

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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FORM S-3  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933  
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WHITE MOUNTAINS INSURANCE GROUP, LTD.  
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

FUND AMERICAN COMPANIES, INC.  
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

BERMUDA  
(STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)

DELAWARE  
(STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)

94-2708455  
(I.R.S. EMPLOYER IDENTIFICATION NUMBER)

52-2272489  
(I.R.S. EMPLOYER IDENTIFICATION NUMBER)

80 SOUTH MAIN STREET  
HANOVER, NEW HAMPSHIRE 03755-2053  
(603) 643-1567  
(ADDRESS, INCLUDING ZIP CODE, AND TELEPHONE NUMBER, INCLUDING  
AREA CODE, OF REGISTRANT'S PRINCIPAL EXECUTIVE OFFICE)

ONE BEACON STREET  
BOSTON, MASSACHUSETTS 02108-3100  
(617) 725-6000  
(ADDRESS, INCLUDING ZIP CODE, AND TELEPHONE NUMBER, INCLUDING  
AREA CODE, OF REGISTRANT'S PRINCIPAL EXECUTIVE OFFICE)

FUND AMERICAN TRUST I  
FUND AMERICAN TRUST II  
FUND AMERICAN TRUST III  
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE  
(STATE OR JURISDICTION OF INCORPORATION OR ORGANIZATION)

04-6954892  
04-6954893  
04-6954894  
(I.R.S. EMPLOYER IDENTIFICATION NUMBER)

ONE BEACON STREET  
BOSTON, MASSACHUSETTS 02108-3100  
(617) 725-6000  
(ADDRESS, INCLUDING ZIP CODE, AND TELEPHONE NUMBER, INCLUDING  
AREA CODE, OF REGISTRANT'S PRINCIPAL EXECUTIVE OFFICE)

J. BRIAN PALMER  
WHITE MOUNTAINS INSURANCE GROUP, LTD.  
80 SOUTH MAIN STREET  
HANOVER, NEW HAMPSHIRE 03755-2053  
(603) 643 - 1567  
(NAME, ADDRESS, INCLUDING ZIP CODE, AND TELEPHONE NUMBER,  
INCLUDING AREA CODE, OF AGENT FOR SERVICE)

-----  
COPIES TO:  
WILLIAM J. WHELAN, III, ESQ.  
CRAVATH, SWAINE & MOORE  
825 EIGHTH AVENUE  
NEW YORK, NEW YORK 10019-7475

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

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

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

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/

CALCULATION OF REGISTRATION FEE

TITLE OF EACH CLASS OF AMOUNT TO BE REGISTERED	AMOUNT OF SECURITIES TO BE REGISTERED	(1)	(2)	(3)	REGISTRATION FEE
Debt Securities of White Mountains Insurance Group, Ltd.	Preference Shares of White Mountains Insurance Group, Ltd.				
Securities and Junior Subordinated Debt Securities of Fund American Companies, Inc.	Preferred Securities of Fund American Trust I, Fund American Trust II and Fund American Trust III (collectively, the "Fund American Trusts")				
of Debt Securities and Junior Subordinated Debt Securities of Fund American Companies, Inc. by White Mountains Insurance Group, Ltd.	Guarantees of Preferred Securities of the Fund American Trusts by White Mountains Insurance Group, Ltd.				
TOTAL		\$1,000,000,000.00	\$250,000.00		

- (1) Includes such indeterminate principal amount of debt securities as may from time to time be issued at indeterminate prices.
- (2) Represents the aggregate initial offering price of all securities sold. Amounts represent United States Dollars or the equivalent in one or more other currencies or currency units.
- (3) Estimated solely for purposes of calculating the registration fee in accordance with Rule 457(o) under the Securities Act of 1933 and exclusive of accrued interest and dividends, if any.
- (4) No additional registration fee is payable in respect of the registration of Guarantees.

THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(a) OF THE SECURITIES ACT OF 1933 OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(a), MAY DETERMINE.

[begin red herring]

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

[end red herring]

PROSPECTUS SUBJECT TO COMPLETION  
PRELIMINARY PROSPECTUS  
DATED NOVEMBER 8, 2001

\$1,000,000,000

WHITE MOUNTAINS INSURANCE GROUP, LTD.  
PREFERENCE SHARES AND DEBT SECURITIES

FUND AMERICAN COMPANIES, INC.  
DEBT SECURITIES AND JUNIOR SUBORDINATED DEBT SECURITIES  
(IRREVOCABLY AND UNCONDITIONALLY GUARANTEED BY  
WHITE MOUNTAINS INSURANCE GROUP, LTD.)

