries required pursuant to Section 2.3 on or before the date such deliveries were required to be made pursuant to this Agreement and (iv) with respect to a Third Party Sale Loan, any representation or warranty made or deemed made by the Third Party Seller to Seller pursuant to the Third Party Purchase Agreement with respect to such Third Party Sale Loan shall prove to have been false or misleading in any respect as of the time when made or deemed made (including by omission of material information necessary to make such representation or warranty not misleading).

"Repurchase Notice" shall have the meaning set forth in Section 5.1.

"Sale Loan" shall have the meaning set forth in Section 2.1.

"Seller" shall mean NCS and NCS II collectively as if NCS and NCS II were one combined entity except where the context of this Agreement otherwise clearly requires.

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"Seller Mortgage Loan" shall mean a loan extended to a natural person or persons, which loan is (i) secured by a mortgage, deed of trust, or equivalent consensual security interest in such person's or persons' ownership interest in a one- to four-family residential structure attached to real property, and (ii) owned by Seller or otherwise originated for or on behalf of Seller with a view to such loan being arranged for by Seller to be sold to a third party designated by Seller.

"Third Party Purchase Agreement" shall mean, with respect to a Third Party Sale Loan, a written purchase agreement between Seller and the Third Party Seller pursuant to which such Third Party Sale Loan was purchased by Seller.

"Third Party Sale Loan" shall mean a Sale Loan underwritten by a party other than Seller.

"Third Party Seller" shall mean, with respect to a Third Party Sale Loan, the party from whom Seller purchased such Third Party Sale Loan.

"Underwriting Criteria" shall mean the underwriting criteria and operating policies and procedures set forth in Exhibit A, as may be amended from time to time pursuant to this Agreement.

"Underwriting Exception Loan" shall mean an Exception Loan other than an Exception Loan that is an Exception Loan for either or both of the following reasons (but for no other reason): (i) the underwriting documentation reviewed or procedures utilized in connection with evaluating the credit risk (including, without limitation, the adequacy of Property securing the obligations of the Mortgagor(s) under such Exception Loan) with respect to such Exception Loan is not in conformity with the Underwriting Criteria (a "Documentation Exception Loan") or (ii) the interest rate for such Exception Loan is not in conformity with those set forth in the Underwriting Criteria for Seller Mortgage Loans that fall within the same interest rate guideline classification; provided, however, that a Documentation Exception Loan shall not be an Underwriting Exception Loan only if alternative underwriting procedures consistent with industry practices and standards are undertaken with respect to such Documentation Exception Loan.

1.2. Other Definitional Provisions. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, the singular the plural and the part the plural; and "or" has the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The section and other headings contained in this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect. Section, subsection, schedule and exhibit references are to this Agreement unless otherwise specified.

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## ARTICLE II PURCHASE AND SALE

2.1. Purchase and Sale. Subject to the terms and conditions set forth herein, Purchaser agrees to purchase from Seller, and Seller agrees to sell, transfer, assign, set over and convey to Purchaser, all of Seller's right, title and interest in and to each Seller Mortgage Loan made available by Seller pursuant to this Agreement to Purchaser for purchase (each such Seller Mortgage Loan (other than an Underwriting Exception Loan) so made available, and each

Underwriting Exception Loan that Purchaser agrees to purchase pursuant to Section 2.2, is hereinafter referred to as a "Sale Loan"); provided, however, that Purchaser shall not be obligated to purchase a Seller Mortgage Loan that is an Underwriting Exception Loan.

2.2. Offering of Sale Loans. (a) Seller shall from time to time during the Purchase Period send to Purchaser by facsimile or other electronic transmission a Purchase List, which shall set forth, among other things, (i) those Seller Mortgage Loans listed thereon that are Sale Loans and (ii) those Seller Mortgage Loans that are Exception Loans or Underwriting Exception Loans and the reasons why such Seller Mortgage Loans are Exception Loans or Underwriting Exception Loans. On or before the applicable Closing Date, Purchaser shall notify Seller (which notification may be oral) which, if any, Underwriting Exception Loans it will buy on such Closing Date.

(b) (i) During the period commencing on the date of this Agreement and ending on December 31, 1998, Seller shall make available to Purchaser pursuant to this Agreement such number of Sale Loans (excluding Underwriting Exception Loans) as is necessary for the aggregate original principal amount of such Sale Loans to equal or exceed 80% of the aggregate original principal balance of all Seller Mortgage Loans (excluding Underwriting Exception Loans) owned by, or originated for or on behalf of, Seller during such period. In addition, Sale Loans (excluding Underwriting Exception Loans) made available to Purchaser during such period pursuant to this Section 2.2 shall be such that the mix of such Sale Loans by lending guideline categories set forth in the Underwriting Criteria shall be substantially the same as the mix by such categories of all Seller Mortgage Loans (excluding Underwriting Exception Loans) owned by, or originated for or on behalf of, Seller during such period.

(ii) During each calendar year commencing on January 1, 1999, January 1, 2000 and January 1, 2001, Seller shall make available to Purchaser pursuant to this Agreement such number of Sale Loans (excluding Underwriting Exception Loans) as is necessary for the aggregate original principal amount of such Sale Loans to equal or exceed 80% of the aggregate original principal balance of all Seller Mortgage Loans (excluding Underwriting Exception Loans) owned by, or originated for or on behalf of, Seller during such calendar year; provided that Seller shall not be obligated to make Sale Loans available to Purchaser pursuant to this Agreement during any such calendar year after the aggregate purchase price for such Sale Loans (excluding Underwriting Exception Loans) purchased by Purchaser during such calendar year pursuant to this

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Agreement equals or exceeds the aggregate purchase price of Sale Loans (excluding Underwriting Exception Loans) purchased by Purchaser from Borrower during the calendar year commencing on January 1, 1998.

2.3. Transfer and Assignment of Sale Loans. (a) On or before the fifth Business Day after each date on which a Purchase List is sent to

Purchaser pursuant to Section 2.2(a) (a "Closing Date"), Seller shall deliver to Purchaser (or a third party designated in writing by Purchaser), with respect to each Sale Loan identified on such Purchase List:

(i) the original Note (if such Note is not already in Purchaser's possession pursuant to the terms of the Credit Agreement), endorsed without recourse, representation or warranty (except for the representations and warranties specifically set forth herein) by Seller to the order of Purchaser and showing a complete chain of title from the originator to Seller;

(ii) if an original Note already in Purchaser's possession is not endorsed to the order of Purchaser, an Endorsement to Promissory Note with respect to such original Note, substantially in the form of Exhibit B attached hereto, duly executed by Seller;

(iii) any one of the following: (A) the original Mortgage pertaining to such Sale Loan, with evidence that such Mortgage has been recorded in the appropriate jurisdiction in which the Property securing such Sale Loan is located, (B) a true and accurate copy of such Mortgage where the original has been transmitted for recording but such original or a certified copy thereof has not yet been returned by the applicable public recording office or (C) a copy of such Mortgage



certified by the public recording office of the jurisdiction in which the Property securing such Sale Loan is located, in those instances where the original recorded Mortgage has been retained by the public recording office or has been lost;

(iv) an Assignment of Mortgage/Deed of Trust in recordable form, duly executed and acknowledged by Seller, assigning and transferring all of Seller's rights and interest with respect to the Mortgage pertaining to such Sale Loan (provided that with respect to a Mortgage referred to in Section 2.3(a)(iii)(B), such Assignment of Mortgage/Deed of Trust shall be delivered as provided in this subparagraph (iv) without the applicable missing recording information);

(v) originals of all assumption and modification agreements, if any, relating to such Sale Loan;

(vi) an original assignment of Mortgage in recordable form, duly executed by the assignor, assigning all of the assignor's rights and interests with respect to the mortgage pertaining to such Sale Loan for each intervening assignment that has not been transmitted for recording;

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(vii) an original recorded assignment of Mortgage or a copy thereof, assigning all of the assignor's rights and interests with respect to the mortgage pertaining to such Sale Loan for each intervening assignment that has been recorded;

(viii) a copy of the title commitment pertaining to the Mortgagee Policy relating to such Sale Loan;

(ix) such documents and instruments (including, without limitation, certificates of title for purposes of noting liens thereon) as are necessary to perfect Purchaser's security interest or lien on any portion of the Property that constitutes a mobile home; and

(x) any Mortgage Documents pertaining to such Sale Loan that are not specifically set forth in this Section 2.3.

(b) Within 60 days after each Closing Date, Seller shall deliver to Purchaser (or a third party designated in writing by Purchaser), with respect to each Sale Loan for which the deliveries were required be made on or before such Closing Date pursuant to Section 2.3(a):

(i) originals or copies certified by the applicable recording office of all recorded intervening assignments of the Mortgage pertaining to such Sale Loan, showing a complete chain of title in such Mortgage from origination to the Seller, if any, including warehousing assignments, with evidence that such assignments have been recorded in the appropriate jurisdiction in which the Property securing such Sale Loan is located;

(ii) the original Mortgagee Policy relating to such Sale Loan, together with any endorsement applicable thereto;

(iii) with respect to a Mortgage referred to in Section 2.3(a)(iii)(B), either (A) the original Mortgage pertaining to such Sale Loan, with evidence that such Mortgage has been recorded in the appropriate jurisdiction in which the Property securing such Sale Loan is located, or (B) a copy of such Mortgage certified by the public recording office of the jurisdiction in which the Property securing such Sale Loan is located, in those instances where the original recorded Mortgage has been retained by the public recording office or has been lost; and

(iv) with respect to a Mortgage referred to in Section 2.3(a)(iii)(B), an Assignment of Mortgage/Deed of Trust in recordable form, duly executed and acknowledged by Seller, assigning and transferring all of Seller's rights and interest with respect to the Mortgage pertaining to such Sale Loan.

(c) All recording fees required for the recording of the Assignments of Mortgage/Deed of Trust from Seller to Purchaser pursuant to this Section 2.3 shall be at the expense of Purchaser.

(d) In addition to the deliveries required by Section 2.3(a) and (b), Seller shall at any time and from time to time upon the request of

Purchaser execute, deliver, file, register and/or record any assignment, notification, transfer form and other documents and do such further acts and things with respect to a Sale Loan, as are necessary to (i) transfer such Sale Loan (and the related Note, Mortgage, Mortgagee Policy and any other related Mortgage Document) to Purchaser so that Purchaser is the sole legal owner of such Sale Loan (and related Note, Mortgage and other Mortgage Documents) free and clear of all liens, security interests and other encumbrances with respect to such Sale Loan (and related Note, Mortgage and other Mortgage Documents) and (ii) show a complete chain of title from the originator to Purchaser.

2.4. Purchase Price. (a) The purchase price for each Sale Loan shall be determined by determining the purchase price for the pool of Sale Loans in which such Sale Loan is included which purchase price shall equal to (i) the aggregate outstanding principal balance of such pool as of the applicable Closing Date, plus (ii) the aggregate accrued but unpaid interest due with respect to such pool as of the applicable Closing Date, plus (iii) a premium determined pursuant to the pricing model set forth in Exhibit E attached hereto.

(b) In the event a Sale Loan purchased by Purchaser pursuant to this Agreement is repaid in full within 90 days after the Closing Date pertaining to such Sale Loan and no prepayment penalty is paid by the Mortgagor with respect to such repayment, Purchaser shall notify Seller of such repayment and Seller shall refund to Purchaser that portion of the purchase price paid by Purchaser for such Sale Loan (excluding the portion representing accrued but unpaid interest thereon) that exceeds 100% of the outstanding principal balance of such Sale Loan as of the applicable Closing Date. Such reimbursement shall be paid within 15 days after Purchaser has notified Seller of such repayment.

2.5. Payment of Purchase Price. (a) On the applicable Closing Date, Purchaser shall pay to Seller the estimated purchase price for each Sale Loan with respect to which the deliveries required by Section 2.3 have been made on or before such Closing Date. Such estimated purchase price shall be based upon the estimates of the outstanding principal balance and accrued but unpaid interest as of the applicable Closing Date as set forth on the applicable Purchase List.

(b) Within three Business Days after the applicable Closing Date, Seller shall determine the actual purchase price for each Sale Loan with respect to which the estimated purchase price was paid to Seller pursuant to Section 2.5(a) and shall give Purchaser written notice of such actual purchase price. Seller shall pay to Purchaser, on the date written notice of the actual purchase price is given to Purchaser, the amount (if

any) by which the aggregate estimated purchase for Sale Loans purchased by Purchaser on the applicable Closing Date exceeds the aggregate actual purchase price for such Sale Loans. Within three Business Days after the applicable Closing Date, Purchaser shall pay to Seller the amount (if any) by which the aggregate actual purchase for Sale Loans purchased by Purchaser on the applicable Closing Date exceeds the aggregate estimated purchase price for such Sale Loans.

(c) The estimated purchase price payable to Seller pursuant to Section 2.5(a) and any amount payable to Seller pursuant to Section 2.5(b) shall be paid by federal wire transfer of funds immediately available at such domestic account designated by Seller.

(d) Any amount payable to Purchaser pursuant to Section 2.5(b)

shall be paid by federal wire transfer of funds immediately available at such domestic account designated by Purchaser.

(e) Upon receipt by Seller of the estimated purchase price pursuant to Section 2.5(a), Purchaser shall become the owner of the Sale Loans with respect to which such estimated purchase price was received and Purchaser shall be entitled to receive from and after the applicable Closing Date all payments and recoveries in respect of such Sale Loans.

2.6. Conditions to Sale and Purchase. Purchaser's obligation to purchase each Sale Loan is subject (such condition applies on a loan-by-loan basis) to its sole reasonable determination that as of the Closing Date with respect to such Sale Loan that no Repurchase Event has occurred (and has not been cured) or exists as of such Closing Date. In addition, Purchaser's obligation to purchase all Sale Loans to be sold on a particular Closing Date shall be subject to the receipt by Purchaser on or before such Closing Date of a Manager's Certificate in the form of Exhibit C attached hereto.

### ARTICLE III REPRESENTATIONS AND WARRANTIES

3.1. General Representations and Warranties of Seller. As of the date of this Agreement and the date of the amendment and restatement of this Agreement, Seller represents and warrants that:

(a) Each Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Georgia. Each Seller has the full power and authority to execute and deliver this Agreement, to purchase and hold each Sale Loan and to enter into and perform all of the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized by all necessary limited liability company and regulatory action. This Agreement constitutes a legal, valid and binding obligation of each Seller, enforceable against each Seller in accordance with the terms hereof, subject to bankruptcy, insolvency and other laws

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relating to the enforcement of creditors' rights in general and to general principles of equity.

(b) The execution and delivery of this Agreement, the consummation of the transactions contemplated herein and the compliance with and fulfillment of the terms and conditions of this Agreement will not conflict with or result in a breach or violation of any of the terms, conditions or provisions of, or constitute a default under, the organization or governing instruments of either Seller, any applicable Law or any agreement to which either Seller is a party or by which either Seller or any of its assets or properties are bound.

3.2. Representations and Warranties of Seller Pertaining to all Sale Loans. With respect to each Sale Loan, each Seller represents and warrants as of the Closing Date on which Purchaser purchases such Sale Loan pursuant to this Agreement that:

(a) Seller is the sole owner, holder and beneficiary of and under, and has good and marketable right and title to, each Sale Loan and the Note and Mortgage pertaining to such Sale Loan, free and clear of any mortgage, pledge, assignment, security interest, lien, charge, claim or encumbrance (other than those arising under the Credit Agreement) and there is no prior outstanding and unreleased assignment, sale or hypothecation thereof. Each Sale Loan is freely assignable and transferable by Purchaser, and the sale and transfer of the Sale Loan from Seller to Purchaser will be free and clear of any and all claims or encumbrances (other than those arising under the Credit Agreement in favor of Purchaser).

(b) The Mortgage, Note and Mortgage Documents pertaining to each Sale Loan (i) are genuine and have been duly executed and delivered by the applicable Mortgagor and every required mortgagor, grantor and trustor and (ii) constitute legal, valid and binding obligations, enforceable against them in accordance with the respective terms thereof, subject to bankruptcy, insolvency and other laws relating to the enforcement of creditors' rights in general and to general principles of equity. No Mortgagor has asserted any defense,

counterclaim or right of rescission or setoff to the enforcement of such Mortgage, Note or any of the Mortgage Documents or asserted that any provision of such Mortgage, Note or any of the Mortgage Documents is unenforceable, and there is no proceeding pending or threatened in which the validity of such Mortgage, Note or Mortgage Documents or the title of the Mortgagor to the Property encumbered by such Mortgage is being challenged.

(c) The Mortgage, Note and Mortgage Documents pertaining to each Sale Loan complied and comply in all material respects with all applicable Laws, including (without limitation) the federal Truth-in-Lending Act (15 U.S.C. ss.ss. 1601 et seq.), the federal Real Estate Settlement Procedures Act (12 U.S.C. ss.ss. 2601 et seq.) and all applicable usury, consumer finance, small loan, equal credit opportunity, flood insurance and disclosure laws. Unless notice has been given to the contrary by Seller to Purchaser

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pursuant to Section 226.32(e)(3) of Regulation Z, the Sale Loan is not a "high cost mortgage" pursuant to Section 226.32 of Regulation Z of the Truth-in Lending Act.

(d) The Mortgage, Note and Mortgage Documents pertaining to each Sale Loan contain customary and enforceable provisions (subject to bankruptcy, insolvency and other laws relating to the enforcement of creditors' rights in general and to general principles of equity) such as render the rights and remedies of the holder thereof adequate for the realization against the applicable Property of the benefits of the security, including foreclosure, and there is no exemption (other than homestead exemptions) available to any Mortgagor or other mortgagor, trustor or grantor that would interfere with such right to realize such benefits of the security.

(e) The Mortgage pertaining to each Sale Loan has been duly and timely filed and recorded in the proper official records and creates a valid lien, with the priority purported to be created thereby, on the Property subject to such Mortgage and all taxes, fees and charges incident to the creation or perfection of such lien have been paid. The Property securing each Sale Loan is free and clear of all mechanics or materialmen's liens and other liens in the nature thereof and all tax liens, and no part of such Property has been released from the lien of the Mortgage encumbering such Property. All currently due and payable real property taxes and assessments, and interest and penalties thereon, relative to the Property securing each Sale Loan have been paid.

(f) To Seller's knowledge, the Property securing each Sale Loan is free of substantial damage and is in good repair in all material respects. To Seller's knowledge, such Property is not affected by a condition arising as a result of, or arising from, the presence of Hazardous Materials on such Property; provided, however, that Seller's knowledge of the existence of such a condition shall be deemed a breach of this representation and warranty only if (i) such Sale Loan would be ineligible, solely by reason of such condition, for purchase by the FNMA under the terms of Section 501.04 (or similar or successor provisions) of the Guide (assuming such Sale Loan were otherwise eligible for purchase) or (ii) such condition constitutes, solely by reason of such condition, a material violation of applicable Law.

(g) Each Property securing each Sale Loan is covered by a Mortgagee Policy issued by a Qualified Insurer, insuring that the Mortgage pertaining to such Sale Loan is a valid lien, with the priority purported to be created thereby, on such Property, subject only to standard exceptions stated therein and such Mortgagee Policy is in full force and effect, is assignable and will inure to the benefit of Purchaser and its successors and assigns as mortgagee or owner of record. Neither Seller nor any prior mortgagee has done, by act or omission, anything that would materially impair the coverage of any such Mortgagee Policy.

(h) Each Property securing each Sale Loan is covered by, and the servicer of each Sale Loan is required to maintain with respect to such Property, a fire and hazard insurance policy issued by a Qualified Insurer with extended coverage containing a

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mortgagee's loss payable clause and suitable provisions for payment of mortgages in order of priority. Such insurance policy is in full force and effect and is in an amount not less than the least of (i) the outstanding principal balance of the Sale Loan and the related senior mortgage, if any, (ii) the full insurable value of such Property and (iii) the minimum amount required to compensate for damage or loss on a replacement cost basis.

(i) Each Property securing a Sale Loan that is located in an area identified in the Federal Register by the Flood Emergency Management Agency as having special flood hazard is covered by, and the servicer of each Sale Loan is required to maintain with respect to such Property, a flood insurance policy issued by a Qualified Insurer containing a mortgagee's loss payable clause and suitable provisions for payment of mortgages in order of priority. Such insurance policy is in full force and effect and is in an amount representing coverage not less than the least of (i) the outstanding principal balance of the Sale Loan and the related senior mortgage, if any, (ii) the full insurable value of such Property and (iii) the minimum amount of insurance available under the National Flood Insurance Act of 1968, as amended.

(j) The outstanding principle balance of each Seller Mortgage Loan (including each Sale Loan) as set forth in the Purchase List pertaining to each Sale Loan and all other information set forth in such Purchase List (other than estimates) is complete and accurate.

(k) There is no payment default or other material non-payment default, breach, violation or event of acceleration by any Mortgagor existing under the Mortgage, Note or Mortgage Documents pertaining to each Sale Loan and there is no event that, with notice and/or the expiration of any grace or cure period, would constitute such a default, breach, violation or event of acceleration. No such default, breach, violation or event of acceleration has been waived, and no such Mortgage, Note or Mortgage Documents have been altered, amended or modified in any respect except for alterations, amendments or modifications with respect to which deliveries have been made pursuant to Section 2.3. No regularly scheduled payment on a Note was (or is) more than 30 days delinquent past the performance or due date during the preceding 12-month period.

(l) Seller has no knowledge of any pending, proposed or threatened condemnation action or eminent domain proceeding relative to the Property securing each Sale Loan or of any pending, proposed or threatened legal action (including, without limitation, bankruptcy or insolvency proceedings) instituted by or with respect to the Mortgagor, Mortgage, Note or Property pertaining to such Sale Loan that does or may adversely affect such Property or the collection or enforcement of such Note or Mortgage or the priority of the lien of such Mortgage.