FUND AMERICAN TRUST I  
FUND AMERICAN TRUST II  
FUND AMERICAN TRUST III  
PREFERRED SECURITIES  
(FULLY AND UNCONDITIONALLY  
GUARANTEED TO THE EXTENT PROVIDED IN THIS PROSPECTUS  
BY WHITE MOUNTAINS INSURANCE GROUP, LTD.)

We may offer these securities in one or more offerings having an aggregate initial public offering price of up to \$1,000,000,000. When we decide to sell a particular series of securities, we will prepare a prospectus supplement describing those securities and our plan of distribution. You should read this prospectus and any prospectus supplement carefully.

White Mountains Insurance Group, Ltd.'s common shares are listed on the New York Stock Exchange under the symbol "WTM".

SEE "RISK FACTORS" BEGINNING ON PAGE 3 TO READ ABOUT FACTORS YOU SHOULD CONSIDER BEFORE INVESTING IN THE SECURITIES.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR DETERMINED WHETHER THIS PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

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 THE DATE OF THIS PROSPECTUS IS , 2001

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that White Mountains Insurance Group, Ltd. ("White Mountains"), Fund American Companies, Inc. ("Fund American") and Fund American Trusts I, II and III (each a "Fund American Trust") filed with the Securities and Exchange Commission (the "SEC") utilizing a "shelf" registration process. Each of White Mountains, Fund American and each Fund American Trust is an issuer under the shelf. Under this shelf process, White Mountains, Fund American and each Fund American Trust may, from time to time over approximately the next two years, sell any combination of the securities described in this prospectus in one or more offerings up to a total dollar amount of \$1,000,000,000 or the equivalent of this amount in foreign currencies or foreign currency units.

This prospectus provides you with a general description of the securities White Mountains, Fund American and each Fund American Trust may offer. Each time White Mountains, Fund American or a Fund American Trust sell securities registered under the registration statement to which this prospectus is part, the issuer will provide a prospectus supplement that will contain specific information about the terms of that offering. The issuer will file each prospectus supplement with the SEC. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with additional information described under the heading "Where You Can Find More Information" below.

This prospectus does not contain separate financial statements for the Fund American Trusts. We do not believe these financial statements would be useful since each trust is an indirect wholly-owned subsidiary of White Mountains, and we file consolidated financial information under the Exchange Act. The Fund American Trusts will not have any independent function other than to issue common and trust preferred securities and to purchase junior subordinated debt securities of Fund American. White Mountains will provide a full, unconditional guarantee of each trust's obligations under their respective common and trust preferred securities.

You should rely only on the information provided in this prospectus and in any prospectus supplement, including the information incorporated by reference. White Mountains, Fund American and the Fund American Trusts have not authorized anyone to provide you with different information. White Mountains, Fund American and the Fund American Trusts are not offering the securities in any state where the offer is not permitted. You should not assume that the information in this prospectus, or any supplement to this prospectus, is accurate at any date other than the date indicated on the cover page of these documents.

WHERE YOU CAN FIND MORE INFORMATION

White Mountains files annual, quarterly and special reports, proxy statements and other information with the SEC. You may read and copy any document we file with the SEC at the SEC's public reference rooms at the following locations:

Public Reference Room  
450 Fifth Street, N.W.  
Room 1024  
Washington, D.C. 20549

New York Regional Office  
233 Broadway  
New York, NY 10279

Chicago Regional Office  
Citicorp Center  
500 West Madison Street  
Suite 1400  
Chicago, Illinois 60661-2511

Please call the SEC at 1-800-SEC-0330 for further information on the operations of the public reference rooms. Our SEC filings are also available to the public at the SEC's web site at [HTTP://WWW.SEC.GOV](http://www.sec.gov) and at the public reference room of the New York Stock Exchange, 20 Broad Street, New York, New York. You may also obtain more information by visiting our web site at [HTTP://WWW.WHITEMOUNTAINS.COM](http://www.whitemountains.com). The information on our web site is not part of this prospectus.

Some documents filed or to be filed by us with the SEC are incorporated by reference into this prospectus. The information contained in those documents is considered to be part of this prospectus, except that the information contained in later-dated documents will supplement, modify or supersede, as applicable, the information contained in earlier-dated documents.

The information in the following documents that we have filed or will file with the SEC is incorporated by reference into this prospectus:

- o Our Annual Report on Form 10-K for the year ended December 31, 2000;
- o Our Quarterly Reports on Forms 10-Q for the quarters ended March 31, 2001 and June 30, 2001;
- o Our Current Reports on Forms 8-K dated February 20, 2001 (filed February 20, 2001); June 1, 2001 (filed June 1, 2001); June 8, 2001 (filed June 8, 2001); July 25, 2001 (filed July 25, 2001); August 23, 2001 (filed August 23, 2001); September 5, 2001 (filed September 7, 2001); September 14, 2001 (filed September 17, 2001); October 31, 2001 (filed November 1, 2001) and November 2, 2001 (filed November 2, 2001); and Form 8-K/A dated June 1, 2001 (filed June 8, 2001); June 1, 2001 (filed June 25, 2001); September 5, 2001 (filed October 31, 2001); November 1, 2001 (filed November 5, 2001) and June 1, 2001 (filed November 7, 2001).
- o Our Proxy Statement for our 2001 Annual Meeting on Schedule 14A filed July 6, 2001;
- o The description of our common shares in Form 8-A filed December 16, 1999; and
- o All documents filed by us with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 after the date of this prospectus and prior to the termination of all offerings hereunder.

The statements contained in this prospectus regarding the provisions of any other document are not necessarily complete. Accordingly, each of these statements is qualified in its entirety by reference to the copy of that document filed with the SEC.

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You may obtain without charge a copy of any of the documents incorporated by reference into this prospectus, except for any exhibits to those documents that are not expressly incorporated by reference, from us. Any request for those documents should be directed to our Corporate Secretary at one of the following addresses or telephone numbers:

80 South Main Street  
Hanover, New Hampshire 03755-2053  
(603) 643-1567

Suite 224  
12 Church Street  
Hamilton HM 11, Bermuda  
(Bermuda mailing address)

Crawford House  
23 Church Street  
Hamilton HM 11, Bermuda  
(Bermuda street address)

(441) 296-6011

White Mountains is organized under the laws of Bermuda. In addition, some of our directors and officers, as well as some of the experts named in this prospectus, reside outside of the United States. A substantial portion of our and their assets are located outside of the United States. It may be difficult for you to effect service of process within the United States on White Mountains' directors, officers and experts who reside outside the United States or to enforce in the United States judgments of U.S. courts obtained in actions against White Mountains or its directors and officers, as well as the experts named in this prospectus who reside outside the United States.

We have been advised by our Bermuda counsel, Conyers Dill & Pearman, that there is doubt as to whether:

- o an investor would be able to enforce, in the courts of Bermuda, judgments of United States courts against persons who reside in Bermuda based upon the civil liability provisions of United States federal securities laws;
- o an investor would be able to enforce, in the courts of Bermuda, judgments of United States courts based upon the civil liability provisions of the United States federal securities laws;
- o an investor would be able to bring an original action in the Bermuda courts to enforce liabilities against us or our directors and officers, as well as the experts named in this prospectus, who reside outside the United States based solely upon United States federal securities laws.

We also have been advised by Conyers Dill & Pearman that there is no treaty in effect between the United States and Bermuda providing for such enforcement, and there are grounds upon which Bermuda courts may not enforce judgments of United States courts. Certain remedies available under the laws of United States jurisdictions, including certain remedies available under the United States federal securities law, may not be allowed in Bermuda courts as contrary to Bermuda's public policy.

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#### PROSPECTUS SUMMARY

THIS SUMMARY HIGHLIGHTS WHAT WE BELIEVE TO BE THE MOST IMPORTANT INFORMATION ABOUT THE COMPANY AND THE OFFERING. BECAUSE THIS IS A SUMMARY, IT DOES NOT CONTAIN ALL THE INFORMATION THAT MAY BE IMPORTANT TO YOU. TO UNDERSTAND OUR BUSINESS AND THIS OFFERING FULLY, YOU SHOULD READ THE ENTIRE PROSPECTUS CAREFULLY, INCLUDING THE RISK FACTORS SECTION BEGINNING ON PAGE 3, THE DOCUMENTS INCORPORATED BY REFERENCE INTO THIS PROSPECTUS AND THE PROSPECTUS SUPPLEMENT RELATING TO THE SECURITIES THAT YOU PROPOSE TO BUY, ESPECIALLY ANY DESCRIPTION OF INVESTMENT RISKS THAT WE MAY INCLUDE IN THE PROSPECTUS SUPPLEMENT. UNLESS OTHERWISE INDICATED OR THE CONTEXT OTHERWISE REQUIRES, REFERENCES IN THIS PROSPECTUS TO "WE", "OUR", "US" OR THE "COMPANY" REFER TO WHITE MOUNTAINS INSURANCE GROUP, LTD. AND ITS DIRECT AND INDIRECT SUBSIDIARIES.