(m) The proceeds of each Sale Loan have been fully disbursed and there is no requirement for future advances thereunder, and all costs, fees and expenses payable in connection with the making and origination of such Sale Loan have been paid.

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(n) The servicing and collection practices used by Seller or by any third-party servicing or collection agent on its or any other holder's behalf have been in all respects legal and prudent and have met customary standards utilized by mortgage lenders in their residential mortgage servicing businesses (including, without limitation, the establishment of any escrow accounts).

(o) Each Sale Loan is free and clear of any and all servicing rights of Seller or any third-party servicer, and there is no obligation or requirement that such Sale Loan be serviced by any particular servicer. Upon the purchase by Purchaser of such Sale Loan, Purchaser shall be entitled to cause such Sale Loan to be serviced by a servicer designated by Purchaser in its sole discretion.

3.3. Representations and Warranties of Seller Pertaining to Sale Loans Underwritten by Third Parties. With respect to each Third Party Sale Loan, each Seller represents and warrants (in addition to the representations

and warranties made in Section 3.2) that such Third Party Sale Loan was purchased by Seller pursuant to a Third Party Purchase Agreement that, among other things, (i) contains standard representations and warranties from the Third Party Seller of the type typically contained in residential mortgage loan purchase agreements and (ii) provides for the Third Party Seller to repurchase, on Seller's demand, such Third Party Sale Loan in the event that any misstatement of material fact or material breach of any warranty contained therein is discovered by Seller, its designee, their respective successors and assigns, the ultimate investor or by the Third Party Seller over the entire life of such Sale Loan.

3.4. Representations and Warranties by Purchaser. As of the date of this Agreement, and subsequently with respect to each Sale Loan as of the Closing Date on which Purchaser purchases such Sale Loan pursuant to this Agreement, Purchaser represents and warrants that:

(a) Purchaser is duly organized and validly existing as a corporation under the laws of the State of Delaware and has the corporate power to execute and deliver this Agreement and to enter into and perform all of the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action.

(b) The execution and delivery of this Agreement, the consummation of the transactions contemplated herein and the compliance with and fulfillment of the terms and conditions of this Agreement will not conflict with or result in a breach or violation of any of the terms, conditions or provisions of, or constitute a default under, the organizational or governing instruments of Purchaser, any applicable Law (other than the federal Real Estate Settlement Procedures Act or similar law pertaining to the origination of mortgage loans) or any agreement to which Purchaser is a party or by which it or any of its assets or properties are bound.

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ARTICLE IV  
UNDERWRITING CRITERIA

4.1. Underwriting Criteria for Seller Mortgage Loans. (a) Seller covenants and agrees that all Seller Mortgage Loans (other than Exception Loans), whether underwritten by either Seller or a third party, shall be made in accordance and compliance with the Underwriting Criteria

4.2. Requests for Amendments of Underwriting Criteria. Purchaser may from time to time, but not more than once in any calendar quarter, request Seller to amend, modify, supplement or replace the Underwriting Criteria, which request shall be in writing and set forth such requested amendment, modification, supplement or replacement. In the event Seller fails for any reason to amend, modify, supplement or replace the Underwriting Criteria pursuant to Purchaser's request within one month after the date of such request, Purchaser shall have the right to terminate its obligations to purchase Seller Mortgage Loans within 10 days after the foregoing one-month period shall have expired in accordance with the provisions of Section 7.2(b); provided, however, that Purchaser shall have the right to terminate such obligations to purchase Seller Mortgage Loans only if (i) the charge-off or delinquency rates pertaining to Seller Mortgage Loans made pursuant to the Underwriting Criteria requested by Purchaser to be amended, modified, supplemented or replaced are greater than the respective charge-off or delinquency rates published by the National Second Mortgage Association for the period most closely corresponding to the period during with such Underwriting Criteria were in effect or (ii) the changes requested by Purchaser to be made to the Underwriting Criteria are substantially consistent with the full range of home equity loan products then offered by recognized consumer finance companies in geographic areas in which Seller Mortgage Loans are then being made.

4.3 Amendments of Underwriting Criteria. Seller shall not amend, modify, supplement or replace the Underwriting Criteria without the prior written consent of Purchaser.

4.4. Relationship Between Underwriting Criteria and Representations and Warranties. In the event of any inconsistencies between the Underwriting Criteria and the representations and warranties of Seller under Section 3.2 with respect to a Sale Loan, (i) such representations and warranties

shall prevail over, and shall not be deemed waived by, the Underwriting Criteria and (ii) such Sale Loan shall comply with such representations and warranties notwithstanding the Underwriting Criteria. In no event shall such representations and warranties be amended, or deemed amended, by any amendment, modification, supplementation or replacement to or of the Underwriting Criteria, it being expressly agreed that such representations and warranties shall be amended only by a writing signed by the parties hereto, which writing shall state explicitly that such representations and warranties are being amended and shall set forth such amendment.

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ARTICLE V  
SELLER'S REPURCHASE OBLIGATIONS

5.1. Repurchase Obligation. In the event any Repurchase Event occurs or exists with respect a Sale Loan purchased by Purchaser pursuant to this Agreement, Purchaser shall have the right, but not the obligation, to sell, transfer, assign, set over and convey to Seller (in which case Seller shall

purchase from Purchaser) such Sale Loan, such purchase and sale to be at the price and on the terms set forth in Section 5.2. Purchaser shall exercise the right granted pursuant to this Section 5.1, if at all, by giving written notice of exercise (a "Repurchase Notice") to the Seller within 90 days after the Closing Date pertaining to such Sale Loan; provided that with respect to a Repurchase Event that arises from the failure of Seller to make, or cause to be made, any of the deliveries required pursuant to Section 2.3(b) on or before the date such deliveries were required to be made pursuant to this Agreement such Repurchase Notice shall be given to Seller within 150 days after the applicable Closing Date.

5.2. Repurchase Price. The purchase price for each Sale Loan purchased by Seller pursuant to Section 5.1 shall be an amount equal to (i) the outstanding principal balance of such Sale Loan as of the applicable Repurchase Closing Date, plus (ii) any premium paid by Purchaser for such Sale Loan, plus (iii) the accrued but unpaid interest due with respect of such Sale Loan as of the applicable Repurchase Closing Date, plus (iv) the recording fees and other expensed incurred by Purchaser in connection with recording the Mortgage assignments pertaining to such Sale Loan, plus (v) any advances for taxes and insurance pertaining to such Sale Loan.

5.3. Repurchase Closing. (a) The consummation of each purchase and sale of a Sale Loan pursuant to this Article V shall take place on or before the date 30 days after the date of the Repurchase Notice (the "Repurchase Closing Date").

(b) On or before the Repurchase Closing Date, Purchaser shall deliver to Seller (or a third party designated in writing by Seller), with respect to the applicable Sale Loan (but only to the extent such items were delivered previously to Purchaser pursuant to Section 2.3):

(i) the original Note, endorsed without recourse by Seller to the order of Purchaser and showing a complete chain of title from the originator to Seller (but only to the extent such Note is not security for Seller's obligations under the Credit Agreement);

(ii) the original Mortgage pertaining to such Sale Loan;

(iii) An Assignment of Mortgage/Deed of Trust in recordable form, duly executed and acknowledged by Purchaser, assigning and transferring all of Purchaser's rights and interest with respect to the Mortgage pertaining to such Sale Loan;

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(iv) originals of all assumption and modification agreements, if any, relating to such Sale Loan; and

(v) the original Mortgagee Policy relating to such Sale Loan, together with any endorsement applicable thereto, assigning and transferring to Seller all of Purchaser's rights and interests under

each such Mortgagee Policy, together with the assignee endorsements to such title insurance policies.

(c) All recording fees required for the recording of the Assignments of Mortgage/Deed of Trust pursuant to this Section 5.3 shall be at the expense of Seller.

(d) In addition to the deliveries required by Section 5.3(b), Purchaser shall at any time and from time to time upon the request of Seller, at Seller's expense, execute, deliver, file, register and/or record any assignment, notification, transfer form and other documents and do such further acts and things, as are reasonable necessary to transfer the applicable Sale Loan to Purchaser.

(e) The purchase price for each Sale Loan purchased by Seller pursuant to Section 5.1 shall be paid on the applicable Repurchase Closing Date as follows:

(i) Such purchase price shall be deemed a "Loan" (as such term is defined in the Credit Agreement) made from Purchaser to Seller as of the Repurchase Closing Date under the Credit Agreement, but only if (A) Purchaser is obligated as of the Repurchase Date to make Loans to Seller under the Credit Agreement and (B) such Loan does not cause the aggregate then-outstanding principal amount of "Loans" under the Credit Agreement to exceed the maximum aggregate amount of "Loans" then permitted thereunder.

(ii) In the event such purchase price is not paid in the form of a "Loan" made from Purchaser to Seller under the Credit Agreement pursuant to the foregoing subclause (i), such purchase price shall be paid on the Repurchase Closing Date by federal wire transfer of funds immediately available at such domestic account designated by Purchaser.

(f) Upon receipt by Purchaser of the purchase price pursuant to Section 5.3(e), Seller shall become the owner of the Sale Loan with respect to which such purchase price was received and Seller shall be entitled to receive from and after the applicable Closing Date all payments and recoveries in respect of such Sale Loan.

#### ARTICLE VI OTHER AGREEMENTS

6.1. Payover; Set-off. (a) If Seller receives any payment with respect to any Sale Loan after the applicable Closing Date on which such Sale Loan was purchased

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by Purchaser pursuant to this Agreement, Seller shall promptly pay over to Purchaser the amount so received, and until so paid over, the same shall be held by Seller in trust for Purchaser. If Purchaser receives any payment with respect to any Sale Loan after the applicable Repurchase Closing Date on which such Sale Loan was repurchased by Seller pursuant to Article V, Purchaser shall (subject

to any rights of Purchaser under the Credit Agreement) promptly pay over to Seller the amount so received, and until so paid over, the same shall be held by Purchaser in trust for Seller.

(b) Seller hereby agrees that if any amount due from Seller to Purchaser under Sections 2.5(b) or 5.3(e) of this Agreement is not paid to Purchaser when due, then Purchaser shall have the right, without notice to Seller, to set-off against and to appropriate and apply to such amount due any purchase price due from Purchaser to Seller under this Agreement. Such right shall be absolute and unconditional in all circumstances and, without limitation, shall exist whether or not Purchaser shall have given notice or made any demand to Seller, and regardless of the existence or adequacy of any collateral or any other security, right or remedy available to Purchaser. The rights provided by this paragraph are in addition to all other rights and remedies that Lender may otherwise have under this Agreement, the Credit Agreement, any other Loan Document (as such term is defined in the Credit Agreement, at law or in equity, or otherwise, and nothing in this Agreement, the Credit Agreement or any other Loan Document shall be deemed a waiver or



prohibition of or restriction on the rights of set-off of Purchaser.

6.2. Records. Seller shall keep all proper records and books of account and all other records required with respect to the determination of the purchase prices for Sale Loans by Purchaser pursuant to this Agreement. Purchaser may cause such records to be audited, at Purchaser's expense, to verify information upon which the determination of such purchase prices are based; provided that Seller shall reimburse Purchaser on a prompt basis for the cost of such audit in the event such audit reveals that the aggregate purchase price of Sale Loans purchased by Purchaser during the period covered by such audit is greater than the amount of the aggregate purchase price actually due for such period by an amount greater than 5% of the aggregate purchase price actually due for such period. Any such audit may be conducted by Purchaser or Purchaser's representatives upon one week's notice during regular business hours at Seller's offices and in such manner as not to significantly interfere with Seller's normal business activities.

6.3. Power of Attorney. Seller hereby irrevocably constitutes and appoints Purchaser and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Seller and in the name of Seller or in its own name, without notice to or assent by Seller to execute, deliver, file, attach, register or record any assignment, endorsement, notification, transfer form or other document or instrument of conveyance or transfer with respect to a Sale Loan and the Mortgage, Note and Mortgage Documents pertaining to such Sale Loan, as is necessary to transfer (and to record such transfer) such Sale Loan

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and the related Mortgage, Note and Mortgage Documents to Purchaser so that Purchaser is the sole legal owner of record of such Sale Loan and related Mortgage, Note and Mortgage Documents free and clear of all liens, security interests and other encumbrances. Borrower hereby ratifies all that said

attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

6.4. Servicing. As of the Closing Date for each Sale Loan, Purchaser shall assume complete responsibility for the servicing and administration of such Sale Loan, including (without limitation) the collection of all payments thereunder, and Seller (or any third-party servicer acting on behalf of Seller) shall have no further servicing or administrative responsibilities with respect to such Sale Loan. Seller shall assist, and shall cause each third-party servicer acting on its behalf to assist, Purchaser in the transfer of servicing and administrative responsibilities with respect to such Sale Loan to facilitate a smooth and efficient transfer of such obligations.

6.5. Indemnification. Seller agrees to indemnify and hold harmless Purchaser and its officers, directors and employees harmless from and against any and all suits, judgments, claims, actions, causes of action, proceedings (regulatory or otherwise) demands, losses, damages, obligations, penalties, fines, forfeitures, costs, expenses (including reasonable attorneys fees actually incurred) and liabilities of any nature incurred or suffered by them as a result of, or arising out of, any breach of Seller's representations or warranties contained in Section 3.1; provided that in the event Seller repurchases a Sale Loan pursuant to Article V, the recovery of Purchaser under this Section 6.5 shall be limited to out-of-pocket expenditures of Purchaser resulting directly from Seller's breach of such representations or warranties with respect to such Sale Loan. The provisions of this Section 6.5 shall survive any termination or expiration of this Agreement.

6.6. Commissions. Each party represents to the other party that it is not a party to any agreement, commitment or arrangement, written or oral, with any person or entity whereby such person or entity is or may become entitled to any finder's, broker's or similar fee or commission in connection with the transactions between Purchaser and Seller as contemplated by this Agreement. If any claims for finder's fees or broker's fees or commissions are ever made against Seller or Purchaser by any person or entity in connection with the transactions contemplated by this Agreement, all such claims will be handled and paid by the party whose actions or alleged commitments form the basis of such claim, and the party whose actions or alleged commitments form the basis of such claim shall indemnify and hold harmless the other party from and against

any and all such claims.

6.7. Arbitration. (a) Except in the event of any litigation or proceeding commenced by any third party against Seller or Purchaser in which the other party is an indispensable party or potential third party defendant, and except for enforcement of any interim or preliminary remedy (to the extent such remedy is sought before the arbitration

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panel is duly appointed and convened), any dispute or controversy between Seller and Purchaser involving the interpretation, construction or application of any terms, covenants or conditions of this Agreement, or transactions under this Agreement, or any claim arising out of or relating to this Agreement, or

transactions under this Agreement, shall, on the request of one party served on the other, be submitted to arbitration in accordance with the provisions of this Section 6.7; provided, however, that this Section 6.7 shall in no way be deemed to impose a duty to submit to arbitration any dispute or controversy pertaining in any way to the Credit Agreement.

(b) Any such dispute, controversy or claim will be settled by arbitration in the Kansas City metropolitan area (except as may otherwise be agreed by the parties in their discretion) in accordance with the rules of the American Arbitration Association then in effect, except as herein specifically otherwise stated or amplified, and judgment upon the award rendered by the arbitrators may be entered in court having jurisdiction over the party against whom the award is sought to be entered.

(c) Notwithstanding anything to the contrary that may or hereafter be contained in the rules of the American Arbitration Association, the procedures set forth in this paragraph (c) shall apply.

(i) A notice of arbitration shall set forth a clear and plain statement of the matter that the party sending the notice ( the "Instituting Party") believes to be a breach or is in dispute. The demand (the "Demand") shall reference principal provisions of this Agreement that the Instituting Party views as controlling or out of the interpretation of which the dispute arises, and shall attach copies of all pertinent documents and other things then in its possession that the Instituting Party views as having direct bearing on the relief sought under the Demand. The receiving party (the "Other Party") shall, within 20 days of receipt of the Demand, provide to the Instituting Party and to the arbitrators a response (the "Answer"), referencing provisions of this Agreement that the Other Party views as controlling, and shall attach copies of all pertinent documents and other things (other than those attached to the Demand) then in its possession that it views as having direct bearing to support the contentions of the Answer. Each party shall appoint one person to hear and determine the dispute within ten days after the Other Party's receipt of the Demand. (If a party fails to so designate is arbitrator within such ten days, the arbitrator designated by the party designating an arbitrator shall act as the sole arbitrator and shall be deemed to be the single, mutually approved arbitrator to resolve the controversy.) The two persons so chosen shall, within 20 days, select a third impartial arbitrator. If they fail to do so within such 20 days, either party may petition a court of competent jurisdiction in the Kansas City metropolitan area (or in any other jurisdiction to which both parties may, in their discretion, agree) to appoint the third arbitrator. The majority decision of the three-arbitrator panel (or the decision of the single arbitrator) shall be final, binding, conclusive and nonappealable.

(ii) Each arbitrator shall be experienced in the mortgage banking industry. Each party shall pay the arbitrator it designated and shall share the cost of the third (or, if

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applicable, the sole) arbitrator. In the event the parties are unable to agree upon a rate of compensation for the third (or sole) arbitrator, the arbitrator shall be compensated for services at a rate to be determined by the American Arbitration Association.

(iii) The arbitrators shall endeavor to promptly schedule the hearings, and to hold the hearings (on consecutive days if practicable), and shall have authority to award relief under legal or equitable principals, including interim or preliminary relief. Nothing in this subparagraph (iii) shall impair the right of a party to seek interim or preliminary relief in a court of competent jurisdiction before the arbitration panel is constituted and convened.

(iv) Other than attorneys' fees and expenses (which shall be borne by the party incurring the same), the costs of the arbitration shall be borne by the losing party or shall be allocated between the parties in such proportion as the arbitrators decide.

(v) The arbitrators shall, upon request by either party, promptly (and in all events within 30 days of the conclusion of the hearing) issue a proposed written opinion of their findings of fact and conclusions of law, which shall become final and binding in accordance with the terms thereof unless either or both parties seek reconsideration in accordance with Section 6.7(c)(vi) of this Agreement. In making their decision, the arbitrators shall be bound by the terms of this Agreement.

(vi) Either party shall have the right, within 20 days of receipt of the arbitrators' proposed opinion, to file with the arbitrators a motion to reconsider (accompanied by a reasoned memorandum), and the other party shall have 20 days to respond to that memorandum. After receipt of such memorandum and response, if any, the arbitrators thereupon shall reconsider the issues raised by such motion and, promptly, either confirm or change their majority decision, which shall then be final and conclusive upon both parties. The costs for such a motion for reconsideration and written opinion of the arbitrators shall be borne by the moving party, or shared equally by both parties if both parties request such reconsideration.

#### ARTICLE VII TERM

7.1. Applicability of Purchase and Sale Obligations. The obligations of Purchaser to purchase Seller Mortgage Loans pursuant to this Agreement, and the obligations of Seller to make Seller Mortgage Loans available to Purchaser for purchase and to sell Seller Mortgage Loans to Purchaser, shall apply only with respect to Seller Mortgage Loans that are owned by, or originated for or on behalf of, Seller during the Purchase Period.

7.2. Termination of Purchase and Sale Obligations. (a) The obligations of Purchaser to purchase Seller Mortgage Loans pursuant to this Agreement, and the

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obligations of Seller to make Seller Mortgage Loans available to Purchaser for purchase and to sell Seller Mortgage Loans to Purchaser, may be terminated:

(i) by the mutual written agreement of Seller and Purchaser;

(ii) by Purchaser, pursuant to Section 4.2 or if (A) there is a failure by Seller to perform or observe any material term, covenant or agreement contained in this Agreement and any such failure shall remain unremedied for 10 days after written notice of such failure shall have been given to Seller by Purchaser, (B) there is an order or decree restraining, enjoining, prohibiting, invalidating or otherwise preventing Purchaser's performance of any of its material obligations hereunder, (C) there shall be pending, or any Governmental Authority shall have notified Purchaser of its intention to institute, any action, suit or proceeding against Purchaser to restrain, enjoin, prohibit, invalidate or otherwise prevent Purchaser's performance of any of its material obligations hereunder, (D) there is a dissolution, termination or existence, insolvency, appointment of a receiver of any part of the property of, or assignment for the benefit of creditors by, or the commencement of any proceeding by or against, Seller under any bankruptcy or insolvency law, (E) the Credit Agreement, any "Loan Document" (as such term is defined in the Credit Agreement) or any "Other Transaction Document" (as such term is defined in the Credit

Agreement and including this Agreement) or any material term or provision thereof shall cease to be in full force and effect, or any party thereto (other than Purchaser) shall, or shall purport to, terminate, repudiate, declare voidable or void or contest the enforceability of any term thereof or obligation thereunder, or any party thereto (other than Purchaser) shall default beyond any applicable grace or cure period in the observance or performance of any material term, provision or condition thereof, (F) a Repurchase Event occurs or exists at any time with respect to Sale Loans constituting in number greater than 5% of all Sale Loans sold by Seller to Purchaser pursuant to this Agreement, or (G) Purchaser's obligations to make "Loans" (as such term is defined in the Credit Agreement) under the Credit Agreement terminates or expires for any reason;

(iii) by Seller, if (A) there is a failure by Purchaser to perform or observe any material term, covenant or agreement contained in this Agreement and any such failure shall remain unremedied for 10 days after written notice of such failure shall have been given to Purchaser by Seller, (B) there is an order or decree restraining, enjoining, prohibiting, invalidating or otherwise preventing Seller's performance of any of its material obligations hereunder; (C) there shall be pending, or any Governmental Authority shall have notified Seller of its intention to institute, any action, suit or proceeding against Seller to restrain, enjoin, prohibit, invalidate or otherwise prevent Seller's performance of any of its material obligations hereunder, or (D) there is a dissolution, termination or existence, insolvency, appointment of a receiver of any part of the property of, or

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assignment for the benefit of creditors by, or the commencement of any proceeding by or against, Purchaser under any bankruptcy or insolvency law.