#### WHITE MOUNTAINS INSURANCE GROUP, LTD.

White Mountains was originally formed as a Delaware corporation in 1980 and became a Bermuda limited liability company during 1999. The company's headquarters are located at Crawford House, 23 Church Street, Hamilton, Bermuda HM 11, its principal executive office is located at 80 South Main Street, Hanover, New Hampshire, 03755-2053 and its registered office is located at Clarendon House, 2 Church Street, Hamilton, Bermuda HM DX. The company's telephone numbers are (441) 296-6011 in Bermuda and (603) 643-1567 in New Hampshire. The company is a holding company for its property and casualty insurance and reinsurance operations.

#### FUND AMERICAN COMPANIES, INC.

Fund American is a Delaware corporation with its principal executive office located at One Beacon Street, Boston, Massachusetts 02108-3100. Fund American is an intermediate holding company for all of White Mountains' property and casualty insurance and reinsurance operations. OneBeacon Corporation ("OneBeacon"), a wholly-owned subsidiary of Fund American, owns and controls several property and casualty insurance and reinsurance companies and Folksamerica Holding Company, Inc. ("Folksamerica"), a wholly-owned subsidiary of the OneBeacon, owns and controls several property and casualty insurance and reinsurance companies.

White Mountains indirectly owns all the outstanding shares of Fund American common stock.

#### THE FUND AMERICAN TRUSTS

The Fund American Trusts I, II and III are each Delaware business trusts that will offer and sell trust preferred securities, from time to time in one or more offerings. Each Fund American Trust will use all of the proceeds from the sale of its trust preferred securities to buy junior subordinated debt securities of Fund American. The Fund American Trusts will receive cash payments from the junior subordinated debt securities, and each trust will distribute these payments to the holders of its trust preferred and common securities.

#### THE OFFERING

We may offer any of the following securities from time to time:

- o preference shares
- o debt securities
- o trust preferred securities

This prospectus describes the general terms that may apply to the securities; the specific terms of any particular securities that we may offer will be described in a separate supplement to this prospectus.

#### RISK FACTORS

Prospective purchasers of the securities should consider carefully all the information set forth in this prospectus and, in particular, should evaluate the specific factors under the section "Risk Factors" beginning on page 3 for considerations relevant to an investment in the offering.

#### OUR EXECUTIVE OFFICES

Our principal executive offices are located at 80 South Main Street, Hanover, New Hampshire 03755-2053, and our telephone number is (603) 643-1567. Our headquarters are located at Crawford House, 23 Church Street, Hamilton, Bermuda HM 11 and our registered office is located at Clarendon House, 2 Church Street, Hamilton, Bermuda HM DX.

#### RISK FACTORS

In addition to the other information in this prospectus, you should consider the following factors before determining whether to invest in the securities.

#### RISKS RELATING TO OUR BUSINESS

UNPREDICTABLE CATASTROPHIC EVENTS, SUCH AS THE SEPTEMBER 11, 2001 TERRORIST ATTACKS, COULD REDUCE OUR NET INCOME.

We write insurance and reinsurance policies that cover catastrophic events. Our policies cover unpredictable natural and other disasters, such as hurricanes, windstorms, earthquakes, floods, fires and explosions. Claims from catastrophic events could reduce our net income, cause substantial volatility in our financial results for any fiscal quarter or year and adversely affect our financial condition or results of operations. Our ability to write new business could also be impacted. We believe that increases in the value and geographic concentration of insured property and the effects of inflation will increase the severity of claims from catastrophic events in the future.

On September 11, 2001, terrorists hijacked a number of airplanes and caused them to crash, resulting in large losses to life and property. We estimate that our pretax gross losses associated with these terrorist attacks to be approximately \$348.0 million, \$85.0 million net of reinsurance and taxes. Further repercussions from these incidents and the effect they will have on us and our industry cannot be predicted and are beyond our control. The current conflict in Afghanistan, the potential commission of further terrorist incidents, substantial political instability and societal disruption may harm our business.

WE MAY NOT BE SUCCESSFUL IN ACHIEVING THE INTENDED BENEFITS OF THE ONEBEACON ACQUISITION.

We recently completed the acquisition of OneBeacon, which significantly changed the operations of our company. Acquisitions involve numerous risks, including:

- o difficulty with the assimilation of acquired operations and products;
- o failure to achieve targeted returns;
- o inability to retain key employees and business relationships of acquired companies; and
- o diversion of the attention and resources of our management team.

The process of improving acquired operations and achieving targeted returns may result in unexpected operating difficulties and may require significant financial and other resources that would otherwise be available for the ongoing development of existing operations.

If we cannot successfully integrate OneBeacon, the risks associated with the acquisition may adversely affect our business, financial condition, results of operations and cash flows.

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OUR LOSS RESERVES MAY BE INADEQUATE TO COVER OUR ULTIMATE LIABILITY FOR LOSSES AND AS A RESULT COULD ADVERSELY AFFECT OUR FINANCIAL RESULTS.

We are required to maintain adequate monetary reserves to cover our estimated ultimate liabilities for loss and loss adjustment expenses. These reserves are only estimates based on actuarial and statistical projections of what we believe the settlement and administration of claims will cost based on facts and circumstances then known to us. Because of the uncertainties that surround estimating loss reserves, we cannot be certain that our reserves are adequate and actual claims and claim expenses paid might exceed our reserves. If our reserves are insufficient to cover our actual loss and loss adjustment expenses, we would have to augment our reserves and incur charges to our earnings. These charges could be material.

OUR SUBSTANTIAL DEBT AND OUR DEBT SERVICE OBLIGATIONS COULD ADVERSELY AFFECT OUR BUSINESS.

We have substantial amounts of outstanding indebtedness. As of June 30, 2001, we had approximately \$1,093.3 million of indebtedness outstanding, including \$828.1 million of indebtedness of Fund American.

Our substantial indebtedness could have significant negative consequences, including:

- o increasing our vulnerability to general adverse economic and industry conditions;
- o limiting our ability to obtain additional financing for working capital, capital expenditures, acquisitions and other purposes;
- o requiring the dedication of a significant portion of our expected cash flow from operations to service our indebtedness, thereby reducing the amount of our expected cash flow available for working capital, capital expenditures, acquisitions and other purposes;
- o making it more difficult to satisfy our obligations with respect to the debt securities;
- o limiting our flexibility in planning for, or reacting to, changes in our business and industry;
- o placing us at a possible competitive disadvantage relative to less leveraged competitors;
- o increasing the amount of our interest expense, because some of our borrowings are at variable rates of interest, which, if interest rates increase, could result in higher interest expense; and
- o limiting, through the financial and other restrictive covenants in our indebtedness, among other things, our ability to borrow additional funds, dispose of assets or make investments.

Our ability to meet our expenses and debt obligations will depend on our future performance, which will be affected by financial, business, economic and other factors. We will not be able to control many of these factors, such as economic conditions and governmental regulation. We cannot be certain that our earnings will be sufficient to allow us to pay the principal and interest on our debt and meet our other obligations. If we do not have enough money, we may be required to refinance all or part of our existing debt, sell assets, borrow more money or sell equity. We cannot assure you that we will be able to accomplish any of these alternatives on terms acceptable to us, if at all.

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DESPITE CURRENTLY EXPECTED LEVELS OF INDEBTEDNESS, OUR SUBSIDIARIES AND WE WILL BE ABLE TO INCUR SUBSTANTIALLY MORE DEBT.

Our subsidiaries and we will be able to incur substantial additional indebtedness in the future. Any such borrowings would be effectively senior to the securities. In addition, the indenture with respect to the debt securities does not restrict us from incurring additional indebtedness. To the extent new debt and other obligations are added to our and our subsidiaries' currently anticipated debt levels, the substantial risks described above would increase.

BECAUSE WHITE MOUNTAINS AND FUND AMERICAN ARE HOLDING COMPANIES, THEY ARE DEPENDENT ON DIVIDENDS AND PAYMENTS FROM THEIR RESPECTIVE SUBSIDIARIES TO MAKE PAYMENTS ON THEIR DEBT AND TO PAY DIVIDENDS ON THEIR PREFERRED STOCK.

As holding companies with no direct operations and whose only significant assets are the capital stock of their respective subsidiaries, each

of White Mountains and Fund American relies on investment income, cash dividends and other permitted payments from its subsidiaries to make principal and interest payments on its debt and dividends on its preferred stock. The respective subsidiaries of White Mountains and Fund American are not obligated to pay amounts due pursuant to any debt securities of White Mountains and Fund American or make funds available to White Mountains or Fund American, respectively, for such payments. The respective subsidiaries of White Mountains and Fund American may not be able to generate a cash flow sufficient to pay a dividend or distribute funds to White Mountains or Fund American. In addition, applicable state law that regulates the payment of dividends by our insurance subsidiaries and certain contractual restrictions, including restrictions in the debt instruments of White Mountains' and Fund American's subsidiaries, could prohibit such dividends or distributions. Under the insurance laws of the states in which White Mountains' and Fund American's insurance subsidiaries are domiciled, an insurer is restricted with respect to the timing or the amount of dividends it may pay without prior approval by regulatory authorities. In a given calendar year, our insurance subsidiaries can generally dividend without prior regulatory approval up to the greater of 10% of their statutory surplus at the beginning of the year or the prior year's statutory net income, subject to the availability of unassigned funds (the statutory accounting equivalent of retained earnings). Larger dividends can be paid only upon regulatory approval. If the respective subsidiaries of White Mountains and Fund American cannot pay dividends, White Mountains and Fund American may be unable to repay their indebtedness or to pay dividends on preferred stock.