(b) Purchaser and Seller shall exercise a right of termination provided in this Section 7.2 by written notice to the other party. Upon such termination, the obligations to purchase and sell Seller Mortgage Loans (including any Sale Loan with respect to which such termination occurs after the date the Purchase List pertaining to such Sale Loan was sent to Purchaser pursuant to Section 2.2(a), but before the Closing Date with respect to such Sale Loan) shall automatically and immediately cease. Termination pursuant to this Section 7.2 shall not otherwise affect the rights or obligations of the parties hereto under this Agreement.

#### ARTICLE VIII MISCELLANEOUS

8.1. Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, or by nationally recognized overnight courier, by first-class mail, or by facsimile transmission (with confirmation in writing mailed first-class or sent by such overnight courier), or by electronic mail (with confirmation by telephone) or by personal delivery, addressed as follows:

If to Purchaser, to:

Companion Mortgage Corporation  
4435 Main Street, Suite 500  
Kansas City, Missouri 64111  
Attention: Clifford A. Davis, Jr.  
Facsimile: 816-561-0673  
CompuServe Address: 72662,3472

If to Seller, to:

National Consumer Services Corp., L.L.C.  
16 Perimeter Center East, Suite 1600  
Atlanta, Georgia 30346  
Attention: John B. Stanforth  
Facsimile: 770-668-0541

Any party may change the address to which it desires notices to be sent by giving the other party ten (10) days' prior notice of any such change. Any notices shall be deemed effective on the earliest to occur of receipt, telephone confirmation of

receipt of facsimile transmission, one Business Day after delivery to a nationally-recognized overnight courier, or three Business Days after deposit in the mail.

8.2. Confidentiality. Each of the parties hereby acknowledges the desire of the other party to maintain confidentiality with respect to the terms of the transactions contemplated by this Agreement. Each party agrees that neither it nor its agents will disclose the specific terms of this Agreement to any person (except to its accountants, attorneys, lenders, regulators, agents and other persons having a legitimate interest in the terms hereof in the ordinary course of such party's business) without the prior written consent of the other party.

8.3. Modification; No Waiver. This Agreement shall not be modified or amended except by an instrument in writing signed by or on behalf of the parties hereto. No waiver of any breach of, or failure to perform or observe, any material term, covenant or agreement contained in this Agreement shall constitute or be construed as a waiver by Purchaser or Seller of any subsequent breach or failure or of any breach of or failure with respect to any other provisions of this Agreement.

8.4. Prior Understandings. This Agreement supersedes all prior understandings whether written or oral, between the parties hereto relating to the transactions provided herein.

8.5. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of Missouri, without regard to choice of law rules thereof.

8.6. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Purchaser and Seller and their representative successors and assigns and shall not be assigned by either party hereto without the prior written consent of the other party hereto, and any purported assignment without such consent shall be void; provided that BFC may assign this Agreement to H&R Block, Inc. or any direct or indirect wholly owned subsidiary of H&R Block, Inc.

8.7. Not a Joint Venture. Neither this Agreement nor the transactions contemplated by this Agreement shall be deemed to give rise to a partnership or joint venture between Purchaser and Seller.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date set forth above.

COMPANION MORTGAGE CORPORATION

By \_\_\_\_\_  
Clifford A. Davis, Jr.  
President

NATIONAL CONSUMER SERVICES  
CORP., L.L.C.

By \_\_\_\_\_  
John B. Stanforth

President

NATIONAL CONSUMER SERVICES  
CORP. II, L.L.C.

By \_\_\_\_\_  
John B. Stanforth  
President

CREDIT AGREEMENT

THIS CREDIT AGREEMENT is made this 19th day of December, 1995 by and between Block Financial Corporation, a Delaware corporation ("Lender"), and National Consumer Services Corp., L.L.C., a Georgia limited liability company ("Borrower").

Recitals:

Borrower has requested Lender to extend credit to Borrower to enable it to borrow, repay and reborrow hereunder amounts initially not exceeding Twenty Million Dollars (\$20,000,000) in aggregate principal at any time outstanding, and Lender is willing to extend such credit upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE 1 -- DEFINITIONS; CONSTRUCTION

1.1. Certain Definitions. In addition to other words and terms defined elsewhere in this Agreement, as used herein the following words and terms shall have the following meanings, respectively, unless the context hereof otherwise clearly requires:

"Adjusted LIBOR Rate" shall have the meaning set forth in Section 2.4.

"Affiliate" shall mean, with respect to any Person, any other Person directly or indirectly through one or more intermediaries (including but not limited to all directors and executive officers of such Person) controlling, controlled by, or under direct or indirect common control with, such Person. For purposes of the preceding sentence, "control" means (i) with respect to a Person that is a corporation, the right to exercise, directly or indirectly, more than 50% of the voting rights attributable to the shares of such corporation, whether through the ownership of voting securities, by contract or otherwise, and (ii) with respect to a Person that is not corporation, the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"Affiliate Transaction" shall have the meaning set forth in Section 6.4.

"Agreement" shall mean this Credit Agreement, as it may be amended, modified or supplemented from time to time.

"Business Day" shall mean any day other than a Saturday, Sunday, public holiday under the laws of the State of Missouri or other day on which Lender is normally closed for business in Kansas City, Missouri.

"Capitalized Lease" shall mean at any time any lease that is, or is required under GAAP to be, capitalized on the balance sheet of Borrower at such time.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

"CERCLIS" shall mean the Comprehensive Environmental Response, Compensation and Liability Information System List, as the same may be amended from time to time.

"Closing Date" shall have the meaning set forth in Section 4.1.

"Code" shall mean the Internal Revenue Code of 1986, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time. References to sections of the Code shall be

construed also to refer to any successor sections.

"Commitment Fee" shall have the meaning set forth in Section 2.2.

"Committed Amount" shall have the meaning set forth in Section 2.1(a).

"Control Group Member" shall mean each trade or business (whether or not incorporated) that together with Borrower is treated as a single employer under Sections 4001(a)(14) or 4001(b)(1) of ERISA or Sections 414(b), (c), (m) or (o) of the Code.

"Debt-to-Equity Ratio" shall mean, with respect to a particular day, the ratio of (A) the sum of (i) the Committed Amount as of such day and (ii) the principal amount outstanding as of such day of all Indebtedness of Borrower other than pursuant to this Agreement, to (B) the owners' equity of Borrower as of such day.

"Dollar," "Dollars" and the symbol "\$" shall mean lawful money of the United States of America.

"Environmental Affiliate" shall mean, with respect to any Person, any other Person whose liability (contingent or otherwise) for any Environmental Claim such Person has retained, assumed or otherwise is liable for (by Law, agreement or otherwise).

"Environmental Approvals" shall mean any Governmental Action pursuant to or required under any Environmental Law.

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"Environmental Claim" shall mean, with respect to any Person, any action, suit, proceeding, investigation, notice, claim, complaint, demand, request for information or other communication (written or oral) by any other Person (including but not limited to any Governmental Authority, citizens'

group, or present or former employee of such Person) alleging, asserting or claiming any actual or potential (a) violation of any Environmental Law, (b) liability under any Environmental Law or (c) liability for investigatory costs, cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries, fines or penalties arising out of, based on or resulting from the presence, or release into the environment, of any Environmental Concern Materials at any location, whether or not owned by such Person.

"Environmental Cleanup Site" shall mean any location that is listed or proposed for listing on the National Priorities List, on CERCLIS or on any similar state list of sites requiring investigation or cleanup, or that is the subject of any pending or threatened action, suit, proceeding or investigation related to or arising from any alleged violation of any Environmental Law.

"Environmental Concern Materials" shall mean (a) any flammable substance, explosive, radioactive material, hazardous material, hazardous waste, toxic substance, solid waste, pollutant, contaminant or any related material, raw material, substance, product or by-product of any substance specified in or regulated or otherwise affected by any Environmental Law (including, but not limited to, any "hazardous substance" as defined in CERCLA or any similar state law), (b) any toxic chemical or other substance from or related to industrial, commercial or institutional activities, and (c) asbestos, gasoline, diesel fuel, motor oil, waste and used oil, heating oil and other petroleum products or compounds, polychlorinated biphenyls, radon and urea formaldehyde.

"Environmental Law" shall mean any Law, whether now existing or subsequently enacted or amended, relating to (a) pollution or protection of the environment, including natural resources, (b) exposure of Persons, including but not limited to employees, to Environmental Concern Materials, (c) protection of the public health or welfare from the effects of products, by-products, wastes, emissions, discharges or releases of Environmental Concern Materials or (d) regulation of the manufacture, use or introduction into commerce of Environmental Concern Materials including their manufacture, formulation, packaging, labeling, distribution, transportation, handling, storage or disposal. Without limitation, "Environmental Law" shall also include any Environmental Approval and the terms and conditions thereof.



"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time. References to sections of ERISA shall be construed also to refer to any successor sections.

"Event of Default" shall have the meaning set forth in Section 7.1.

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"Exception Loan" shall mean a Mortgage Loan that, or with respect to which, (i) meets the criteria set forth in clauses (b) through (i) of the definition of "Qualified Mortgage Loan," (ii) complies substantially with the underwriting criteria set forth in Schedule 6.11 and (iii) variances from the underwriting criteria set forth in Section 6.11 are approved in writing by a senior executive of Borrower prior to the origination of such Mortgage Loan.

"Exception Sale Loan" shall mean an Exception Loan that, as of the date in question, Lender has agreed to purchase from Borrower pursuant to the Loan Purchase Agreement.

"Governmental Action" shall have the meaning set forth in Section 3.4.

"Governmental Authority" shall mean any government or political subdivision or any agency, authority, bureau, central bank, commission, department or instrumentality of either, or any court, tribunal, grand jury or arbitrator.

"H&R Block Franchisee" means (i) any Person authorized by a franchise agreement with H&R Block, Inc. or any of its Subsidiaries to operate an office that operates under the "H&R Block" name and is open to the public for the preparation of tax returns, and (ii) any Person authorized by a franchise agreement (or subfranchise agreement) with a Person referred to in subclause (i) of this sentence to operate an office that operates under the "H&R Block" name and is open to the public for the preparation of tax returns.

"Indebtedness" of a Person shall mean:

(a) All obligations on account of money borrowed by, or credit extended to or on behalf of, or for on account of deposits with or advances to, such Person;

(b) All obligations of such Person evidenced by bonds, debentures, notes or similar instruments;

(c) All obligations of such Person for the deferred purchase price of property or services;

(d) All obligations secured by a Lien on property owned by such Person (whether or not assumed), and all obligations of such Person under Capitalized Leases (without regard to any limitation of the rights and remedies of the holder of such Lien or the lessor under such Capitalized Leases to repossession or sale of such property);

(e) The face amount of all letters of credit issued for the account of such Person and, without duplication, the unreimbursed amount of all drafts drawn

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thereunder, and all other obligations of such Person associated with such letters of credit or draws thereon;

(f) All obligations of such Person in respect of acceptances or similar obligations issued for the account of such Person;

(g) All obligations of such Person under a product financing or similar arrangement described in paragraph 8 of FASB Statement of Accounting Standards No. 49 or any similar requirement of GAAP; and

(h) All obligations of such Person under any interest rate or currency protection agreement, interest rate or currency future, interest rate or currency option, interest rate or currency swap or cap or other interest rate or currency hedge agreement.

"Indemnified Parties" shall mean Lender and its Affiliates (other than Borrower, in the event Borrower is an Affiliate of Lender), and the directors, officers and employees of each of the foregoing.

"Law" shall mean any law (including common law), constitution, statute, treaty, convention, regulation, rule, ordinance, order, injunction, writ, decree or award of any Governmental Authority.

"LIBOR Rate" shall have the meaning set forth in Section 2.4.

"Lien" shall mean any mortgage, deed of trust, pledge, lien, security interest, charge, claim or other encumbrance or security arrangement of any nature whatsoever or any agreement to give any of the foregoing, including but not limited to any conditional sale or title retention arrangement, and any assignment, deposit arrangement or lease intended as, or having the effect of, security.

"Loan" shall mean any loan made by Lender to Borrower under this Agreement, and "Loans" shall mean all Loans made by Lender under this Agreement.

"Loan Commitment" shall have the meaning set forth in Section 2.1(a).

"Loan Documents" shall mean this Agreement, the Note, the Security Agreement, and all other agreements and instruments executed and delivered in connection herewith or therewith or extending, renewing, refinancing or refunding any indebtedness, obligation or liability arising under any of the foregoing, in each case as the same may be amended, modified or supplemented from time to time hereafter; provided that the term "Loan Documents" shall not include the Other Transaction Documents.

"Loan Purchase Agreement" shall have the meaning set forth in Section 4.1(d).

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"Material Adverse Effect" shall mean: (a) a material adverse effect on the business, operations, condition (financial or otherwise) or prospects of Borrower, (b) a material adverse effect on the ability of Borrower to perform or comply with any of the terms and conditions of any Loan Document or any of the Other Transaction Documents, or (c) any adverse effect on the legality, validity, binding effect, enforceability of admissibility into evidence of any Loan Document or any of the Other Transaction Documents, or the ability of Lender to enforce any rights or remedies under or in connection with any Loan Document or Other Transaction Document.

"Maturity Date" shall mean December 31, 1998.

"Member" means any person that is admitted to Borrower pursuant to the provisions of the Operating Agreement.

"Mortgage" shall mean the mortgage, deed of trust or other instrument creating a lien on an estate in fee simple interest in real property (including the improvements thereof) securing a Mortgage Loan.

"Mortgage Documents" shall mean any and all documents required to be executed by the obligor(s) under a Mortgage Loan in connection with such Mortgage Loan.

"Mortgage Loan" shall mean a loan extended to a natural person or persons, which loan is secured by a mortgage, deed of trust, or equivalent consensual security interest in such person's or persons' ownership interest in real property and a one- to four-family residential structure attached to such real property.

"Mortgage Note" shall mean the note or other evidence of indebtedness evidencing the indebtedness of the obligor(s) under a Mortgage Loan.

"Multiemployer Plan" shall mean any employee benefit plan that is a "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA and to which Borrower or any Controlled Group Member has or had an obligation to contribute.

"Note" shall mean the promissory note of Borrower executed and delivered under Section 2.1(c), and any promissory note or notes issued in substitution therefor in connection with any extensions, renewals, refinancings or refundings thereof in whole or in part.

"Notice" shall have the meaning set forth in Section 8.5.

"Obligations" shall mean all indebtedness, obligations and liabilities of Borrower to Lender from time to time arising under or in connection with or related to or evidenced by or secured by or under color of this Agreement or any other Loan Document, and all extensions, renewals or refinancings thereof, whether such indebtedness, obligations or liabilities are direct or indirect, otherwise secured or unsecured, joint or several, absolute

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or contingent, due or to become due, whether for payment or performance, now existing or hereafter arising. Without limitation of the foregoing, such indebtedness, obligations and liabilities include the principal amount of Loans, interest, fees, indemnities or expenses under or in connection with this Agreement or any other Loan Document, and all extensions, renewals, refinancings thereof, whether or not such Loans were made in compliance with the terms and conditions of this Agreement or in excess of the obligation of Lender to lend. Obligations shall remain Obligations notwithstanding any

assignment or transfer by Lender or any subsequent assignment or transfer of any of the rights of Lender under this Agreement or any other Loan Document or any interest therein.

"Office," when used in connection with Lender, shall mean its office located at 4435 Main Street, Suite 500, Kansas City, Missouri 64111, or at such other office or offices of Lender or any Subsidiary or Affiliate thereof as may be designated in writing from time to time by Lender to Borrower.

"Operating Agreement" shall mean that certain Operating Agreement for Borrower dated as of September 15, 1995, as amended from time to time.

"Other Transaction Documents" shall mean the documents contemplated by Sections 4.1(c) and (d).

"PBGC" means the Pension Benefit Guaranty Corporation established under Title IV of ERISA or any other governmental agency, department or instrumentality succeeding to the functions of such corporation.

"Pension-Related Event" shall mean any of the following events or conditions:

(a) Any action is taken by any Person (i) to terminate, or which would result in the termination of, a Plan, either pursuant to its terms or by operation of law (including, without limitation, any amendment of a Plan that would result in a termination under Section 4041(e) of ERISA), or (ii) to have a trustee appointed for a Plan pursuant to Section 4042 of ERISA;

(b) PBGC notifies any Person of its determination that an event described in Section 4042 of ERISA has occurred with respect to a Plan, that a Plan should be terminated, or that a trustee should be appointed for a Plan;

(c) Any Reportable Event occurs with respect to a Plan;

(d) Any action occurs or is taken that could result in Borrower becoming subject to liability for a complete or partial withdrawal by any Person from a Multiemployer Plan (including, without limitation, seller liability incurred under Section 4204(a)(2) of ERISA), or Borrower or any Controlled Group Member receives from any Person a notice or demand for payment on account of any such alleged or asserted liability;

(e) (i) There occurs any failure to meet the minimum funding standard under Section 302 of ERISA or Section 412 of the Code with respect to a Plan, or any tax return is filed showing any tax payable under Section 4971(a) of the Code with respect to any such failure, or Borrower or any Controlled Group Member receives a notice of deficiency form the Internal Revenue Service with respect to any alleged or

asserted such failure or (ii) any request is made by any Person for a variance from the minimum funding standard, or an extension of the period for amortizing unfunded liabilities, with respect to a Plan; or

(f) the liability (contingent or otherwise) of Borrower for or in connection with any Postretirement Benefits as of any day, whether such liability is funded or unfunded, at any time exceeds ten percent (10%) of the owners' equity of Borrower as of such day.

"Permitted Distribution" shall mean a dividend or distribution made by Borrower to any one or more of its Members on account of any equity or ownership interest in Borrower, which, at the time of and after giving effect to such dividend or distribution, the following conditions have been satisfied:

(a) no Event of Default or Potential Default shall have occurred and be continuing or would occur as a consequence thereof and each of the representations and warranties of Borrower set forth in Article 3 is true on and as of the date of such dividend or distribution both before and after giving effect thereto; and

(b) the Debt-to-Equity Ratio of Borrower is not less than 7 to 1; and

(c) the owners' equity of Borrower is not less than \$500,000;

"Person" shall mean an individual, corporation, partnership, trust, unincorporated association, joint venture, joint-stock company, limited liability company, trust, Governmental Authority or other entity.

"Plan" means any employee pension benefit plan within the meaning of Section 3(2) of ERISA (other than a Multiemployer Plan) covered by Title IV of ERISA by reason of Section 4021 of ERISA, of which Borrower or any Controlled Group Member is or has been within the preceding five years a "contributing sponsor" within the meaning of Section 4001(a)(13) of ERISA, or which is or has been within the preceding five years maintained for employees of Borrower or any Controlled Group Member.

"Potential Default" shall mean any event or condition that with notice, passage of time or a determination by Lender would constitute an Event of Default.

"Postretirement Benefits" shall mean any benefits, other than retirement income, provided by Borrower to retired employees, or to their spouses, dependents or beneficiaries, including (without limitation) group medical insurance or benefits, or group life insurance or death benefits.

"Qualified Insurer" shall mean an insurance company or security or bonding company qualified to write the insurance policy in the relevant jurisdiction that, in the case of a fire, hazard or flood insurance policy, shall have a rating of "A" or better from A.M. Best.

"Qualified Mortgage Loan" shall mean a Mortgage Loan that, or with respect to which:

(a) complies with the underwriting criteria set forth in Schedule 6.11;

(b) in all material respects complies with, and was originated

and made in compliance with, all applicable Laws, including (without limitation) the federal Truth-in-Lending Act (15 U.S.C. (Section) (Section) 1601 et seq.), the federal Real Estate Settlement Procedures Act (12 U.S.C. (Section) (Section) 2601 et seq.) and all applicable usury, consumer finance, small loan, equal credit opportunity, flood insurance and disclosure laws;

(c) the Mortgage, Mortgage Note and other Mortgage Documents pertaining to such Mortgage Loan have been duly executed and delivered by the applicable obligor(s) and every required mortgagor, grantor and trustor;

(d) Borrower has received a written opinion from legal counsel to the effect that the form of the Mortgage and Mortgage Note pertaining to such Mortgage Loan is sufficient to constitute legal, valid and binding obligations, enforceable against the obligor(s) thereunder in accordance with the respective terms thereof, subject to bankruptcy, insolvency and other laws relating to the enforcement of creditors' rights in general and to general principles of equity;

(e) the Mortgage, Mortgage Note and other Mortgage Documents contain customary and enforceable provisions (subject to bankruptcy, insolvency and other laws relating to the enforcement of creditors' rights in general and to general principles of equity) such as render the rights and remedies of the holder thereof adequate for the realization against the Underlying Property of the benefits of the security, including foreclosure;

(f) the Mortgage has been duly and timely filed and recorded in the proper official records and creates a valid lien, with the priority purported to be created thereby, on the Underlying Property;

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(g) the Underlying Property is covered by an ALTA Loan Policy of Title Insurance issued by a financially sound and reputable title insurance company, which policy is assignable and insures that the applicable Mortgage is a valid first lien (or second lien in the case of second mortgages) on such Underlying Property, subject only to standard exceptions stated therein;

(h) the Underlying Property is covered by fire and hazard insurance policy issued by a Qualified Insurer with extended coverage containing a mortgagee's loss payable clause and suitable provisions

for payment of mortgages in order of priority in an amount not less than the least of (i) the outstanding principal balance of the Mortgage Loan and the related senior mortgage, if any, (ii) the full insurable value of the Underlying Property and (iii) the minimum amount required to compensate for damage or loss on a replacement cost basis; and

(i) any Underlying Property located in an area identified in the Federal Register by the Flood Emergency Management Agency as having special flood hazard is covered by a flood insurance policy issued by a Qualified Insurer containing a mortgagee's loss payable clause and suitable provisions for payment of mortgages in order of priority in an amount representing coverage not less than the least of (i) the outstanding principal balance of the Mortgage Loan and the related senior mortgage, if any, (ii) the full insurable value of the Underlying Property and (iii) the minimum amount of insurance available under the National Flood Insurance Act of 1968, as amended.