DECREASES IN RATES FOR PROPERTY AND CASUALTY INSURANCE AND REINSURANCE COULD REDUCE OUR NET INCOME.

The property and casualty insurance and reinsurance industry historically has been highly cyclical and competitive. Rates for property and casualty insurance and reinsurance are influenced primarily by factors that are outside of our control, including market and competitive conditions and regulatory issues. Any significant decrease in the rates for property and casualty insurance or reinsurance could reduce our net income.

THE PROPERTY AND CASUALTY INSURANCE AND REINSURANCE INDUSTRY IS HIGHLY COMPETITIVE AND WE MAY NOT BE ABLE TO COMPETE EFFECTIVELY IN THE FUTURE.

The property and casualty insurance and reinsurance industry is highly competitive and has experienced severe price competition over the last several years. We compete in the United States with numerous international and domestic insurance and reinsurance companies. Some of these competitors

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have greater financial resources than we do, have been operating for longer than we have and have established long-term and continuing business relationships throughout the industry, which can be a significant competitive advantage. In addition, we expect to face further competition in the future. If we are unable to maintain our competitive position, our business may be adversely affected and we may not be able to compete effectively in the future.

WE MAY NOT BE ABLE TO SUCCESSFULLY ALLEVIATE RISK THROUGH REINSURANCE AND RETROCESSIONAL ARRANGEMENTS.

We attempt to limit our risk of loss through reinsurance and retrocessional arrangements. The availability and cost of reinsurance and retrocessional protection is subject to market conditions, which are outside of our control. As a result, we may not be able to successfully alleviate risk through these arrangements. In addition, we are subject to credit risk with respect to our reinsurance and retrocessions because the ceding of risk to other insurance enterprises and reinsurers does not relieve us of our liability to our policy holders or ceding companies. We also may experience difficulties in the future in recovering material reinsurance receivables under our reinsurance and retrocessional arrangements if one or more of our reinsurers suffer financial deterioration.

WE MAY NOT MAINTAIN A FAVORABLE FINANCIAL STRENGTH RATING WHICH COULD ADVERSELY AFFECT OUR ABILITY TO CONDUCT BUSINESS.

Third party rating agencies assess and rate the claims-paying ability of insurers and reinsurers. Financial strength ratings are used by insurers and reinsurers and insurance and reinsurance intermediaries as an important means of assessing the financial strength and quality of insurers and reinsurers. In addition, the rating of a company purchasing reinsurance may be adversely affected by an unfavorable rating or the lack of a rating of its reinsurer. These ratings are based upon criteria established by the rating agencies. Some of the criteria relate to general economic conditions and other circumstances outside the rated company's control. Periodically the rating agencies evaluate us to confirm that we continue to meet the criteria of the ratings previously assigned to us. The claims-paying ability ratings assigned by rating agencies to insurance or reinsurance companies are based upon factors relevant to policyholders and are not directed toward the protection of investors. Financial strength ratings by rating agencies are not ratings of securities or recommendations to buy, hold, or sell any security.

OneBeacon's principal insurance operating subsidiaries presently hold an "A" (Excellent) financial strength rating from A.M. Best Company. Folksamerica's principal reinsurance operating subsidiary presently holds an "A-" (Excellent) financial strength rating from A.M. Best Company. A downgrade or withdrawal of either of our ratings could severely limit or prevent us from writing any new insurance or reinsurance policies.



OUR INABILITY TO ACCURATELY ASSESS UNDERWRITING RISK COULD REDUCE OUR NET INCOME.

Our success is dependent on our ability to accurately assess the risks associated with the businesses that we insure or reinsure. If we fail to accurately assess the risks we assume, we may fail to establish appropriate premium rates and our reserves may be inadequate to cover our losses, which could adversely impact our financial condition and results of operations.

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REGULATION MAY RESTRICT OUR ABILITY TO OPERATE AND RESTRICTS OUR ABILITY TO RECEIVE DIVIDENDS FROM OUR INSURANCE SUBSIDIARIES.