"Regular Payment Date" shall mean the fifth Business Day of each calendar month after the date hereof.

"Related Litigation" shall have the meaning set forth in Section 8.12(b)(i).

"Reportable Event" means (i) a reportable event described in Section 4043 of ERISA and regulations thereunder, (ii) a withdrawal by a substantial employer from a Plan to which more than one employer contributes, as referred to in Section 4063(b) of ERISA, (iii) a cessation of operations at a facility causing more than twenty percent (20%) of Plan participants to be separated from

employment, as referred to in Section 4062(e) of ERISA, or (iv) a failure to make a required installment or other payment with respect to a Plan when due in accordance with Section 412 of the Code or Section 302 of ERISA that causes the total unpaid balance of missed installments and payments (including unpaid interest) to exceed \$750,000.

"Security Agreement" shall have the meaning set forth in Section 4.1(b).

"Solvent" means, with respect to any Person at any time, that as such time (a) the sum of the debts and liabilities (including, without limitation, contingent liabilities) of such Person is not greater than all of the assets of such Person at a fair valuation, (b) the present fair salable value of the assets of such Person is not less than the amount that will

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be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person has not incurred, will not incur, does not intend to incur, and does not believe that it will incur, debts or liabilities (including, without limitation, contingent liabilities) beyond such person's ability to pay as such debts or liabilities mature, (d) such Person is not engaged in, and is not about to engage in, a business or a transaction (other than the underwriting, origination, processing, purchase, sale and/or

securitization of mortgage loans secured by residential real estate and the making of warehousing lines of credit and other credit facilities to enable others to originate such loans) for which such Person's property constitutes or would constitute unreasonably small capital, and (e) such Person is not otherwise insolvent as defined in, or otherwise in a condition that could in any circumstances then or subsequently render any transfer, conveyance, obligation or act then made, incurred or performed by it avoidable or fraudulent pursuant to, any Law that may be applicable to such Person pertaining to bankruptcy, insolvency or creditors' rights (including, but not limited to, the Bankruptcy Code of 1978, as amended, and, to the extent applicable to such Person, the Uniform Fraudulent Conveyance Act, Uniform Fraudulent Transfer Act, or any other applicable Law pertaining to fraudulent conveyances or fraudulent transfers or preferences).

"Standard Notice" shall mean an irrevocable notice provided to Lender on a Business Day that is at least one Business Day in advance. Standard Notice must be provided no later than 10:00 a.m., Kansas City time, on the last day permitted for such notice.

"Subsidiary" of a Person at any time shall mean any corporation of which a majority (by number of shares or number of votes) of any class of outstanding capital stock normally entitled to vote for the election of one or more directors (regardless of any contingency that does or may suspend or dilute the voting rights of such class) is at such time owned directly or indirectly, beneficially or of record, by such Person or one or more Subsidiaries of such Person, and/or any trust of which a majority of the beneficial interest is at such time owned directly or indirectly, beneficially or of record, by such Person or one or more Subsidiaries of such Person.

"Taxes" shall have the meaning set forth in Section 2.8.

"Underlying Property" shall mean the real property, including the improvements thereon, upon which a Mortgage creates a lien securing a Mortgage Loan.

1.2. Construction. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, the singular the plural and the part the plural; and "or" has the inclusive meaning represented by the phrase "and/or"; and "property" includes all properties and assets of any kind or nature, tangible or intangible, real, personal or mixed. References in this Agreement to "determination" (and similar terms) by Lender include good faith estimates by Lender (in the case of quantitative determinations) and good faith beliefs by Lender (in the case of qualitative

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determinations). The words "hereof," "herein," "hereunder" and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The section and other headings contained in this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect. Section, subsection, schedule and exhibit references are to this Agreement

unless otherwise specified.

### 1.3. Accounting Principles.

(a) As used herein, "GAAP" shall mean generally accepted accounting principles in the United States, applied on a consistent basis.

(b) Except as otherwise provided in this Agreement, all computations and determinations as to accounting or financial matters shall be made, and all financial statements to be delivered pursuant to this Agreement shall be prepared, in accordance with GAAP; and all accounting or financial terms shall have the meanings ascribed to such terms by GAAP.

(c) If and to the extent that the financial statements generally prepared by Borrower apply accounting principles other than GAAP, all financial statements referred to in this Agreement or any other Loan Document shall be delivered in duplicate, one set based on the accounting principles then generally applied by Borrower and one set based on GAAP. To the extent this Agreement or such other Loan Document requires financial statements to be accompanied by an opinion of independent accountants, each set of financial statements shall be accompanied by such opinion.

## ARTICLE 2 -- THE LOANS

### 2.1. The Loans.

(a) Loan Commitment. Subject to and upon the terms and conditions and relying upon the representations and warranties herein set forth, Lender agrees (such agreement being herein called the "Loan Commitment") to make Loans to Borrower at any time or from time to time on or after the Closing Date to, but not including, the Maturity Date in an aggregate amount not exceeding at any one time outstanding the lesser of (i) Lender's Committed Amount and (ii) the maximum aggregate outstanding principal balance of Loans permitted under Section 6.12 at such time. Lender's "Committed Amount" at any time shall be equal to \$20,000,000, as such amount may be increased under Section 2.2 at such time.

(b) Nature of Credit. Within the limits of time and amount set forth in this Section 2.1, and subject to the other provisions of this Agreement, Borrower may borrow, repay and reborrow Loans hereunder.

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(c) Note. The obligation of Borrower to repay the unpaid principal amount of the Loans and to pay interest thereon shall be evidenced in part by a promissory note of Borrower, dated the Closing Date, in substantially the form attached hereto as Exhibit A, with the blanks appropriately filled, payable to the order of Lender in a face amount equal to the Committed Amount of Lender.

(d) Maturity. To the extent not due and payable earlier, the Loans shall be due and payable on the Maturity Date.

### 2.2. Commitment Fee; Increase in the Committed Amount.

(a) Commitment Fee. Borrower agrees to pay to Lender a commitment fee (the "Commitment Fee") for each day from and including the Closing Date to but not including the Maturity Date equal to 0.25% per annum on the amount (not less than zero) equal to the unborrowed portion of the Committed Amount on such day. Such Commitment Fee shall be due and payable for the preceding calendar month for which such fee has not been paid on (i) each Regular Payment Date and (ii) the Maturity Date.

(b) Optional Increase of the Committed Amount. Borrower may increase the Committed Amount of Lender to (i) \$50,000,000 at any time during the 3-month period commencing 9 months from and after the date of this Agreement and (ii) \$100,000,000 at any time during the 3-month period commencing 21 months from and after the date of this Agreement. Increases in the Committed Amount shall be made by providing not less than 60 days notice (which notice shall be irrevocable) to such effect to Lender, which notice shall specify the date during the applicable three-month period on which such increase shall take effect. After the date specified in such notice the Commitment Fee shall be calculated upon the Committed Amount as so increased. Upon the increase of the Committed Amount pursuant to this Section 2.2(b), Borrower shall execute and deliver a new Note reflecting such increased Committed Amount and upon delivery of such Note Lender shall cancel and deliver to Borrower the Note reflecting the prior Committed Amount.

2.3. Making of Loans. Whenever Borrower desires that Lender make a Loan, Borrower shall provide Standard Notice to Lender setting forth the following information:

(a) The date, which shall be a Business Day, on which such proposed Loan is to be made;

(b) A list of Qualified Mortgage Loans and Exception Loans to be funded by such proposed Loan; and

(c) The principal amount of such proposed Loan, which amount shall not exceed the sum of (i) the aggregate outstanding principal amount of all Qualified Mortgage Loans set forth in the list referred to in the immediately foregoing

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subclause (b) and (ii) 95% of the aggregate outstanding principal amount of all Exception Loans set forth in the list referred to in the immediately foregoing subclause (b).

Standard Notice having been so provided, unless any applicable condition specified in Article 4 has not been satisfied, on the date specified in such Standard Notice Lender shall make the proceeds of the Loan available to Borrower

at Lender's Office by federal wire transfer of funds immediately available at such domestic account designated by Borrower in such Standard Notice, no later than 12:00 Noon, Kansas City time, in funds immediately available at such office.

2.4. Interest Rate. The unpaid principal amount of the Loans shall bear interest for each day until due at a fluctuating rate per annum (the "Adjusted LIBOR Rate") equal to two percent (2%) per annum above the London interbank offered rate for one month United States dollar deposits as published in the Wall Street Journal (the "LIBOR Rate"). Any change in the Adjusted LIBOR Rate derived from a change in the LIBOR Rate shall take effect on the day on which the change in the LIBOR Rate occurred. Interest on the unpaid principal amount of the Loans shall be calculated on the basis of the actual number of days elapsed in a year of 360 days.

2.5. Loan Principal Repayments. (a) On the Maturity Date, Borrower shall pay to Lender the entire outstanding principal balance of the Loans together with all accrued and unpaid interest thereon, and all fees and charges payable, if any, in connection therewith. Borrower shall have the right at its option from time to time to prepay the Loans in whole or in part without premium or penalty.

(b) If at any time the aggregate outstanding principal balance of Loans hereunder exceeds the amount permitted by Section 6.12, Borrower shall, on the date such excess occurs, prepay such amount of the Loans so as to eliminate such excess.

2.6. Interest Payment Dates. Interest on the Loans shall be due and payable (i) for each calendar month on the Regular Payment Date next following such calendar month and (ii) on the Maturity Date. After maturity of the Loans (by acceleration or otherwise), interest on the Loans shall be due and payable on demand.



2.7. Payments Generally; Interest on Overdue Amounts.

(a) Payments Generally. All payments and prepayments to be made by Borrower in respect of principal, interest, fees, indemnity, expenses or other amounts due from Borrower hereunder or under any other Loan Document shall be payable in Dollars by 12:00 o'clock noon, Kansas City time, on or before the day when due without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived, and an action therefor shall immediately accrue, without setoff, counterclaim, withholding or other deduction, reduction or diminution of any kind or nature. Such payments shall be made to Lender at its Office in Dollars in funds immediately available

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at such Office. Any payment or prepayment received by Lender after 12:00 o'clock noon, Kansas City time, on any day shall be deemed to have been received on the next succeeding Business Day.

(b) Interest on Overdue Amounts. To the extent permitted by

Law, after there shall have become due (by acceleration or otherwise) principal, interest, fees, indemnity, expenses or any other amounts due from Borrower hereunder or any other Loan Document, such amounts shall bear interest for each day until paid (before and after judgment), payable on demand, at a rate per annum (in each case based on a year of 360 days and actual days elapsed) that for each day shall be equal to 2% above the then-current Adjusted LIBOR Rate. To the extent permitted by Law, interest accrued on any amount that has become due hereunder or under any Loan Document shall compound on a day-to-day basis, and hence shall be added daily to the overdue amount to which such interest relates.

2.8. Taxes.

(a) Payments Net of Taxes. All payments made by Borrower under this Agreement or any other Loan Document shall be made free and clear of, and without reduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withhold or assessed by any Governmental Authority, and all liabilities with respect thereto, excluding franchise taxes or taxes imposed on or measured by the net income of Lender (all such nonexcluded taxes, levies, imposts, deductions, charges or withholdings being hereinafter referred to as "Taxes"). If any Taxes or withholdings with respect to Taxes are required to be withheld or deducted from any amounts payable to Lender under this Agreement or any other Loan Document, Borrower shall pay the relevant amount of such Taxes or withholdings and the amounts so payable to Lender shall be increased to the extent necessary to yield to Lender (after payment of all Taxes) interest on any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement and the other Loan Documents. Whenever any Taxes are paid by Borrower with respect to payments made in connection with this Agreement or any other Loan Document, as promptly as possible thereafter, Borrower shall send to Lender a certified copy of an original official receipt received by Borrower showing payment thereof.

(b) Indemnity. Borrower hereby indemnifies Lender for the full amount of all Taxes attributable to payments by or on behalf of Borrower hereunder or under any of the other Loan Documents, any Taxes paid by Lender, and any present or future claims, liabilities or losses with respect to or resulting from any omission to pay or delay in paying any Taxes (including any incremental Taxes, interest or penalties that may become payable by Lender as a result of any failure to pay such Taxes), whether or not such Taxes were correctly or legally asserted. Such indemnification shall be made within 15 days from the date Lender makes written demand therefor. Lender must notify Borrower promptly in writing of the event giving rise to such indemnification and give

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Borrower sole control of the defense and all negotiations for its settlement and compromise.

2.9. Usury. In no event shall the total of all amounts payable hereunder, whether interest or of other charges that may or might be

characterized as interest, exceed the maximum rate or amount permitted to be

charged under applicable Law. If Lender receives any payment that is or would be in excess of the interest or other charge permitted to be charged under applicable Law, the portion of the payment that is in excess of the permissible amount shall have been, and shall be deemed to have been, a payment in reduction in principal of the Loans or, if such portion exceeds the aggregate unpaid principal amount of the Loans, the excess shall be refunded to Borrower.

#### ARTICLE 3 -- REPRESENTATIONS AND WARRANTIES

Borrower hereby represents and warrants to Lender as follows:

3.1. Organizational Status. Borrower (i) is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Georgia, (ii) has the requisite power and authority to own its property and to transact the business in which it is engaged, and (iii) is duly qualified or licensed to do business in good standing under the laws of each jurisdiction where its ownership of its properties or the nature of its activities or both makes such qualification or licensing necessary or advisable, except where the failure to be so licensed or qualified, individually or in the aggregate, could not have a Material Adverse Effect.

3.2. Power and Authorization. Borrower has the requisite power and authority to execute, deliver, perform, and take all actions contemplated by, the Loan Documents and Other Transaction Documents and all such actions have been duly and validly authorized by all necessary proceedings on its part. Without limitation of the foregoing, Borrower has the requisite power and authority to borrow pursuant to the Loan Documents to the fullest extent permitted hereby and thereby from time to time, and has taken all necessary action to authorize such borrowings.

3.3. Execution and Binding Effect. This Agreement and each of the other Loan Documents and the Other Transaction Documents has been duly and validly executed and delivered by Borrower. This Agreement and each other Loan Document and Other Transaction Document when executed and delivered by Borrower will constitute the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors' rights or by general principles of equity limiting the availability of equitable remedies.

3.4. Governmental Approvals and Filings. No approval, order, consent, authorization, certificate, license, permit or validation of, or exemption or other action by,

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or filing, recording or registration with, or notice to, any Governmental Authority (collectively, "Governmental Action") is or will be necessary in connection with the execution and delivery of any Loan Document or Other Transaction Document by Borrower, consummation by Borrower of the transactions herein or therein contemplated, performance of or compliance with the terms

and conditions hereof or thereof by Borrower (other than such filings as are necessary to perfect a security interest), or to ensure the legality, validity, binding effect, enforceability or admissibility in evidence hereof or thereof.

3.5. Absence of Conflicts. Neither the execution and delivery of any Loan Document or Other Transaction Document by Borrower, nor consummation by Borrower of the transactions herein or therein contemplated, nor performance or compliance with the terms and conditions hereof or thereof by Borrower, does or will

(a) violate or conflict with any Law, or

(b) violate, conflict with or result in a breach of any term or condition of, or constitute a default under, or result in (or give rise to any right, contingent or otherwise, of any Person to cause) any termination, cancellation, prepayment or acceleration of performance of, or result in the creation or imposition of (or give rise to any obligation, contingent or otherwise, to create or impose) any Lien upon

any property of Borrower (except for any Lien in favor of Lender securing the Obligations) pursuant to, or otherwise result in (or give rise to any right, contingent or otherwise, of any Person to cause) any change in any right, power, privilege, duty or obligation of Borrower under or in connection with,

(i) the Articles of Organization or Operating Agreement (or other constituent documents) of Borrower,

(ii) any agreement or instrument creating evidencing, securing or guaranteeing any Indebtedness to which Borrower is a party or by which Borrower or its properties (now owned or hereafter acquired) may be subject or bound, or

(iii) any other agreement or instrument or arrangement to which Borrower is a party or by which Borrower or any of its property or assets may be subject or bound, except, in the case of this clause (b)(iii), for matters that, individually or in the aggregate, could not have a Material Adverse Effect.

3.6. Accurate and Complete Disclosure. All information heretofore, contemporaneously or hereafter provided (orally or in writing) by or on behalf of Borrower to Lender pursuant to in connection with any Loan Document or any transaction contemplated hereby or thereby is or will be (as the case may be) true and accurate in all material respects on the date as of which such information is dated (or, if

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not dated, when received by Lender) and does not or will not (as the case may be) omit to state any material fact necessary to make such information not misleading at such time in light of the circumstances in which it was provided. Borrower has disclosed to Lender in writing every fact or

circumstance known to Borrower that has, or which could have, a Material Adverse Effect.

3.7. Solvency. On and as of the Closing Date, and on the date of each Loan and after giving effect to application of the proceeds thereof in accordance with the terms of the Loan Documents, Borrower is and will be Solvent.

3.8. Partnerships, Subsidiaries, Etc. Borrower is neither a partner (general or limited) of any partnership nor a party to any joint venture agreement. Borrower does not own (beneficially or of record) any equity or similar interest in any Person (including but not limited to any interest pursuant to which Borrower has or may in any circumstance have an obligation to make capital contributions to, or be generally liable for or on account of the liabilities, acts or omissions of such other Person).

3.9. Litigation. There is no pending or threatened action, suit, proceeding or investigation by or before any Governmental Authority against or affecting Borrower, except for matters that, if adversely decided, individually or in the aggregate, could not have a Material Adverse Effect.

3.10. Absence of Events of Default. No event has occurred and is continuing and no condition exists that constitutes an Event of Default or Potential Default.

3.11. Absence of Other Conflicts. Borrower is not in violation of or conflict with, or is subject to any contingent liability on account of any violation of or conflict with:

(a) any Law,

(b) its Articles of Organization or Operating Agreement (or other constituent documents), or

(c) any agreement or instrument or arrangement to which it is party or by which it or any of its properties (now owned or hereafter acquired) may be subject or bound,

except for matters that, individually or in the aggregate, could not have a Material Adverse Effect.

3.12. Insurance. Borrower maintains with financially sound and reputable insurers insurance with respect to its properties and business and against at least such liabilities, casualties and contingencies and in at least such types and amounts as is

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customary in the case of corporations or limited liability companies engaged in the same or a similar business or having similar properties similarly situated.

3.13. Title to Property; Liens. Borrower has good and marketable title in fee simple to all real property owned or purported to be owned by it and good title to all other property of whatever nature owned or purported to be owned by it, including but not limited to all property reflected in the most recent balance sheet submitted pursuant to Section 5.1(a) (except as sold or otherwise disposed of in the ordinary course of business after the date of such balance sheet and except for such defects in title that, individually or in the aggregate, could not have a Material Adverse Effect). None of the properties and assets of Borrower are subject to any Liens, except for Liens that are permitted pursuant to Section 6.2.

3.14. Intellectual Property. Borrower owns, or is licensed or otherwise has the right to use, all of the patents, trademarks, service marks, names (trade, service, fictitious or otherwise), copyrights, technology (including but not limited to computer programs and software), processes, data bases and other rights, free from burdensome restrictions, necessary to own and operate its properties and to carry on its business as presently conducted and presently planned to be conducted without conflict with the rights of others, except for matters that, individually or in the aggregate, could not have a Material Adverse Effect.

3.15. Taxes. All tax and information returns required to be filed by or on behalf of Borrower have been properly prepared, executed and filed. All taxes, assessments, fees and other governmental charges upon Borrower or upon its properties, income, sales or franchises that are due and payable have been paid, other than those not yet delinquent and payable without premium or penalty, and except for those being diligently contested in good faith by appropriate proceedings, and in each case adequate reserves and provisions for taxes have been made on the books of Borrower.

3.16. Employee Benefits. Borrower has no liability (contingent or otherwise) for or in connection with, and none of its properties is subject to a Lien in connection with, any Pension-Related Event.

3.17. Environmental Matters.

(a) Borrower and each of its Environmental Affiliates is and has been in full compliance with all applicable Environmental Laws, except for matters that, individually or in the aggregate, could not have a Material Adverse Effect. There are no circumstances that may prevent or interfere with such full compliance in the future.

(b) Borrower and each of its Environmental Affiliates have all Environmental Approvals necessary or desirable for the ownership and operation of their respective properties, facilities and businesses as presently owned and operated and as

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presently proposed to be owned and operated, except for matters that, individually or in the aggregate, would not have a Material Adverse Effect.

(c) There is no Environmental Claim pending or threatened, and there are no past or present acts, omissions, events or circumstances (including

but not limited to any dumping, leaching, deposition, removal, abandonment, escape, emission, discharge or release of Environmental Concern Material at, on or under any facility or property now or previously owned, operated or leased by Borrower or any of its Environmental Affiliates) that could form the basis of any Environmental Claim against Borrower or any of its Environmental Affiliates, except for matters that, if adversely decided, individually or in the aggregate, could not have a Material Adverse Effect.

(d) No facility or property now or previously owned, operated or leased by Borrower or any of its Environmental Affiliates is an Environmental Cleanup Site. Neither Borrower nor any of its Environmental Affiliates has directly transported or directly arranged for the transportation of any Environmental Concern Materials to any Environmental Cleanup Site. No Lien exists, and no condition exists that could result in the filing of a Lien, against any property of Borrower or any of its Environmental Affiliates under any Environmental Law.

3.18. Regulatory Restrictions. Borrower is not (a) an "investment company" or a company "controlled" by an investment company within the meaning of the Investment Company Act of 1940, as amended, (b) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended, (c) subject to regulation under the Federal Power Act, the Interstate Commerce Act, or the Investment Company Act of 1940, as amended, or (d) subject to any other Law that purports to restrict or regulate its ability to borrow money or obtain credit.

3.19. Indebtedness. Borrower has no liabilities or obligations with respect to Indebtedness other than Indebtedness set forth in Schedule 3.19.

3.20. Ownership of Mortgage Loans; Servicing Agreements. As of the date of this Agreement, Borrower (i) neither owns, nor has a security interest in, any loan that is secured by a mortgage, deed of trust or equivalent consensual security interest in real property and (ii) is not a party to any agreement with a third party servicer pertaining to the servicing of Mortgage Loans owned by Borrower.

3.21. H&R Block Franchisee Loans. As of the date of this Agreement, (i) there are no outstanding advances, loans or extensions of credit from Borrower to any H&R Block Franchisee or any Subsidiary or Affiliate of an H&R Block Franchisee, and (ii) Borrower has not made or entered into any written agreement pertaining to the making of any of the foregoing advances, loans or extensions of credit.

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#### ARTICLE 4 -- CONDITIONS OF LENDING

4.1. Conditions to Effectiveness. This Agreement shall be and become effective on such date (herein referred to as the "Closing Date") when, and only when, the following conditions precedent have all been satisfied:

(a) Agreement; Note. This Agreement shall have been duly executed by Borrower and Lender, and Lender shall have received an executed Note conforming to the requirements hereof, duly executed on behalf of Borrower.

(b) Security Agreement. Lender shall have received a Security Agreement substantially in the form of Exhibit B hereto (the "Security Agreement"), duly executed on behalf of Borrower, as well as all documents necessary to perfect the security interest contemplated by such Security Agreement, duly executed on behalf of Borrower.

(c) Option and Warrant Agreement. Lender, Borrower and W.D. Everitt, Jr. shall have entered into an Option and Warrant Agreement in such form acceptable to Lender in its sole discretion, pursuant to which Lender shall have an option to purchase 40% of the equity interest of Borrower for a purchase price of \$4,000,000.

(d) Loan Purchase Agreement. Lender and Borrower shall have entered into a Loan Purchase Agreement in such form acceptable to

Lender in its sole discretion, which Loan Purchase Agreement shall provide for, among other things, Lender to purchase 100% of Qualified Mortgage Loans offered to it by Borrower (provided that Borrower shall offer not less than 80% in principal amount of Qualified Mortgage Loans) (the "Loan Purchase Agreement").

(e) Proceedings. Lender shall have received certificates signed by each Member dated as of the Closing Date as to (i) true copies of the Articles of Organization and the Operating Agreement (or other constituent documents) of Borrower in effect on such date (which documents shall have been amended to Lender's satisfaction), (ii) true copies of all requisite action taken by Borrower authorizing the execution, delivery and performance of the Loan Documents and Other Transaction Documents and (iii) the incumbency and signature of the Manager of Borrower executing this Agreement and the other Loan Documents and Other Transaction Documents. Lender shall have received a certificate from the Secretary of State of Georgia dated not more than 45 days before the Closing Date showing the good standing of Borrower in the State of Georgia.

(f) Legal Opinion of Counsel to Borrower. Lender shall have received an opinion addressed to Lender, dated the Closing Date, of Fleming, Drummond & Ray, a limited liability company, counsel to Borrower in substantially the form

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attached hereto as Exhibit C; Borrower hereby expressly instructs such counsel to prepare such opinion and to deliver such opinion to Lender.

4.2. Conditions to All Loans. The obligation of Lender to make any Loan is subject to performance by Borrower of its obligations to be performed hereunder and under the other Loan Documents and the Other Transaction Documents on or before the date of such Loan, satisfaction of the conditions precedent set forth herein and in the other Loan Documents (including without limitation the conditions precedent to the effectiveness of this Agreement set forth in Section 4.1) and to the satisfaction of the following further conditions precedent:

(a) Representations and Warranties. Each of the representations and warranties made by Borrower herein and in each other Loan Document shall be true and correct in all material respects on and as of the date of such Loans as if made on and as of such date, both before and after giving effect to the Loans requested to be made on such date.

(b) No Defaults. No Event of Default or Potential Default shall have occurred and be continuing on the date of such Loans or after giving effect to the Loans requested to be made on such date.

(c) No Violations of Law, etc. Neither the making nor use of the Loans shall cause Lender to violate or conflict with any Law.

Each request by Borrower for any Loan shall constitute a representation and warranty by Borrower that the conditions set forth in this Section 4.2 have been satisfied as of the date of such request. Failure of Lender to receive notice from Borrower to the contrary before the Loan pertaining to such Loan is made shall constitute a further representation and warranty by Borrower that the conditions set forth in this Section 4.2 have been satisfied as of the date such Loan is made.

#### ARTICLE 5 -- AFFIRMATIVE COVENANTS

Except as otherwise provided in this Article 5, so long as Lender is obligated to make Loans to Borrower under this Agreement or so long as there remains outstanding any Obligations:

##### 5.1. Basic Reporting Requirements.

(a) Annual Audit Reports. As soon as practicable, and in any event within 120 days after the close of each fiscal year of Borrower, Borrower

shall furnish or cause to be furnished to Lender statements of income, cash flows and changes in owners' equity of Borrower for such fiscal year and a statement of financial position as of the close of such fiscal year, and notes to each, all in reasonable detail, setting forth in comparative form the corresponding figures for the preceding fiscal year. Such financial

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statements shall (i) for Borrower's fiscal year ended December 31, 1995, be

accompanied by an opinion of independent certified accountants selected by Borrower and (ii) for each of Borrower's fiscal years ended after December 31, 1995, be accompanied by an opinion of independent certified public accountants of recognized national standing selected by Borrower. Such opinion shall be free of exceptions or qualifications not acceptable to Lender and in any event shall be free of any exception or qualification that relates to a limited scope of examination. In addition, such opinion for each of Borrower's fiscal years ended after December 31, 1995 shall be free of any exception or qualification that is of "going concern" or like nature. Such opinion in any event shall contain a written statement of such accountants that (i) such accountants examined such financial statements in accordance with generally accepted auditing standards considered necessary under the circumstances and (ii) in the opinion of such accountants such financial statements present fairly the financial position of Borrower as of the end of such fiscal year and the results of its operations and its cash flows and changes in owners' equity for such fiscal year, in conformity with GAAP.

(b) Mortgage Loan Reporting. On each Business Day before the Maturity Date, Borrower shall submit to Lender a report substantially in the form attached hereto as Exhibit D with respect to the immediately preceding Business Day.

(c) Other Information. Borrower shall furnish to Lender, as soon as available but not later than 30 days after the end of each calendar month, a copy of such monthly financial reports as prepared by Borrower in its normal course of business for such month. In addition, Borrower shall promptly furnish to Lender such other financial information and in such form as Lender may reasonably request from time to time.

(d) Notice of Certain Events. Promptly upon becoming aware of any of the following, Borrower shall give Lender notice thereof, together with a written statement setting forth the details thereof and any action with respect thereto taken or proposed to be taken by Borrower:

(i) any Event of Default or Potential Default;

(ii) any material adverse change in the business, operations, or condition (financial or otherwise) or prospects of Borrower other than any proposed, but yet-to-be enacted, changes in Law;

(iii) any pending or threatened action, suit, investigation or proceeding by or before any Governmental Authority against or affecting Borrower, except for matters that if decided adversely, individually or in the aggregate, could not have a Material Adverse Effect; or

(iv) any Pension-Related Event, which notice shall be accompanied by a copy of any notice, request, return, petition or other document received by Borrower or any Controlled Group Member from any Person, or that has been or

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is to be filed with or provided to any Person (including, without limitation, the Internal Revenue Service, PBGC or any Plan beneficiary, alternate payee or employer representative), in connection with such Pension-Related Event.

(v) any Environmental Claim pending or threatened against Borrower or any of its Environmental Affiliates, or any past or present acts, omissions, events or circumstances (including but not limited to

any dumping, leaching, deposition, removal, abandonment, escape, emission, discharge or release of any Environmental Concern Material at, or under any facility or property now or previously owned, operated or leased by Borrower or any of its Environmental Affiliates) that could form the basis of such Environmental Claim, which Environmental Claim, if resolved adversely, individually or in the aggregate with other Environmental Claims, could have a Material Adverse Effect.

(e) Visitation; Verification; Copies of Mortgage Documents.

Borrower shall permit such Persons as Lender may designate from time to time to visit and inspect any of the properties of Borrower, to examine Borrower's books and records and take copies and extracts therefrom and to discuss its affairs with its Manager, officers, Members or other equity owners, employees and independent accountants at such times and as often as Lender may reasonably request. Borrower authorizes its Manager, such officers, Members or other equity owners and independent accountants to discuss with Lender the affairs of Borrower. In addition, Borrower shall provide copies of Mortgage Documents pertaining to Mortgage Loans owned by Borrower as Lender may reasonably request from time to time.

5.2. Insurance. Borrower shall maintain with financially sound and reputable insurance companies, insurance with respect to its properties and business and against such liabilities, casualties and contingencies and of such types and in such amounts as is customary in the case of corporations or limited liability companies engaged in the same or similar businesses or having similar properties similarly situated.

5.3. Payment of Taxes and Other Potential Charges and Priority Claims. Borrower shall pay or discharge

(a) on or prior to the date on which penalties attach thereto, all taxes, assessments and other governmental charges imposed upon it or any of its properties;

(b) on or prior to the date when due, all lawful claims of materialmen, mechanics, carriers, warehousemen, landlords and other like Persons that, if unpaid, might result in the creation of a Lien upon any such property; and

(c) on or prior to the date when due, all other lawful claims that, if unpaid, might result in the creation of a Lien upon any such property or that, if unpaid,

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might give rise to a claim entitled to priority over general creditors of Borrower in a case under Title 11 (Bankruptcy) of the United States Code, as amended;

provided that unless and until foreclosure, distraint, levy, sale or similar proceedings shall have been commenced, Borrower need not pay or discharge any such tax, assessment, charge or claim so long as (x) the validity thereof is contested in good faith and by appropriate proceedings diligently conducted and (y) such reserves or other appropriate provisions as may be required by GAAP shall have been made therefore.

5.4. Preservation of Organizational Status. Borrower shall maintain its status as a limited liability company duly organized, validly existing and in good standing under the laws of the State of Georgia, and to be duly qualified to do business in good standing in all jurisdictions in which the ownership of its properties or the nature of its business or both make such qualification necessary or advisable, except for matters that, individually or in the aggregate, could not have a Material Adverse Effect.

5.5 Governmental Approvals and Filings. Borrower shall keep and maintain in full force and effect all Governmental Actions necessary or advisable in connection with execution and delivery of any Loan Document or Other Transaction Document by Borrower, consummation by Borrower of the transactions herein or therein contemplated, performance of or compliance with the terms and conditions hereof or thereof by Borrower or to ensure the legality, validity, binding effect, enforceability or admissibility in evidence hereof or thereof.



5.6. Maintenance of Properties and Mortgage Loans. Borrower shall maintain in good repair, working order and condition the properties now or hereafter owned, leased or otherwise possessed by it and shall make all necessary and proper repairs, renewals, replacements, additions and improvements thereto so that the business carried on in connection therewith may be properly and advantageously conducted at all times. Borrower shall take, or cause to be taken, all steps and actions necessary for all Mortgage Loans owned by it to maintain their status as Qualified Mortgage Loans or Exceptions Loans, as the case may be.

5.7. Avoidance of Other Conflicts. Borrower shall not violate or conflict with, be in violation of or conflict with, or be or remain subject to any liability (contingent or otherwise) on account of any violation or conflict with

(a) any Law,

(b) its Articles of Organization or Operating Agreement (or other constituent documents), or

(c) any agreement or instrument to which it is party or by which it or any of its properties (now owned or hereafter acquired) may be subject or bound,

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except for matters that could not, individually or in the aggregate, have a Material Adverse Effect.

5.8. Financial Accounting Practices. Borrower shall make and keep books, records and accounts that, in reasonable detail, accurately and fairly reflect its transactions and dispositions of its assets and maintain a system of internal accounting controls sufficient to provide reasonable assurances that (a) transactions are executed in accordance with management's general or specific authorization, (b) transactions are recorded as necessary to (i) permit preparation of financial statements in conformity with GAAP and (ii) maintain accountability for assets, (c) access to assets is permitted only in accordance with management's general or specific authorization and (d) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

5.9 Use of Proceeds. Borrower shall apply the proceeds of all Loans hereunder only for the purpose (and for no other purpose) of (i) funding Qualified Mortgage Loans and Exception Loans originated by a Subsidiary or Affiliate of H&R Block, Inc. or a Subsidiary or Affiliate of an H&R Block Franchisee (but only to the extent (A) such Qualified Mortgage Loans and Exception Loans are purchased by Borrower within 25 Business Days after the date such Qualified Mortgage Loans and Exception Loans are funded or (B) the advances, loans or extensions of credit made by Borrower to fund such Qualified Mortgage Loans and Extension Loans are repaid to Borrower within 25 Business Days after the date such Qualified Mortgage Loans and Exception Loans are funded) and (ii) making or purchasing Qualified Mortgage Loans and Exception Loans; provided that the amount of Exception Loans that may be owned by Borrower on any day shall be subject to the provisions of Section 6.6. Borrower shall not use the proceeds of any Loans hereunder directly or indirectly for any unlawful purpose or in any manner inconsistent with any other provision of any Loan Document.

5.10. Real Property. Upon acquisition by Borrower of any Underlying Property (whether pursuant to foreclosure or deed in lieu of foreclosure) or any time thereafter, Borrower shall at Lender's request (i) execute and deliver a first priority mortgage or deed of trust, in such form as designated by Lender, in favor of Lender covering such Underlying Property and (ii) deliver an ALTA-form title insurance policy naming Lender as insured mortgagee, issued by a title insurance company acceptable to Lender, in an amount not less than the fair market value of such Underlying Property (as determined by Lender in its reasonable discretion), insuring that Lender has a first mortgage, with such endorsements as may be required by Lender and with no exceptions or exclusions other than standard exceptions or exclusions or as may be approved by Lender.

5.11. Servicing of Mortgage Loans. Borrower covenants to service, or to cause a third-party servicer to service, at Borrower's sole cost and expense all Mortgage Loans owned by Borrower in accordance with prudent residential mortgage loan servicing standards.

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5.12. Delivery of Notes. (a) Borrower shall cause to be delivered to Lender (or such third party designated by Lender in writing) each Mortgage Note (i) pertaining to a Mortgage Loan owned by Borrower or (ii) in which Borrower has been granted a security interest. Each such Mortgage Note shall be delivered directly to Lender (i) with respect to Mortgage Loans purchased by Borrower, by the Person from whom Borrower purchased the applicable Mortgage Loan, such delivery to be made concurrently with the purchase by Borrower of such Mortgage Loan and (ii) with respect Mortgage Notes in which Borrower has been granted a security interest, by the Person that processed the origination of the applicable Mortgage Loan, such delivery to be made within one day after the closing of such Mortgage Loan. Lender acknowledges and agrees that any Mortgage Note in Lender's possession with respect to which Borrower has a security interest (other than a Mortgage Note pertaining to a Mortgage Loan purchased by Borrower) shall be held by Lender as a bailee of Borrower and that this Agreement shall be deemed notification of Borrower's security interest in such Mortgage Note.

(b) Borrower shall deliver to Lender (or such third party designated by Lender in writing) each promissory note pertaining to advances, loans and extensions of credit to H&R Block Franchisees or Subsidiaries or Affiliates of H&R Block Franchisees permitted by Section 6.6. Each such promissory note shall be delivered directly to Lender within one day after the closing or making of such advance loan or extension of credit.

(c) Borrower shall deliver to Lender a Collateral Assignment of Mortgage substantially in the form of Exhibit E attached hereto, duly executed and acknowledged by Borrower, with respect to each Mortgage (i) pertaining to a Mortgage Loan owned by Borrower or (ii) in which Borrower has been granted a security interest. Each such Collateral Assignment of Mortgage shall be delivered to Lender within seven days after the closing of the applicable Mortgage Loan.

5.13. Further Assurances. Borrower shall promptly, upon the request of Lender, at Borrower's expense, cause, make, execute, endorse, acknowledge, file and/or deliver to Lender from time to time such assignments, conveyances, and financing or continuation statements, and take such further steps relating to the collateral covered by any of the Loan Documents (including, without limitation, the assignment or transfer of such collateral to Lender or such third-party designated by Lender) as Lender may reasonably require.

#### ARTICLE 6 -- NEGATIVE COVENANTS

So long as Lender is obligated to make Loans to Borrower under this Agreement or so long as there remains outstanding any Obligations:

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6.1. Indebtedness. Borrower shall not create, incur, assume or suffer to exist any Indebtedness exceeding an aggregate outstanding principal amount of \$50,000 other than (i) Indebtedness of Borrower under this Agreement, (ii) Indebtedness of Borrower in existence on the date hereof and disclosed on Schedule 3.19 and (iii) Indebtedness secured by Liens permitted pursuant to Section 6.2.

6.2. Liens. Borrower shall not, directly or indirectly, create, incur, assume or suffer to exist any Lien on any of its properties, assets or revenues, whether now owned or hereafter acquired, other than the following:

(i) Liens created under the Loan Documents in favor or

Lender;

(ii) Liens incurred or pledges and deposits made in connection with worker's compensation, unemployment insurance and other social security benefits and Liens to secure the performance of statutory obligations, surety or appeal bonds, performance bonds or other obligations of a like nature, in each case, incurred in the ordinary course of business;

(iii) Liens for taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded (provided that any reserve or other appropriate provision as shall be required in conformity with GAAP shall have been made therefor);

(iv) Liens imposed by Law, such as mechanics' carriers', warehousemen's, materialmen's, and vendors' Liens, incurred in good faith in the ordinary course of business with respect to amounts not yet delinquent or being contested in good faith by appropriate proceedings if a reserve or other appropriate provisions, if any, as shall be required by GAAP shall have been made therefor;

(v) Liens of landlords or mortgagees of landlords, arising solely by operation of Law, on fixtures and movable property located on premises leased by Borrower in the ordinary course of business;

(vi) financing statements filed or recorded with respect to personal property leased by Borrower in the ordinary course of business to the owners of such personal property (provided such financing statements are filed or recorded solely in connection with such leases and not the borrowing of money or the obtaining of advances or credit or Capitalized Lease obligations); and

(vii) Liens arising out of judgments or awards in respect of which it shall in good faith be prosecuting an appeal or proceedings for review and in respect of which it shall have secured a subsisting stay of execution pending such appeal or proceedings for review.

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6.3. Fundamental Changes. Borrower shall not (i) enter into any transaction of merger or consolidation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), (ii) convey, sell, lease, or otherwise transfer all or substantially all of its business, property or assets, whether in one or a series of transactions or (iii) sell, assign, convey or otherwise transfer to any Person a participation or other partial interest in Mortgage Loans or loans made by Borrower as permitted pursuant to clause (ii) of Section 6.6; provided that this Section 6.3 shall not prohibit Borrower from selling its entire ownership interest in Mortgage Loans in the ordinary course of business.

6.4. Transactions with Affiliates. Borrower shall not sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into any contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate (an "Affiliate Transaction"), unless such Affiliate Transaction is on terms that are no less favorable to Borrower than those that would have been obtained in a comparable transaction by Borrower with an unrelated Person; provided that this Section 6.4 shall not be deemed to prohibit the transactions contemplated by any Loan Document or any Other Transaction Document.

6.5. Contingent Obligations. Borrower shall not agree to create, incur, assume, guarantee, endorse or otherwise in any way be or become responsible or liable, directly or indirectly, for any contingent obligations of any other Person.

6.6. Investments, Loans and Advances; Structure. Borrower shall not make any advance, loan, extension of credit or capital contribution to, or purchase any stock, bonds, notes, debentures or other securities or equity interests of, or make any other investments in, any Person except for (i) Qualified Mortgage Loans and Exception Loans made or purchased by Borrower in

the ordinary course of business (provided, however, that at no time shall the aggregate outstanding principal balance of Exception Loans owned by Borrower as of the close of business on any day exceed 10% of the combined aggregate outstanding principal balance of Exception Loans and Qualified Loans owned by Borrower as of the close of business on such day), (ii) advances, loans and extensions of credit to H&R Block Franchisees or Subsidiaries or Affiliates of H&R Block Franchisees solely for the purpose of funding Qualified Mortgage Loans and Exception Loans and solely pursuant written loan agreements in form and substance approved in writing in advance by Lender, (iii) overnight funds with federally chartered and federally insured institutions and (iv) other short-term investments rated A or higher by Standard & Poors, Moody's, Best, Fitch or any other appropriate rating agency and that have a maturity of one year or less. In addition, Borrower shall not form any subsidiary corporation or limited liability company without the prior written consent of Lender and Borrower shall not take any action or forbear from taking any action (including, without limitation, the granting of consents to actions taken or proposed to be taken by others) that would cause Borrower to be taxable as a corporation for federal income tax purposes.

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6.7. Lease Obligations. Borrower shall not create or suffer to exist any obligations for the payment or rent or any property under lease or agreement to lease, except for operating leases entered into by Borrower in the ordinary course of business that provide for aggregate annual rentals that do not exceed \$120,000.