The insurance and reinsurance industries are subject to extensive regulation under Federal, state and foreign laws. Governmental agencies have broad administrative power to regulate many aspects of the insurance business, which may include premium rates, marketing practices, advertising, policy forms and capital adequacy. These agencies are concerned primarily with the protection of policyholders rather than shareholders or holders of debt securities. Insurance laws and regulations limit the amount of dividends that can be paid, impose restrictions on the amount and type of investments, prescribe solvency standards that must be met and maintained and require the maintenance of reserves. In addition, state insurance holding company statutes generally require prior notice or approval of changes of control of an insurer or its holding company.

MANDATED MARKET MECHANISMS MAY REQUIRE US TO UNDERWRITE POLICIES WITH A HIGHER RISK OF LOSS.

White Mountains' insurance and reinsurance operations are often required to directly or indirectly participate in mandatory shared market mechanisms, principally in the states of Massachusetts, New Jersey and New York. These mechanisms typically require insurers to accept applications for insurance policies by individuals who are unable to obtain insurance in the voluntary market. Underwriting results related to assigned risk plans are typically adverse and, as a result, we underwrite some policies with a higher risk of loss than we would normally accept. This may result in greater liability than anticipated and could adversely affect our financial condition and results of operations.

OUR INVESTMENT OBJECTIVES MAY NOT BE REALIZED.

The success of our investment objectives is affected by general economic conditions that are outside of our control. General economic conditions can adversely affect the markets for interest-rate-sensitive securities, including the extent and timing of investor participation in such markets, the level and volatility of interest rates and, consequently, the value of fixed income securities. Unexpected volatility or illiquidity in the markets in which we directly or indirectly hold positions could adversely affect us and we may not be able to realize our investment objectives, which could reduce our net income.

WE DEPEND ON OUR KEY PERSONNEL TO MANAGE OUR BUSINESS EFFECTIVELY AND THEY MAY BE DIFFICULT TO REPLACE.

Our performance substantially depends on the efforts and abilities of our senior management team and other executive officers and key employees. Furthermore, much of our competitive advantage is based on the expertise, experience and know-how of our key personnel. The loss of key employees could have a negative effect on our business, revenues, results of operations and financial condition. Our success also depends on the ability to hire and retain additional personnel. Difficulty in hiring or retaining personnel could adversely affect future operating performance.

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#### SPECIAL NOTE ON FORWARD-LOOKING STATEMENTS

This prospectus includes "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. All statements, other than statements of historical facts, included or incorporated by reference in this prospectus which address activities, events or developments which we expect or anticipate will or may occur in the future are forward-looking statements. The words "believe", "intend", "expect", "anticipate", "project", "estimate", "predict" and similar expressions are also intended to identify forward-looking statements.

These forward-looking statements include, among others, such things as:

- o the amount and nature of future capital expenditures;
- o our financial and operating targets;
- o business strategy;
- o expansion and growth of our business and operations;
- o projections of revenues, income (or loss), earnings (or loss)

per share, dividends, market share or other financial forecasts;

- o our or our management's statements of plans, objectives or goals, including those related to growth in book value and deferred credit per share or return on equity; and
- o expected losses on, and adequacy of loss reserves for, insurance in force.

These statements are based on certain assumptions and analyses made by us in light of our experience and perception of historical trends, current conditions and expected future developments, as well as other factors we believe are appropriate in the circumstances. However, whether actual results and developments will conform with our expectations and predictions is subject to a number of risks and uncertainties which could cause actual results to differ materially from our expectations, including:

- o the risk factors discussed in this prospectus and in the documents we incorporate by reference;
- o continued availability of capital and financing;
- o general economic, market or business conditions;
- o the acquisition and other business opportunities (or lack thereof) that may be presented to and pursued by us;
- o competitive forces, including the conduct of other property and casualty insurers and reinsurers;
- o changes in domestic or foreign laws or regulations applicable to us, our competitors or our clients;

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- o an economic downturn or other economic conditions (such as a rising interest rate environment) adversely affecting our financial position;
- o loss reserves established by us subsequently proving to have been inadequate; and
- o other factors, most of which are beyond our control.

Consequently, all of the forward-looking statements made in this prospectus are qualified by these cautionary statements, and there can be no assurance that the actual results or developments anticipated by us will be realized or, even if substantially realized, that they will have the expected consequences to or effects on us or our business or operations. We assume no obligation to update publicly any such forward-looking statements, whether as a result of new information, future events or otherwise.

RATIO OF EARNINGS TO FIXED CHARGES  
AND RATIO OF EARNINGS TO COMBINED FIXED CHARGES  
AND PREFERRED STOCK DIVIDENDS

The following table sets forth the ratio of earnings to fixed charges and the ratio of earnings to combined fixed charges and preferred stock dividends for White Mountains for the periods indicated.