6.8. Restricted Payments. Borrower shall not, directly or indirectly (i) declare or pay any dividend or make any distribution on account of any equity or ownership interest in Borrower other than a Permitted Distribution and other than pursuant to Section 4.01(a) (or applicable successor section) of the Operating Agreement or (ii) purchase, redeem, call or otherwise acquire or retire for value any equity or ownership interest in Borrower; provided that this Section 6.8 shall not be deemed to prohibit the transactions contemplated by the Other Transaction Documents. Not later than the date of making any Permitted Distribution, the Manager of Borrower shall deliver to Lender an officer's certificate signed by the Manager of Borrower stating that such Permitted Distribution is permitted and setting forth the basis upon which the calculations required by this Section 6.8 were computed.

6.9. Change in Business; Funding or Purchasing of Loans. Borrower shall not engage in any material line of business substantially different from those lines of business carried on by Borrower on the date hereof, and Borrower shall not fund or purchase any loans other than Qualified Mortgage Loans and Exception Loans.

6.10. Amendments of Organization Documents and Material Agreements. Borrower shall not, without the prior written consent of Lender, modify, amend, supplement or replace, nor permit any modification, amendment, supplement or replacement of, (i) the Articles of Organization or the Operating Agreement (or other constituent documents) of Borrower or any document executed and delivered in connection with any of the forgoing, (ii) any agreement with any third-party servicer pertaining to the servicing of the Mortgage Loans owned by Borrower or (iii) any agreement with an H&R Block Franchisee or a Subsidiary or Affiliate of an H&R Block Franchisee pertaining to advances, loans or extensions of credit by Borrower to such H&R Block Franchisee or Subsidiary or Affiliate.

6.11. Amendments of Underwriting Criteria. Borrower shall not modify, amend, supplement or replace, nor permit any modification, amendment, supplement or replacement of, the underwriting criteria set forth in Schedule 6.11 without the prior written consent of Lender.

6.12. Borrowing Base. (a) Borrower shall not permit the aggregate outstanding principal balance of Loans hereunder on any day to be greater than the sum of (i) the aggregate outstanding principal balance of Qualified Mortgage Loans and Exception Sale Loans that are owned by Borrower on such day and have been outstanding as of such day for less than 91 days, plus (ii) 95% of the aggregate outstanding principal balance of Exception Loans (other than Exception Sale Loans) that

are owned by Borrower on such day and have been outstanding as of such day for less than 91 days, plus (iii) the aggregate original principal balance of Qualified Mortgage Loans and Exception Sale Loans that are originated on the Business Day next following such day and are originated in states that require the funds for Mortgage Loans to be available 24 hours prior to the origination of such Mortgage Loans, plus (iv) 95% of the aggregate original principal balance of Exception Loans (other than Exception Sale Loans) that are originated on the Business Day next following such day and are originated in states that require the funds for Mortgage Loans to be available 24 hours prior to the origination of such Mortgage Loans, plus (v) the aggregate amount of proceeds advanced by Borrower pursuant to, and in compliance with, clause (i) of Section 5.9.

(b) In the event Borrower repurchases from Lender any Mortgage Loan sold to Lender pursuant to the Loan Purchase Agreement, such Mortgage Loan shall be deemed to have commenced being outstanding for purposes of this Section 6.12 as of the date of such repurchase.

6.13. Third-Party Servicing Agreements. Borrower shall not, without the prior written consent of Lender, enter into any agreements with any third party pertaining to the servicing by such party of Mortgage Loans owned by Borrower.

#### ARTICLE 7 -- DEFAULTS

7.1. Events of Default. An Event of Default shall mean the occurrence or existence of one or more of the following events or conditions (for any reason, whether voluntary, involuntary or effected or required by Law):

(a) Principal of any Loan shall not have been paid when due.

(b) Interest on any Loan, any fees, indemnity or expenses, or any other amount due hereunder or under any other Loan Document shall not have been paid when due and such failure (other than a failure pertaining to any amount due on or after the Maturity Date) shall have continued for a period of five Business Days.

(c) Any representation or warranty made or deemed to be made by Borrower in or pursuant to or in connection with any Loan Document, or any statement made by Borrower (or the Manager or any Member of Borrower) in any financial statement, certificate, report, exhibit or document furnished by Borrower (or such Manager or Member) to Lender pursuant to or in connection with any Loan Document, shall prove to have been false or misleading in any material respect as of the time when made or deemed made (including by omission of material information necessary to make such representation, warranty or statement not misleading).

(d) Borrower shall default in the performance or observance of any of the covenants contained in Section 5.1(d)(i) or Article 6.

(e) Borrower shall default in the performance or observance of any other covenant, agreement or duty under this Agreement or any other Loan Document and (i) in the case of a default under Section 5.1 (other than as referred to in subsection (d)(i) thereof), such default shall have continued for a period of ten Business Days and (ii) in the case of any other default, such default shall have continued for a period of thirty days.

(f) One or more judgments for the payment of money shall have been entered against Borrower, which judgment or judgments equal or exceed \$100,000 in the aggregate, and such judgment or judgments shall have remained undischarged and unstayed for a period of thirty consecutive days.

(g) One or more writs or warrants of attachment, garnishment, execution, distraint or similar process equal to or exceeding in value the aggregate amount of \$100,000 shall have been issued against Borrower or any of its properties and shall have remained undischarged and unstayed for a period of thirty consecutive days.

(h) Any Loan Document or term or provision thereof shall cease, for any reason, to be in full force and effect, or any Loan Document shall cease to be effective to grant a lien on the collateral described therein with the priority purported to be created thereby; or Borrower shall, or shall purport to, terminate (except in accordance with the terms of such Loan Document), repudiate, declare voidable, void or otherwise contest the enforceability of, any Loan Document or term or provision thereof or any obligation or liability of Borrower thereunder.

(i) Any Other Transaction Document or any material term or provision thereof shall cease to be in full force and effect; or any party (other than Lender) thereto shall, or shall purport to, terminate, repudiate, declare voidable or void or otherwise contest the enforceability of, any of such agreements or any material term or provision thereof or any material obligation or liability of any party thereunder; or any party (other than Lender) thereto shall default beyond any applicable grace or cure period in the observance or performance of any material term, provision or condition thereof.

(j) A Governmental Authority shall have ruled, determined or held that the forms of the Mortgage Note and the Mortgage pertaining to any Mortgage Loan owned by Borrower are such that they do not constitute legal, valid and binding obligations, enforceable against the obligor(s) thereunder in accordance with the respective terms thereof (subject to bankruptcy, insolvency and other laws relating to the enforcement of creditors' rights in general and to general principles of equity), and Lender shall determine in good faith (which

determination shall be conclusive) that such ruling, determination or holding, individually or in the aggregate could have a Material Adverse Effect.

(k) Any one or more Pension-Related Events referred to in subsection (a)(ii), (b) or (e) of the definition of "Pension-Related Event" shall have occurred; or any one or more other Pension-Related Events shall have occurred and Lender shall determine in good faith (which determination shall be conclusive) that such other Pension-Related Events, individually or in the aggregate, could have a Material Adverse Effect.

(l) Any one or more of the events or conditions set forth in the following clauses (i) or (ii) shall have occurred in respect of Borrower or any of its Environmental Affiliates, and Lender shall determine in good faith (which determination shall be conclusive) that such events or conditions, individually or in the aggregate, could have a Material Adverse Effect: (i) any past or present violation of any Environmental Law by such Person, or (ii) the existence of any pending or threatened Environmental Claim against any such Person, or the existence of any past or present acts, omissions, events or circumstances that could form the basis of any Environmental Claim against any such Person.

(m) A proceeding shall have been instituted in respect of Borrower

(i) seeking to have an order for relief entered in respect of such Person, or seeking a declaration or entailing a finding that such Person is insolvent or similar declaration or finding, or seeking dissolution, winding up, charter revocation or forfeiture, liquidation, reorganization, arrangement, adjustment, composition or other similar relief with respect to such Person, its assets or its debts under any

Law relating to bankruptcy, insolvency, relief of debtors or protection of creditors, termination of legal entities or any other similar Law now or hereinafter in effect, or

(ii) seeking appointment of a receiver, trustee, liquidator, assignee sequestrator or other custodian for such Person or for all or any substantial part of its property,

and such proceeding shall result in the entry, making or grant of such order for relief, declaration, finding, relief or appointment, or such proceeding shall remain undismissed and unstayed for a period of thirty consecutive days.

(n) Borrower shall become insolvent; shall fail to pay, become unable to pay, or state that it is or will be unable to pay, its debts as they become due; shall voluntarily suspend transaction of its

business; shall make a general assignment for the benefit of creditors; shall institute (or fail to controvert in a timely and appropriate manner) a proceeding described in Section 7.1(m) (i), or

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(whether or not any such proceeding has been instituted) shall consent to or acquiesce in any such order for relief described therein; shall institute (or fail to controvert in a timely and appropriate manner) a proceeding described in Section 7.1(m) (ii), or (whether or not any such proceeding has been instituted) shall consent to or acquiesce in any such appointment or to the taking of possession by any such custodian of all or any substantial part of its property; shall dissolve, wind up, revoke or forfeit its charter other constituent documents) or liquidate itself or any tantial part of its property; or shall take any action in herance of any of the foregoing.

7.2. Consequences of an Event of Default. (a) If an Event of Default specified in subsections (a) through (l) of Section 7.1 shall occur and be continuing or shall exist, then, in addition to all other rights and remedies that Lender may have hereunder or under any other Loan Document, at law, in equity or otherwise, Lender shall be under no further obligation to make Loans hereunder, and Lender may, by notice to Borrower, from time to time do any of the following:

(i) Declare the Loan Commitment terminated, whereupon the Loan Commitment will terminate and any fees hereunder shall be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby waived, and an action therefor shall immediately accrue.

(ii) Declare the unpaid principal amount of the Loans, interest accrued thereon and all other Obligations to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby waived, and an action therefor shall immediately accrue.

(b) If an Event of Default specified in subsections (m) or (n) of Section 7.1 shall occur or exist, then, in addition to all other rights and remedies that Lender may have hereunder or under any other Loan Document, at law, in equity or otherwise, the Loan Commitment shall automatically terminate and Lender shall be under no further obligation to make Loans, and the unpaid principal amount of the Loans, interest accrued thereon and all other Obligations shall become immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby waived, and an action therefor shall immediately accrue.

#### ARTICLE 8 -- MISCELLANEOUS

8.1. Holidays. Whenever any payment or action to be made or taken hereunder or under any other Loan Document shall be stated to be due on a day that is not a Business Day, such payment or action shall be made or taken on the next following Business Day and such extension of time shall be included in computing interest or fees, if any, in connection with such payment or action.

8.2. Records. The unpaid principal amount of the Loans, the unpaid interest accrued thereof, the interest rate or rates applicable to such unpaid principal amount, the duration of such applicability, the Committed Amount, and the accrued and unpaid fees owing to Lender shall at all times be ascertained from the records of Lender, which shall be conclusive absent obvious error.

8.3. Amendments and Waivers. Lender and Borrower may from time to time amend, modify or supplement the provisions of this Agreement or any other Loan Document for the purpose of amending, adding to, or waiving any provisions, or changing in any manner the rights and duties of Borrower and Lender. Any such amendment, modification or supplement must be in writing signed by Borrower and Lender and shall be effective only to the extent set forth in such writing. Any Event of Default or Potential Default waived or consented to in any such amendment, modification or supplement shall be deemed to be cured and not continuing to the extent and for the period set forth in such waiver or consent, but no such waiver or consent shall extend to any other or subsequent Event of Default or Potential Default or impair any right consequent thereto.

8.4. No Implied Waiver; Cumulative Remedies. No course of dealing and no delay or failure of Lender in exercising any right, power or privilege under this Agreement or any other Loan Document shall affect any other or future exercise thereof or exercise of any other right, power or privilege; nor shall any single or partial exercise of any such right, power or privilege or any abandonment or discontinuance of steps to enforce such a right, power or privilege preclude any further exercise thereof or of any other right, power or privilege. The rights and remedies of Lender under this Agreement and any other Loan Document are cumulative and not exclusive of any rights or remedies that Lender would otherwise have hereunder or thereunder, at law, in equity or otherwise.

8.5. Notices. (a) Except to the extent otherwise expressly permitted hereunder or thereunder, all notices, requests, demands, directions and other communications (collectively, "Notices") under this Agreement or any Loan Document shall be in writing (including facsimile communication) and shall be sent by first-class mail, or by nationally-recognized overnight courier, or by facsimile transmission (with confirmation in writing mailed first-class or sent by such overnight courier) or by personal delivery. All Notices shall be sent to the applicable party at the address stated on the signature page hereof or in accordance with the last unrevoked written direction from such party to the other party, in all cases with postage or other charges prepaid. Any such properly given Notice shall be effective on the earliest to occur of receipt, telephone confirmation of receipt of facsimile transmission, one Business Day after delivery to a nationally-recognized overnight courier, or three Business Days after deposit in the mail.

(b) Lender may rely on any notice (whether or not such notice is made in a manner permitted or required by this Agreement or any Loan Document) purportedly

made by or on behalf of Borrower, and Lender shall not have any duty to verify the identity or authority of any Person giving such notice.

8.6. Expenses; Taxes; Indemnity. (a) Borrower agrees to pay or cause to be paid and to save Lender harmless against liability for the payment of all reasonable out-of-pocket costs and expenses (including but not limited to reasonable fees and expenses of counsel, including legal counsel, auditors, and all other professional, accounting, evaluation and consulting costs) incurred by Lender from time to time arising from or relating to the enforcement or preservation of rights under this Agreement or any Loan Documents (including but not limited to any such costs and expenses arising from or relating to (i) collection or enforcement by Lender of an outstanding Loan or any other amount owing hereunder or thereunder and (ii) any litigation, proceeding, dispute, work out, restructuring or rescheduling related in any way to this Agreement or the Loan Documents).



(b) Borrower hereby agrees to pay all stamp, document, transfer, recording, filing, registration, search, sales and excise fees and taxes and all similar impositions now or hereafter determined by Lender to be payable in connection with this Agreement or any other Loan Documents or any other documents, instruments or transactions pursuant to or in connection herewith or therewith, and Borrower agrees to save Lender harmless from and against any and all present or future claims, liabilities or losses with respect to or resulting from any omission to pay or delay in paying any such fees, taxes or impositions.

(c) Borrower hereby agrees to reimburse and indemnify each of the Indemnified Parties from and against any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever (including, without limitation, the fees and disbursements of counsel for such Indemnified Party in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnified Party shall be designated a party thereto) that may at any time be imposed on, asserted against or incurred by such Indemnified Party as a result of, or arising out of, or in any way related to or by reason of, this Agreement or any other Loan Document, any transaction from time to time contemplated hereby or thereby, or any transaction financed in whole or in part or directly or indirectly with the proceeds of any Loan (and without in any way limiting the generality of the foregoing, including any violation or breach of any Environmental Law or any other Law by Borrower or any of its Environmental Affiliates; any Environmental Claim arising out of the management, use, control, ownership or operation of property by any such Persons, including all on-site and off-site activities involving Environmental Concern Materials; or any exercise by Lender of any of its rights or remedies under this Agreement or any other Loan Document); but excluding any such losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements to the extent

resulting from the negligence or willful misconduct of such Indemnified Party, as finally determined by a court of competent jurisdiction. If and to the extent that the foregoing obligations of Borrower

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under this subsection (c), or any other indemnification obligation of Borrower hereunder or under any other Loan Document, are unenforceable for any reason, Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of such obligations that is permissible under applicable Law.

(d) Notwithstanding the provisions of Section 8.6(c) Borrower shall not be obligated to reimburse and indemnify Indemnified Parties pursuant to Section 8.6(c) from and against losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements as a result of, or arising out of, or in any way related to or by reason of, the breach of any Environmental Law by any of Borrower's Environmental Affiliates or any Environmental Claim arising out of the management, use, control, ownership or operation of property by any of Borrower's Environmental Affiliates to the extent (i) such breach of Environmental Law or such Environmental Claim pertains to a Mortgage Loan purchased by Lender (and not subsequently repurchased by Borrower from Lender) pursuant to the Loan Purchase Agreement or the Underlying Property pertaining to such Mortgage Loan and (ii) such losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements would not have been imposed on, asserted against or incurred by such Indemnified Party had such Mortgage Loan not been purchased by Lender.

8.7. Severability. The provisions of this Agreement are intended to be severable. If any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

8.8. Prior Understandings. This Agreement and the other Loan Documents supersede all prior and contemporaneous understandings and agreements, whether written or oral, between the parties hereto relating to the transactions provided for herein and therein.

8.9. Duration; Survival. All representations and warranties of Borrower contained herein or in any other Loan Document or made in connection herewith or therewith shall survive the making of, and shall not be waived by the execution and delivery of, this Agreement, or any other Loan Document, any investigation by or knowledge of Lender, the making of any Loan, or any other event or condition whatever. All covenants and agreements of Borrower contained herein or in any other Loan Document shall continue in full force and effect from and after the date hereof so long as Borrower may borrow hereunder and until payment in full of all amounts due Lender under this Agreement or any other Loan Documents. Without limitation, all obligations of Borrower hereunder or under any other Loan Document to make payments to Lender shall survive

termination of Borrower's right to borrow hereunder and all other events and conditions whatever.

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8.10. Set-Off. Borrower hereby agrees that if any Obligation of Borrower shall be due and payable (by acceleration or otherwise), Lender shall have the right, without notice to Borrower, to set-off against and to appropriate and apply to such Obligation any indebtedness, liability or obligation of any nature owing to Borrower by Lender. Such right shall be absolute and unconditional in all circumstances and, without limitation, shall exist whether or not Lender or any other Person shall have given notice or made any demand to Borrower or any other Person, whether such indebtedness, obligation or liability owed to Borrower is contingent, absolute, matured or unmatured (it being agreed that Lender may deem such indebtedness, obligation or liability to be then due and payable at the time of such set-off), and regardless of the existence or adequacy of any collateral or any other security, right or remedy available to Lender. The rights provided by this Section are in addition to all other rights and remedies that Lender may otherwise have under this Agreement, any other Loan Document, at law or in equity, or otherwise, and nothing in this Agreement or any other Loan Document shall be deemed a waiver or prohibition of or restriction on the rights of set-off of any such Person.

8.11. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrower, Lender, all future holders of the Note, and their respective successors and assigns, except that Borrower may not assign or transfer any of its rights hereunder or interests herein without the prior written consent of Lender, and any purported assignment without such consent shall be void.

8.12. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial; Limitation of Liability.

(a) Governing Law. THIS AGREEMENT AND ALL OTHER LOAN DOCUMENTS (EXCEPT TO THE EXTENT, IF ANY, OTHERWISE EXPRESSLY STATED IN SUCH OTHER LOAN DOCUMENTS) SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MISSOURI, WITHOUT REGARD TO PRINCIPLES OF CHOICE OF LAW.

(b) Certain Waivers. BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY:

(i) AGREES THAT ANY ACTION, SUIT OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY STATEMENT, COURSE OF CONDUCT, ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION HERewith OR THEREWITH (COLLECTIVELY, "RELATED LITIGATION") MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN JACKSON COUNTY, MISSOURI, SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND TO THE FULLEST EXTENT PERMITTED BY LAW AGREES THAT IT

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WILL NOT BRING ANY RELATED LITIGATION IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM);

(ii) WAIVES ANY OBJECTION THAT IT MAY HAVE AT ANY TIME TO THE

LAYING OF VENUE OF ANY RELATED LITIGATION BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY SUCH RELATED LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORM, AND WAIVES ANY RIGHT TO OBJECT, WITH RESPECT TO ANY RELATED LITIGATION BROUGHT IN ANY SUCH COURT, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER BORROWER;

(iii) CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY RELATED LITIGATION BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO BORROWER AT THE ADDRESS FOR NOTICES DESCRIBED IN SECTION 8.5, AND CONSENTS AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW); AND

(iv) WAIVES THE RIGHT TO TRIAL BY JURY IN ANY RELATED LITIGATION.

(c) Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY LAW, NO CLAIM MAY BE MADE BY BORROWER AGAINST LENDER OR ANY AFFILIATE, DIRECTOR, OFFICER, EMPLOYEE, ATTORNEY OR AGENT OF LENDER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM ARISING FROM OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY STATEMENT, COURSE OF CONDUCT, ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION HEREWITH OR THEREWITH (WHETHER FOR BREACH OF CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY). BORROWER HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE UPON ANY CLAIM FOR ANY SUCH DAMAGES, WHETHER SUCH CLAIM PRESENTLY EXISTS OR ARISES HEREAFTER AND WHETHER OR NOT SUCH CLAIM IS KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by a proper and duly authorized officer or representative on the day and year first above written.

BLOCK FINANCIAL CORPORATION

By /s/ CLIFFORD A. DAVIS, JR.

-----  
Clifford A. Davis, Jr.  
Vice President, Finance and  
Corporate Development

Address for Notices:

Block Financial Corporation  
4435 Main Street, Suite 500  
Kansas City, Missouri 64111

Attn: Clifford A. Davis, Jr.

Telephone: 816-751-6000  
Facsimile: 816-561-0673

NATIONAL CONSUMER SERVICES  
CORP., L.L.C.

By /s/ JOHN B. STANFORTH

-----  
John B. Stanforth, Manager

Address for Notices:

ACKNOWLEDGED AND  
AGREED:

/s/ W.D. EVERITT, JR.

-----  
W.D. Everitt, Jr.

National Consumer Services Corp., L.L.C.  
7000 Peachtree Dunwoody Road  
Building 17, Suite 120  
Atlanta, Georgia 30328  
Attn: John B. Stanforth

Telephone: 770-395-1119 \_\_\_\_\_  
Facsimile: 770-668-0541 \_\_\_\_\_

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FIRST AMENDMENT TO CREDIT AGREEMENT  
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THIS FIRST AMENDMENT TO CREDIT AGREEMENT (this "First Amendment") is made and entered into as of January 1, 1996 by and among NATIONAL CONSUMER SERVICES CORP., L.L.C., a Georgia limited liability company ("NCS"), NATIONAL CONSUMER SERVICES CORP. II, L.L.C., a Georgia limited liability company ("NCS II"), and BLOCK FINANCIAL CORPORATION, a Delaware corporation ("BFC").

RECITALS  
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A. BFC and NCS have heretofore entered into that certain Credit Agreement dated as of December 19, 1995 (the "Credit Agreement"), pursuant to which BFC agreed to extend credit to NCS subject to the terms and conditions set forth therein.

B. BFC and NCS have agreed to amend the Credit Agreement to include NCS II as borrower thereunder as hereinafter provided.

AGREEMENTS  
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IN CONSIDERATION of the foregoing and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged and accepted, and intending to be legally bound hereby, the parties hereto agree as follows:

5. Definitions. Unless otherwise expressly defined herein, all capitalized terms used in this First Amendment shall have the respective meanings ascribed to such terms in the Credit Agreement.

6. Amendments to Credit Agreement. The Credit Agreement is hereby amended as follows:

(a) The Credit Agreement is hereby amended to add NCS II as a party thereto.

(b) Section 1.1 of the Credit Agreement is hereby amended to add the following definitions:

"NCS" shall mean National Consumer Services Corp., L.L.C., a Georgia limited liability company.

"NCS Operating Agreement" shall mean that certain Operating Agreement for NCS dated as of September 15, 1995, as amended from time to time.

"NCS II" shall mean National Consumer Services Corp., L.L.C. II, a Georgia limited liability company.

"NCS II Operating Agreement" shall mean that certain Operating Agreement for NCS II dated as of December 19, 1995, as amended from time to time.

(c) The Credit Agreement is hereby amended so that NCS and NCS II shall be referred to collectively therein as "Borrower" and "Borrower" as used therein shall mean NCS and NCS II on a collective basis; provided, however, that (i) each representation and warranty set forth in Article III (other than the representation and warranty set forth in Section 3.19) shall be deemed to be made by each of NCS and NCS II in their individual capacities and (ii) each reference to Borrower contained in Articles V, VI and VII shall be deemed to be made by, or apply to, each of NCS and NCS II in their individual capacities, except with respect to financial or accounting amounts, computations and determinations and except where the context of the Credit Agreement otherwise clearly requires.

(d) Section 1.3(b) of the Credit Agreement is hereby amended by adding the following sentence:

All computations and determinations as to accounting or financial amounts and matters shall be made, and all financial statements to be delivered pursuant to this Agreement shall be prepared, on a consolidated basis as if NCS II were a wholly-owned subsidiary of NCS.

(e) The definition of the term "Operating Agreement" contained in Section 1.1 of the Credit Agreement is hereby amended to read as follows:

"Operating Agreement" shall mean the NCS Operating Agreement and the NCS II Operating Agreement, collectively.

(f) The definition of the term "Other Transaction Documents" contained in Section 1.1 of the Credit Agreement is hereby amended to read as follows:

"Other Transaction Documents" shall mean the documents contemplated by Sections 4.1(c) and (d), as amended from time to time.

(g) Section 5.9 of the Credit Agreement is hereby amended in its entirety to read as follows:

5.9 Use of Proceeds. Borrower shall apply the proceeds of all Loans hereunder only for the purpose (and for no other purpose) of (i) funding Qualified Mortgage Loans and Exception Loans originated by third parties (including, without limitation, any Subsidiary or Affiliate of H&R Block, Inc. or a Subsidiary or Affiliate of an H&R Block Franchisee), but only to the extent (A) such Qualified Mortgage Loans and Exception Loans are purchased by Borrower within 25 Business Days after the date such Qualified Mortgage Loans and Exceptions Loans are

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funded or (B) the advances, loans or extensions of credit made by Borrower to fund such Qualified Mortgage Loans and Extension Loans are repaid to Borrower within 25 Business Days after the date such Qualified Mortgage

Loans and Exception Loans are funded and (ii) making or purchasing Qualified Mortgage Loans and Exception Loans; provided that the amount of Exception Loans that may be owned by Borrower on any day shall be subject to the provisions of Section 6.6. Borrower shall not use the proceeds of any Loans hereunder directly or indirectly for any unlawful purpose or in any manner inconsistent with any other provision of any Loan Document.

(h) Section 5.12(b) of the Credit Agreement is hereby amended in its entirety to read as follows:

(b) Borrower shall deliver to Lender (or such third party designated by Lender in writing) each promissory note pertaining to advances, loans and extensions of credit to third parties permitted by Section 6.6. Each such promissory note shall be delivered directly to Lender within one day after the closing or making of such advance loan or extension of credit.

(i) Section 6.1 of the Credit Agreement is hereby amended in its entirety to read as follows:

6.1 Indebtedness. Borrower shall not create, incur, assume or suffer to exist any Indebtedness exceeding an aggregate outstanding principal amount of \$50,000 other than (i) Indebtedness of Borrower under this Agreement and (ii) Indebtedness secured by Liens permitted pursuant to Section 6.2.

(j) Section 6.6 of the Credit Agreement is hereby amended in its entirety to read as follows:

6.6 Investments, Loans and Advances: Structure. Borrower shall not make any advance, loan, extension of credit or capital contribution to, or purchase any stock, bonds, notes, debentures or other securities or equity interests of, or make any other investments in, any Person except for (i) Qualified Mortgage Loans and Exception Loans made or purchased by Borrower in the ordinary course of business (provided, however, that at no time shall the aggregate outstanding principal balance of Exception Loans owned by Borrower as of the close of business on any day exceed 10% of the combined aggregate outstanding principal balance of Exception Loans and Qualified Loans owned by Borrower as of the close of business on such day), (ii) advances, loans and extensions of credit to third parties (including,

without limitation, H&R Block Franchisees or Subsidiaries or Affiliates of H&R Block

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Franchisees) solely for the purpose of funding Qualified Mortgage Loans and Exception Loans and solely pursuant written loan agreements in form and substance approved in writing in advance by Lender, (iii) overnight funds with federally chartered and federally insured institutions and (iv) other short-term investments rates A or higher by Standard & Poors, Moody's, Best, Fitch or any other appropriate rating agency and that have a maturity of one year or less. In addition, Borrower shall not form any subsidiary corporation or limited liability company without the prior written consent of Lender and Borrower shall not take any action or forbear

from taking any action (including, without limitation, the granting of consents to actions taken or proposed to be taken by others) that would cause Borrower to be taxable as a corporation for federal income tax purposes.

(k) Section 6.8 of the Credit Agreement is hereby amended in its entirety to read as follows:

6.8 Restricted Payments. Borrower shall not, directly or indirectly, (a) declare or pay any dividend or make any distribution on account of any equity or ownership interest in Borrower other than (i) a Permitted Distribution, (ii) pursuant to Section 4.01(a) (or applicable successor section) of the NCS Operating Agreement and of the NCS II Operating Agreement, and (iii) pursuant to Section 4.01(b) of the NCS Operating Agreement (or applicable successor section) or (b) purchase, redeem, call or otherwise acquire or retire for value any equity or ownership interest in Borrower, except pursuant to Section 4.01(b) of the NCS Operating Agreement (or applicable successor section); provided, that this Section 6.8 shall not be deemed to prohibit the transactions contemplated by the Other Transaction Documents. Not later than the date of making any Permitted Distribution, the Manager of Borrower shall deliver to Lender an officer's certificate signed by the Manager of Borrower stating that such Permitted Distribution is permitted and setting forth the basis upon which the calculations required by this Section 6.8 were computed.

(l) Section 6.10 of the Credit Agreement is hereby amended in its entirety to read as follows:

6.10 Amendments of Organization Documents and Material Agreements. Borrower shall not, without the prior written consent of Lender, modify, amend, supplement or replace, nor permit any modification, amendment, supplement or replacement of, (i) the Articles of Organization or the Operating Agreement (or other constituent documents) of Borrower or any document executed and delivered in connection with any of the foregoing, (ii) any agreement with any third-

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party servicer pertaining to the servicing of the Mortgage Loans owned by Borrower or (iii) any agreement with a third party pertaining to advances, loans or extensions of credit by Borrower to such third party permitted by Section 6.6.

(m) The address for notices to NCS and NCS II is hereby amended to read as follows:

National Consumer Services Corp., L.L.C.  
National Consumer Services Corp. II, L.L.C.  
16 Perimeter Center  
Suite 1600  
Atlanta, Georgia 30306

7. Conditions to Effectiveness. This First Amendment shall become effective on such date (the "Effective Date") on which it is executed and delivered by each of the parties hereto, but only upon satisfaction of each of the following conditions:

(a) Amended Note. NCS and NCS II shall each have duly executed and delivered to BFC an amended Note dated as of the Effective Date setting forth NCS II as an additional obligor thereunder (the "Amended Note"). The Amended Note shall be issued in replacement and substitution for the Promissory Note, dated December 19, 1995, of NCS to BFC, previously issued under the Credit Agreement for the principal sum of up to \$20,000,000 (the "Original Note").

(b) Amended and Restated Security Agreement. NCS and NCS II shall each have duly executed and delivered to BFC (i) an Amended and Restated Security Agreement amending that certain Security Agreement dated December 19, 1995 made by NCS in favor of BFC to include NCS II as an obligor, and grantor of a security interest, thereunder, and (ii) all documents necessary to perfect the security interest contemplated thereunder.

(c) Amended and Restated Option and Warrant Agreement. NCS, NCS II and W.D. Everitt, Jr. ("Everitt") shall each have duly executed and delivered to BFC an Amended and Restated Option and Warrant Agreement amending and restating that certain Option and Warrant Agreement dated December 19, 1995 by and among NCS, BFC and Everitt to include terms with respect to NCS II identical to those pertaining to NCS.

(d) First Amendment to Loan Purchase Agreement. NCS and NCS II shall each have duly executed and delivered to BFC (i) a First Amendment to Loan Purchase Agreement amending that certain Loan Purchase Agreement dated December 19, 1995 by and between NCS and BFC to include NCS II as a party thereto upon terms identical to those pertaining to NCS.

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(e) Proceedings. BFC shall have received certificates signed by each Member of NCS II dated as of the Effective Date as to (i) true copies of the Articles of Organization and the Operating Agreement (or other constituent documents) of NCS II in effect on such date (which documents shall have been amended to BFC's satisfaction), (ii) true copies of all requisite action taken by NCS II authorizing the execution, delivery and performance of the Loan Documents and Other Transaction Documents and (iii) the incumbency and signature of the manager of NCS II executing this First Amendment and the other documents contemplated by this First Amendment. BFC shall have received a certificate from the Secretary of State of Georgia dated not more than 30 days before the Effective Date showing the good standing of NCS II in the State of Georgia.

(f) Legal Opinion of Counsel to NCS II. There shall have been delivered to BFC an opinion of Fleming, Drummond & Ray, a limited liability company, counsel to NCS II, dated the Effective Date, in form and substance satisfactory to BFC and covering such legal matters relating to this First Amendment, the Amended Note and the other documents and transactions contemplated hereby and thereby as BFC may reasonably request.

8. Representations and Warranties. Each of NCS and NCS II hereby represents and warrants that each of the representations and warranties set forth in Article 3 of the Credit Agreement are true and correct on and as of the date hereof as if made on and as of the date hereof, and further represents and warrants to BFC as follows:

(a) Each of NCS and NCS II has the requisite power and authority to execute, deliver, perform and take all actions contemplated by, this First Amendment and the Amended Note, and all such action has been duly and validly authorized by all necessary corporate proceedings on its part.

(b) This First Amendment and the Amended Note have been duly and validly executed and delivered by NCS and NCS II and constitute the legal, valid and binding obligations of NCS and NCS II, enforceable against NCS and NCS II in accordance with their terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors' rights or by general principals of equity limiting the availability of equitable remedies.

(c) No Government Action is or will be necessary or advisable in connection with execution and delivery by NCS and NCS II of this First



Amendment or the Amended Note, consummation by NCS and NCS II of the transactions herein or therein contemplated, performance of or compliance with the terms and conditions hereof or thereof by NCS and NCS II or to ensure the legality, validity, binding effect, enforceability or admissibility in evidence hereof or thereof.

(d) Neither the execution and delivery of this First Amendment or the Amended Note by NCS and NCS II, nor consummation by NCS and NCS II of the transactions herein or therein contemplated, nor performance of or compliance with the terms and conditions hereof or thereof by NCS and NCS II does or will

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(i) violate or conflict with and Law, or

(ii) violate, conflict with or result in a breach of any term or condition of, or constitute a default under, or result in (or give rise to any right, contingent or otherwise, of any Person to cause) any termination, cancellation, prepayment or acceleration of performance of, or result in the creation or imposition of (or give rise to any obligation, contingent or otherwise, to create or impose) any Lien upon any property of NCS or NCS II pursuant to, or otherwise result in (or give rise to any right, contingent or otherwise, of any Person or cause) any change in any right, power, privilege, duty or obligation of NCS or NCS II under or in connection with,

(A) the articles of organization or Operating Agreement (or other constituent documents) of NCS or NCS II,

(B) any agreement or instrument creating, evidencing, securing or guaranteeing any Indebtedness to which NCS or NCS II is a party or by which NCS or NCS II or any of their properties (now owned or hereafter acquired) may be subject or bound, or

(C) any other agreement or instrument or arrangement to which NCS or NCS II is a party or by which NCS or NCS II or any of their properties (now owned or hereafter acquired) may be subject or bound, except, in the case of this clause (C), for matters that, individually or in the aggregate could not have a Material Adverse Effect.

5. Consents, Waivers and Acknowledgments. (a) BFC acknowledges that NCS II has made Mortgage Loans that are to be sold to BFC pursuant to the Loan Purchase Agreement. NCS II hereby represents and warrants that all such Mortgage Loans constitute Qualified Mortgage Loans. BFC hereby waives any Event of Default that may have occurred prior to the date hereof that may have arisen from the fact that NCS II funded such Mortgage Loans from proceeds of Loans to NCS under the Credit Agreement.

(b) BFC hereby consents to amendments to the NCS Operating Agreement as reflected in the form of Restated and Amended Operating Agreement attached hereto as Exhibit A.

6. Credit Agreement Confirmed. The Credit Agreement, as amended by this First Amendment, is in all respects ratified, approved and confirmed by NCS and NCS II and shall, as so amended, remain in full force and effect in accordance with its terms. All references to the Credit Agreement in any of the Loan Documents shall be deemed to refer to the Credit Agreement as amended by this First Amendment, and all references to the Note in the Credit Agreement or any of the Loan Documents shall be deemed to refer to the Amended Note.

7. Miscellaneous.

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(a) This First Amendment and the Amended Note shall be governed by and construed in accordance with the laws of the State of Missouri.

(b) This First Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted

assigns.

(c) This First Amendment may be executed in any number of counterparts and by the different parties hereto on separate counterparts and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

(d) Promptly after the Effective Date and the delivery by NCS and NCS II to BFC of the Amended Note, BFC shall mark the Original Note "canceled for exchange" and shall return the Original Note to NCS.

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IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this First Amendment by their respective officers thereunto duly authorized, as of the day and year first above written.

BLOCK FINANCIAL CORPORATION

By: /s/ Clifford A. Davis, Jr.

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Clifford A. Davis, Jr.  
Vice President, Finance and  
Corporate Development

NATIONAL CONSUMER SERVICES  
CORP., L.L.C.

By: /s/ John B. Stanforth

-----  
John B. Stanforth  
Manager

NATIONAL CONSUMER SERVICES  
CORP. II, L.L.C.

By: /s/ John B. Stanforth

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John B. Stanforth  
Manager

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SECOND AMENDMENT TO CREDIT AGREEMENT

THIS SECOND AMENDMENT TO CREDIT AGREEMENT (this "Second Amendment") is made and entered into as of November 30, 1996 by and among NATIONAL CONSUMER SERVICES CORP., L.L.C., a Georgia limited liability company (NCS"), NATIONAL CONSUMER SERVICES CORP. II, L.L.C., a Georgia limited liability company ("NCS II"), and BLOCK FINANCIAL CORPORATION, a Delaware corporation ("BFC").

Recitals

A. BFC, NCS and NCS II are parties to that certain Credit Agreement dated as of December 19, 1995, as amended by the First Amendment to Credit Agreement dated as of January 1, 1996 (as amended, the "Credit Agreement"), pursuant to which BFC agree to extend credit to NCS and NCS II subject to the terms and conditions set forth therein.

B. The parties hereto desire to amend the Credit Agreement to modify the provisions pertaining to the delivery of Mortgage Notes to BFC.

Agreements

IN CONSIDERATION of the foregoing and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged and accepted, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Definitions. Unless otherwise expressly defined herein, all capitalized terms used in this Second Amendment shall have the respective meanings ascribed to such terms in the Credit Agreement.

2. Amendment to Credit Agreement. (a) Section 1.1 of the Credit Agreement is hereby amended by deleting the definition of "Exception Loan" thereof in its entirety and inserting in lieu thereof the following definition:

"Exception Loan" shall mean a Mortgage Loan that, or with respect to which, (i) meets the criteria set forth in clauses (b) through (i) or the definition of "Qualified Mortgage Loan," (ii) is made in substantial compliance with the underwriting criteria set forth in Section 6.11 and (iii) any variance from the underwriting criteria set forth in Section 6.11 is approved in writing by an executive officer of Borrower in accordance with the policy concerning exceptions to underwriting standards as set forth in Exhibit F attached hereto (as such standards may be amended and modified in writing by the parties from time to time) prior to the origination of such Mortgage Loan or purchase by Borrower of such Mortgage Loan, as the case may be.

(b) Section 1.1 of the Credit Agreement is hereby amended to add the following definition:

"Underwriting Exception Loan" shall mean an Exception Loan other than an Exception Loan that is an Exception Loan for either or both of the following reasons (but for no other reason): (i) the underwriting documentation reviewed or procedures utilized in connection with evaluating the credit risk (including, without limitation, the adequacy of Property securing the obligations of the Mortgagor(s) under such Exception Loan) with respect to such Exception Loan is not in conformity with the Underwriting Criteria (a "Documentation Exception Loan") or (ii) the interest rate for such Exception Loan is not in conformity with those set forth in the Underwriting Criteria for Seller Mortgage Loans that fall within the same interest rate guideline classification; provided, however, that a Documentation Exception Loan shall not be an Underwriting Exception Loan only if alternative underwriting procedures consistent with industry practices and standards are undertaken with respect to such

Documentation Exception Loan.

(c) Section 2.2(b) of the Credit Agreement is hereby amended in its entirety to read as follows:

(b) Optional Increase of the Committed Amount. Borrower may increase the Committed Amount of Lender to (i) \$50,000,000 at any time during the 3-month period ending March 31, 1997 and (ii) \$100,000,000 at any time during the 3-month period commencing 21 months from and after the date of this Agreement. Increases in the Committed Amount shall be made by providing not less than 60 days notice (which notice shall be irrevocable) to such effect to Lender, which notice shall specify the date during the applicable three-month period on which such increase shall take effect. After the date specified in such notice the Commitment Fee shall be calculated upon the Committed Amount as so increased. Upon the increase of the Committed Amount pursuant to this Section 2.2(b), Borrower shall execute and deliver a new Note reflecting such increased Committed Amount and upon delivery of such Note Lender shall cancel and deliver to Borrower the Note reflecting the prior Committed Amount.

(d) Section 5.9 of the Credit Agreement is hereby amended in its entirety to read as follows:

5.9 Use of Proceeds. Borrower shall apply the proceeds of all Loans hereunder only for the purpose (and for no other purpose) of (i) funding Qualified Mortgage Loans and Exception Loans originated by third parties (but only to the extent (A) at least 80% of such Qualified Mortgage Loans and Exception Loans are purchased by Borrower within 25 Business Days after the date such Qualified Mortgage Loans and Exception Loans are funded or (B) the advances, loans or extensions of credit made by Borrower to fund such Qualified Mortgage Loans and Exception Loans are repaid to Borrower within 25 Business Days after the date such Qualified Mortgage Loans and Exception Loans are funded) and (ii) originating, making or purchasing Qualified Mortgage Loans and

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Exception Loans. Borrower shall not use the proceeds of any Loans hereunder directly or indirectly for any unlawful purpose or in any manner inconsistent with any other provision of any Loan Document.

(e) Section 5.12 of the Credit Agreement is hereby amended in its entirety to read as follows:

5.12. Delivery of Notes and Mortgage Documents. (a) Borrower shall cause to be delivered to Lender (or such third party designated by Lender in writing) each Mortgage Note pertaining to a Mortgage Loan owned by Borrower and each Mortgage Note in which Borrower has been granted a security interest. Notwithstanding the foregoing sentence and in lieu of the foregoing delivery requirement, Borrower may direct the Person that closed the Mortgage Loan pertaining to such Mortgage Note (which direction shall be in writing) to either (i) hold such Mortgage Note in trust on behalf of Lender (and Borrower, in cases in which Borrower has a security interest in such Mortgage Note) until the applicable Mortgage Loan is sold to a Person other than Borrower or (ii) deliver such Mortgage Note to a Person (other than Borrower) to whom such Mortgage Note is intended to be sold; provided, however, that the Person to whom such Mortgage Note is delivered shall execute a "bailment" letter substantially in the form of Exhibit E attached hereto. Each Mortgage Note delivered pursuant to this Section 5.12(a) shall either be endorsed in blank or endorsed to Lender.

(b) In addition to each Mortgage Note to be delivered pursuant to Section 5.12(a), Borrower shall cause to be delivered to Lender (or such third party designated by Lender in writing) (i) either the original recorded Mortgage or a copy thereof certified by the applicable recording office (provided that if the Mortgage has not yet been recorded but has been sent for recording, a copy of the Mortgage may be delivered in lieu of the foregoing so long as either of the foregoing is delivered to Lender promptly upon receipt thereof by Borrower), (ii) copies of each intervening assignment of the Mortgage (which shall be recorded or shall have been sent for recording in the

applicable recording office) and (iii) an original assignment of Mortgage in recordable form, assigning the Mortgage from Borrower to Lender.

(c) Each delivery to be made to Lender pursuant to Sections 5.12(a) and (b) shall be made in the following manner:

(i) In the case of Mortgage Loans purchased by Borrower, either (A) the Person from whom Borrower purchased the applicable Mortgage Loan shall deliver the Mortgage Note and other deliverable documents directly to Lender concurrently with the purchase by Borrower of such Mortgage Loan or (B) Borrower shall deliver the Mortgage Note and other deliverable documents to Lender within five Business Days after the purchase by Borrower of the applicable Mortgage Loan.

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(ii) In the case of Mortgage Notes in which Borrower has been granted a security interest, either (A) the Person that processed the origination of the applicable Mortgage Loan shall deliver the Mortgage Note and other deliverable documents directly to Lender within three Business Days after the closing of such Mortgage Loan or (B) Borrower shall deliver the Mortgage Note and other deliverable documents to Lender within five Business Days after receipt thereof by Borrower (but in no event later than ten Business Days after origination of the Mortgage Loan evidenced by such Mortgage Note).

Lender acknowledges and agrees that any Mortgage Note in Lender's possession with respect to which Borrower has a security interest (other than a Mortgage Note pertaining to a Mortgage Loan purchased by Borrower) shall be held by Lender as a bailee of Borrower and that this Agreement shall be deemed notification of Borrower's security interest in such Mortgage Note.

(d) Borrower shall deliver to Lender (or such third party designated by Lender in writing) each promissory note pertaining to advances, loans and extensions of credit permitted by Section 6.6. Each such promissory note shall be delivered directly to Lender within one day after closing or making of such advance or extension of credit.

(f) Section 6.6 of the Credit Agreement is hereby amended in its entirety to read as follows:

6.6 Investment, Loans and Advances; Structures. Borrower shall not make any advance, loan, extension of credit or capital contribution to, or purchase any stock, bonds, notes, debentures or other securities or equity interests of, or make any other investments in, any Person except for (i) Qualified Mortgage Loans and Exception Loans made or purchased by Borrower in the ordinary course of business (provided, however, that at no time shall the aggregate outstanding principal balance of Underwriting Exception Loans owned by Borrower as of the close of business on any day exceed 10% of the Committed Amount in effect as of the close of business on such day), (ii) advances, loans and extensions of credit to third parties solely for the purpose of funding Qualified Mortgage Loans and Exception Loans and solely pursuant to written loan agreements in form and substance approved in writing in advance by Lender, (iii) overnight funds with federally chartered and federally insured institutions and (iv) other short-term investments rated A or higher by Standard & Poors, Moody's, Best, Fitch or any other appropriate rating agency and that have a maturity of one year or less. In addition, Borrower shall not form any subsidiary corporation or limited liability company without the prior written consent of Lender and Borrower shall not take any action or forbear from taking any action (including, without limitation, the granting of

consents to actions taken or

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proposed to be taken by others) that would cause Borrower to be taxable as a corporation for federal income tax purposes.

(g) The Credit Agreement is hereby amended by (i) deleting Exhibit E thereto in its entirety and inserting in lieu thereof Exhibit E attached hereto and (ii) adding Exhibit F attached hereto.

3. Credit Agreement Confirmed. The Credit Agreement, as amended by this Second Amendment, is in all respects ratified, approved and confirmed by NCS, NCS II and BFC and shall, as so amended, remain in full force and effect in accordance with its terms. All references to the Credit Agreement in any of the Loan Documents shall be deemed to refer to the Credit Agreement as amended by this Second Amendment.

4. Miscellaneous. This Second Amendment shall be governed by and construed in accordance with the laws of the State of Missouri and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

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IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this First Amendment by their respective officers thereunto duly authorized, as of the day and year first above written.

BLOCK FINANCIAL CORPORATION

By: /s/ William P. Anderson

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Name: William P. Anderson  
Title: President

NATIONAL CONSUMER SERVICES, CORP., L.L.C.

By: /s/ John B. Stanforth

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John B. Stanforth  
President

NATIONAL CONSUMER SERVICES CORP., II, L.L.C.

By: /s/ John B. Stanforth

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John B. Stanforth  
President

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THIRD AMENDMENT TO CREDIT AGREEMENT

THIS THIRD AMENDMENT TO CREDIT AGREEMENT (this "Third Amendment") is made and entered into as of March \_\_\_\_, 1997 by and among NATIONAL CONSUMER SERVICES CORP., L.L.C., a Georgia limited liability company ("NCS"), NATIONAL CONSUMER SERVICES CORP. II, L.L.C., a Georgia limited liability company ("NCS II"), and BLOCK FINANCIAL CORPORATION, a Delaware corporation ("BFC").

Recitals

A. BFC, NCS and NCS II are parties to that certain Credit Agreement dated as of December 19, 1995, as amended by the First Amendment to Credit Agreement dated as of January 1, 1996, and by the Second Amendment to Credit Agreement dated November 30, 1996 (as amended, the "Credit Agreement"), pursuant to which BFC agreed to extend credit to NCS and NCS II subject to the terms and conditions set forth therein.

B. The parties hereto desire to further amend the Credit Agreement as follows.

Agreements

IN CONSIDERATION of the foregoing and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged and accepted, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Definitions. Unless otherwise expressly defined herein, all capitalized terms used in this Third Amendment shall have the respective meanings ascribed to such terms in the Credit Agreement.

2. Amendment to Credit Agreement. Section 6.8 of the Credit Agreement is hereby amended in its entirety to read as follows:

6.8 Restricted Payments. Borrower shall not, directly or indirectly, (a) declare or pay any dividend or make any distribution on account of any equity or ownership interest in Borrower other than (i) a Permitted Distribution, (ii) pursuant to Section 4.01(a) (or applicable successor section) of the NCS Operating Agreement and of the NCS II Operating Agreement, and (iii) pursuant to Section 4.01(b) of the NCS Operating Agreement (or applicable successor section) or (b) purchase, redeem, call or otherwise acquire or retire for value any equity or ownership interest in Borrower, except (i) pursuant to Section 4.01(b) of the NCS Operating Agreement (or applicable successor section), and (ii) redemptions of minority equity/ownership interests held by employees of either Borrower (other than John B. Stanforth) pursuant to the Second Restated and Amended Operating

Agreement of NCS and the Restated and Amended Operating Agreement of NCS II ; provided, that this Section 6.8 shall not be deemed to prohibit the transactions contemplated by the Other Transaction Documents. Not later than the date of

making any Permitted Distribution, the Manager of Borrower shall deliver to Lender an officer's certificate signed by the Manager of Borrower stating that such Permitted Distribution is permitted and setting forth the basis upon which the calculations required by this Section 6.8 were computed.

3. Credit Agreement Confirmed. The Credit Agreement, as amended by this Third Amendment, is in all respects ratified, approved and confirmed by NCS, NCS II and BFC and shall, as so amended, remain in full force and effect in accordance with its terms. All references to the Credit Agreement in any of the Loan Documents shall be deemed to refer to the Credit Agreement as amended by this Third Amendment.

4. Miscellaneous. This Third Amendment shall be governed by and construed in accordance with the laws of the State of Missouri and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the parties hereto have duly executed and

delivered this Third Amendment by their respective officers thereunto duly authorized, as of the day and year first above written.

BLOCK FINANCIAL CORPORATION

By: /s/ Bret G. Wilson

-----  
Name: Bret G. Wilson  
Title: Vice President

NATIONAL CONSUMER SERVICES  
CORP., L.L.C.

By: /s/ John B. Stanforth

-----  
John B. Stanforth  
President

NATIONAL CONSUMER SERVICES  
CORP. II, L.L.C.

By: /s/ John B. Stanforth

-----  
John B. Stanforth  
President



## EXHIBIT 12(A)

BLOCK FINANCIAL CORPORATION  
 COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES  
 (AMOUNTS IN THOUSANDS)

|   | 1997     | 1996    | 1995      | 1994           | 1993     |
|---|----------|---------|-----------|----------------|----------|
|   | -----    | -----   | -----     | -----          | -----    |
| Pretax income from continuing operations.....       | \$ 7,053 | \$5,077 | \$(5,788) | \$(15,644) (a) | \$10,122 |
|   | -----    | -----   | -----     | -----          | -----    |
| FIXED CHARGES:                                      |          |         |           |                |          |
| Interest expense.....                               | 11,397   | 3,230   | 2,985     | 2,932          | 1,703    |
| Interest portion of net rent expense(b).....        | 184      | 101     | 49        | 3              | --       |
|   | -----    | -----   | -----     | -----          | -----    |
| Total fixed charges.....                            | 11,581   | 3,331   | 3,034     | 2,935          | 1,703    |
|   | -----    | -----   | -----     | -----          | -----    |
| Earnings before income taxes and fixed charges..... | \$18,634 | \$8,408 | \$(2,754) | \$(12,709)     | \$11,825 |
|   | -----    | -----   | -----     | -----          | -----    |
| Ratio of earnings to fixed charges.....             | 1.6:1    | 2.5:1   | (c)       | (d)            | 6.9:1    |
|   | -----    | -----   | -----     | -----          | -----    |

(a) Earnings for the year ended April 30, 1994 included a nonrecurring charge of \$25,072 for purchased research and development related to the acquisition of MECA Software, Inc. as disclosed in the Acquisitions note to the Guarantor's consolidated financial statements for the year ended April 30, 1996. If such charges had not occurred, the ratio of earnings to fixed charges would have been 4.2:1.

(b) One-third of net rent expense is the portion deemed representative of the interest factor.

(c) Earnings were insufficient to cover fixed charges for the year ended April 30, 1995 by \$5,788.

(d) Earnings were insufficient to cover fixed charges for the year ended April 30, 1994 by \$15,644.

H&R BLOCK, INC.  
 GUARANTOR  
 COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES  
 (AMOUNTS IN THOUSANDS)

|   | 1997         | 1996      | 1995          | 1994          | 1993      |
|---|--------------|-----------|---------------|---------------|-----------|
|   | -----        | -----     | -----         | -----         | -----     |
| Pretax income from continuing operations.....       | \$38,556 (a) | \$285,294 | \$219,996 (b) | \$283,184 (c) | \$275,894 |
|   | -----        | -----     | -----         | -----         | -----     |
| FIXED CHARGES:                                      |              |           |               |               |           |
| Interest expense.....                               | 11,661       | 3,969     | 4,060         | 3,798         | 6,580     |
| Interest portion of net rent expense (d).....       | 32,265       | 26,248    | 23,459        | 21,218        | 19,672    |
|   | -----        | -----     | -----         | -----         | -----     |
| Total fixed charges.....                            | 43,926       | 30,217    | 27,519        | 25,016        | 26,252    |
|   | -----        | -----     | -----         | -----         | -----     |
| Earnings before income taxes and fixed charges..... | \$82,482     | \$315,511 | \$247,515     | \$308,200     | \$302,146 |
|   | -----        | -----     | -----         | -----         | -----     |
| Ratio of earnings to fixed charges.....             | 1.9:1 (e)    | 10.4:1    | 9.0:1         | 12.3:1        | 11.5:1    |
|   | -----        | -----     | -----         | -----         | -----     |

- 
- (a) Pretax income from continuing operations for the year ended April 30, 1997 includes the minority interest in CompuServe. Earnings for the year ended April 30, 1997 includes nonrecurring charges of \$34,754 related to CompuServe as disclosed in the Other Expenses note to the Guarantor's consolidated financial statements for such year. If such charges had not occurred, the ratio of earnings to fixed charges would have been 2.7:1.
- (b) Earnings for the year ended April 30, 1995 included a nonrecurring charge of \$83,508 for purchased research and development related to the acquisition of SPRY, Inc. as disclosed in the Acquisitions note to the Guarantor's consolidated financial statements for the year ended April 30, 1997. If such charges had not occurred, the ratio of earnings to fixed charges would have been 12.0:1.
- (c) Earnings for the year ended April 30, 1994 included a nonrecurring charge of \$25,072 for purchased research and development related to the acquisition of MECA Software, Inc. as disclosed in the Acquisitions note to the Guarantor's consolidated financial statements for the year ended April 30, 1996. If such charges had not occurred, the ratio of earnings to fixed charges would have been 13.3:1.
- (d) One-third of net rent expense is the portion deemed representative of the interest factor.
- (e) The decrease in the ratio of earnings to fixed charges in 1997 is primarily attributable to the operations of CompuServe, which negatively impacted the computation by 5.1. Interest expense incurred in connection with the Company's mortgage loan business also contributed to the decrease.

INDEPENDENT AUDITORS' CONSENT

We consent to the incorporation by reference in this Registration Statement of Block Financial Corporation and H&R Block, Inc. on Form S-3 of our reports dated June 17, 1997, appearing in and incorporated by reference in the Annual Report on Form 10-K/A of H&R Block, Inc. for the year ended April 30, 1997 and to the reference to us under the heading "Experts" in the Prospectus, which is part of this Registration Statement.

/s/ Deloitte & Touche LLP  
- - - - -

Kansas City, Missouri  
August 14, 1997

Independent Auditors' Consent

The Board of Directors  
Option One Mortgage Corporation:

We consent to the incorporation by reference in the registration statement on Form S-3 of Block Financial Corporation and H&R Block, Inc. dated August 14, 1997 of our report dated February 18, 1997, with respect to the balance sheets of Option One Mortgage Corporation as of December 31, 1996 and 1995 and the statements of earnings, stockholder's equity and cash flows for the year ended December 31, 1996 and for the period March 3, 1995 to December 31, 1995 (Successor period) and from January 1, 1995 to March 2, 1995 (Predecessor period), which report appears in the Form 8-K/A of H&R Block, Inc. dated August 14, 1997 and to the reference to our firm under the heading "Experts" in the Prospectus.

Our report dated February 18, 1997 contains an explanatory paragraph that states that effective March 3, 1995, Fleet National Bank, Rhode Island acquired all of the outstanding stock of Option One Mortgage Corporation in a business combination accounted for as a purchase. As a result of the acquisition, the financial information for the periods after the acquisition is presented on a different cost basis than that for the periods before the acquisition and, therefore, is not comparable. Effective September 27, 1995, Fleet National Bank, Rhode Island transferred its investment in the Company to one of its wholly owned subsidiaries, Fleet Holding Corporation.

/S/ KPMG PEAT MARWICK LLP

Orange County, California  
August 14, 1997

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
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FORM T-1

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) \_\_\_\_\_

-----  
BANKERS TRUST COMPANY

(Exact name of trustee as specified in its charter)

NEW YORK  
(Jurisdiction of Incorporation or  
organization if not a U.S. national bank)

13-4941247  
(I.R.S. Employer  
Identification no.)

FOUR ALBANY STREET  
NEW YORK, NEW YORK  
(Address of principal  
executive offices)

10006  
(Zip Code)

Bankers Trust Company  
Legal Department  
130 Liberty Street, 31st Floor  
New York, New York 10006  
(212) 250-2201

(Name, address and telephone number of agent for service)

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BLOCK FINANCIAL CORPORATION  
(Exact name of obligor as specified in its charter)

Delaware  
(State or other jurisdiction of  
Incorporation or organization)

52-1781495  
(I.R.S. employer  
Identification no.)

4435 Main Street, Suite 500  
Kansas City, Missouri  
(Address of principal executive offices)

64111  
(Zip Code)

DEBT SECURITIES OF BLOCK FINANCIAL CORPORATION  
(Title of the indenture securities)

Item 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

Federal Reserve Bank (2nd District)  
Federal Deposit Insurance Corporation  
New York State Banking Department

New York, NY  
Washington, D.C.  
Albany, NY

(b) Whether it is authorized to exercise corporate trust powers.

Yes.

Item 2. Affiliations with Obligor.

If the obligor is an affiliate of the Trustee, describe each such affiliation.

None.

Item 3. -15. Not Applicable

Item 16. List of Exhibits.

- Exhibit 1 - Restated Organization Certificate of Bankers Trust Company dated August 7, 1990, Certificate of Amendment of the Organization Certificate of Bankers Trust Company dated June 21, 1995 - Incorporated herein by reference to Exhibit 1 filed with Form T-1 Statement, Registration No. 33-65171, Certificate of Amendment of the Organization Certificate of Bankers Trust Company dated March 20, 1996, incorporate by referenced to Exhibit 1 filed with Form T-1 Statement, Registration No. 333-25843 and Certificate of Amendment of the Organization Certificate of Bankers Trust Company dated June 19, 1997, copy attached.
- Exhibit 2 - Certificate of Authority to commence business - Incorporated herein by reference to Exhibit 2 filed with Form T-1 Statement, Registration No. 33-21047.
- Exhibit 3 - Authorization of the Trustee to exercise corporate trust powers Incorporated herein by reference to Exhibit 2 filed with Form T-1 Statement, Registration No. 33-21047.
- Exhibit 4 - Existing By-Laws of Bankers Trust Company, as amended on February 18, 1997, Incorporated herein by reference to Exhibit 4 filed with Form T-1 Statement, Registration No. 333-24509-01.

-2-

Exhibit 5 - Not applicable.

Exhibit 6 - Consent of Bankers Trust Company required by Section 321(b) of the Act. Incorporated herein by reference to Exhibit 4 filed with Form T-1 Statement, Registration No. 22-18864.

Exhibit 7 - The latest report of condition of Bankers Trust Company dated as of March 31, 1997. incorporated by reference to Exhibit 7 with Form T-1 Statement, Registration No. 333-25843.

Exhibit 8 - Not Applicable.

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Bankers Trust Company, 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 11th day of August, 1997.

BANKERS TRUST COMPANY

By: /s/ Kevin Weeks

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Kevin Weeks  
Assistant Vice President

State of New York,  
  
Banking Department

I, MANUEL KURSKY, Deputy Superintendent of Banks of the State of New York, DO HEREBY APPROVE the annexed Certificate entitled "CERTIFICATE OF AMENDMENT OF THE ORGANIZATION CERTIFICATE OF BANKERS TRUST COMPANY Under Section 8005 of the Banking Law," dated June 19, 1997, providing for an increase in authorized capital stock from \$1,601,666,670 consisting of 100,166,667 shares with a par value of \$10 each designated as Common Stock and 600 shares with a par value of \$1,000,000 each designated as Series Preferred Stock to \$2,001,666,670 consisting of 100,166,667 shares with a par value of \$10 each designated as Common Stock and 1,000 shares with a par value of \$1,000,000 each designated as Series Preferred Stock.

Witness, my hand and official seal of the Banking Department at the City of New York,

this 27th day of June in the Year of our Lord one thousand nine hundred and ninety-seven.

Manuel Kursky  
-----  
Deputy Superintendent of Banks

CERTIFICATE OF AMENDMENT  
  
OF THE  
  
ORGANIZATION CERTIFICATE  
  
OF BANKERS TRUST

Under Section 8005 of the Banking Law

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We, James T. Byrne, Jr. and Lea Lahtinen, being respectively a Managing Director and an Assistant Secretary of Bankers Trust Company, do hereby certify:

1. The name of the corporation is Bankers Trust Company.
2. The organization certificate of said corporation was filed by the Superintendent of Banks on the 5th of march, 1903.

3. The organization certificate as heretofore amended is hereby amended to increase the aggregate number of shares which the corporation shall have authority to issue and to increase the amount of its authorized capital stock in conformity therewith.

4. Article III of the organization certificate with reference to the authorized capital stock, the number of shares into which the capital stock shall be divided, the par value of the shares and the capital stock outstanding, which reads as follows:

"III. The amount of capital stock which the corporation is hereafter to have is One Billion, Six Hundred and One Million, Six Hundred Sixty-Six Thousand, Six Hundred Seventy Dollars (\$1,601,666,670), divided into One Hundred Million, One Hundred Sixty-Six Thousand, Six Hundred Sixty-Seven (100,166,667) shares with a par value of \$10 each designated as Common Stock and 600 shares with a par value of One Million Dollars (\$1,000,000) each designated as Series Preferred Stock."

is hereby amended to read as follows:

"III. The amount of capital stock which the corporation is hereafter to have is Two Billion One Million, Six Hundred Sixty-Six Thousand, Six Hundred Seventy Dollars (\$2,001,666,670), divided into One Hundred Million, One Hundred Sixty-Six Thousand, Six Hundred Sixty-Seven (100,166,667) shares with a par value of \$10 each designated as Common Stock and 1000 shares with a par value of One Million Dollars (\$1,000,000) each designated as Series Preferred Stock."

5. The foregoing amendment of the organization certificate was authorized by unanimous written consent signed by the holder of all outstanding shares entitled to vote thereon.

IN WITNESS WHEREOF, we have made and subscribed this certificate this 19th day of June, 1997.

James T. Byrne, Jr.  
-----  
James T. Byrne, Jr.  
Managing Director

Lea Lahtinen  
-----  
Lea Lahtinen  
Assistant Secretary

State of New York                    )  
  ) ss:  
County of New York                 )

Lea Lahtinen, being fully sworn, deposes and says that she is an Assistant Secretary of Bankers Trust Company, the corporation described in the foregoing certificate; that she has read the foregoing certificate and knows the contents thereof, and that the statements herein contained are true.

Lea Lahtinen  
-----  
Lea Lahtinen

Sworn to before me this 19th day of June, 1997.

Sandra L. West  
-----  
Notary Public

SANDRA L. WEST  
Notary Public State of New York  
No. 31-4942101  
Qualified in New York County  
Commission Expires September 19, 1998