YEAR ENDED DECEMBER 31, ----	----- SIX					
MONTHS ENDED 1996 1997 1998						
1999 2000 JUNE 30, 2001 ----						
-----						
----- Ratio of earnings to fixed charges	(1).....	2.3	8.7	5.4	9.7	21.8 n/a (2)
Ratio of earnings to combined fixed charges and preferred stock dividends.....	2.3	8.7	5.4	9.7	21.8	n/a (2)

- (1) For purposes of this computation, earnings are defined as earnings from continuing operations before income taxes plus fixed charges excluding capitalized interest. Fixed charges are the sum of interest expense and interest expense inherent in lease obligations.
- (2) Not applicable due to a loss from continuing operations before income taxes plus fixed charges excluding capitalized interest reported during the period.

USE OF PROCEEDS

Unless indicated otherwise in a prospectus supplement, we expect to use the net proceeds from the sale of the securities for general corporate purposes, including repayment of borrowings, working capital, capital expenditures, share repurchase programs and acquisitions. Unless otherwise specified in the

accompanying prospectus supplement, the Fund American Trusts will use all proceeds received from the sale of their trust preferred securities to purchase junior subordinated debt securities of Fund American.

## BUSINESS

### GENERAL

White Mountains Insurance Group, Ltd. was originally formed as a Delaware corporation in 1980 and became a Bermuda company during 1999. The company's headquarters are located at Crawford House, 23 Church Street, Hamilton, Bermuda HM 11, its principal executive office is located at 80 South Main Street, Hanover, New Hampshire 03755-2053 and its registered office is located at Clarendon House, 2 Church Street, Hamilton, Bermuda HM DX. The company is the holding company for its property and casualty insurance and reinsurance operations.

In June 1999, the company changed its name from "Fund American Enterprises Holdings, Inc." to "White Mountains Insurance Group, Inc."

In October 1999, the company completed a corporate reorganization whereby it changed its domicile from Delaware to Bermuda (the "Redomestication"). The Redomestication was primarily undertaken to improve the company's ability to compete in international markets by creating a corporate structure which is more favorable for the formation and growth of internationally-based insurance and reinsurance operations and which has an enhanced ability to pursue business combinations with non- United States entities. In connection with the Redomestication, the company's name was further changed to "White Mountains Insurance Group, Ltd." to comply with Bermuda law.

On June 1, 2001, the company acquired OneBeacon Corporation (formerly CGU Corporation, "OneBeacon") from London-based CGNU plc. ("CGNU") for \$2.1 billion, of which \$260.0 million consisted of a convertible note payable (the "Seller Note") with the balance paid in cash. OneBeacon owns and controls several property and casualty insurance companies and Folksamerica Holding Company, Inc. ("Folksamerica"), a wholly-owned subsidiary of OneBeacon, which owns and controls several property and casualty insurance and reinsurance companies.

On October 30, 2001, OneBeacon announced that it had reached a definitive agreement (the "Renewal Rights Agreement") with Liberty Mutual Insurance Group ("Liberty Mutual") which, beginning November 1, 2001, gradually transfers OneBeacon's personal and commercial business, staff and operations in 42 states and the District of Columbia to Liberty Mutual.

### PROPERTY AND CASUALTY INSURANCE

#### OVERVIEW

As a property and casualty insurance company, OneBeacon writes insurance policies in exchange for premiums paid by its customers (the insured). An insurance policy is a contract between an insurance company and the insured whereby the insurance company agrees to pay for losses covered under the contract. Property insurance covers the financial consequences of accidental losses to the property of the insured, such as a house and typically the personal property in it, or a business' building, inventory and equipment. Casualty insurance (often referred to as liability insurance) generally covers the financial consequences of a legal liability of an individual or an organization resulting from negligent acts and omissions causing bodily injury and/or property damage to a third party. Property and casualty insurance is available on a wide variety of coverages, including the following:

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- o Automobile insurance covers physical damage to an insured's vehicle as well as liabilities to third parties. Auto physical damage insurance covers loss or damage to vehicles from collision, vandalism, fire, theft or other causes. Auto liability insurance covers bodily injury to others, damage to the property of others resulting from automobile accidents caused by the insured and the legal costs of defending the insured against lawsuits.
- o Homeowners insurance covers losses to an insured's home, including its contents, as a result of weather, fire, theft and other causes.
- o Workers' compensation insurance covers an employer's liability for injuries, disability or death of employees, without regard to fault, as prescribed by state workers' compensation law and other statutes.
- o Ocean marine insurance covers losses to an insured's vessel and/or its cargo as a result of a collision, fire, piracy and other perils.
- o Inland marine insurance covers property that may be

in transit, held by a bailee at a fixed location, movable goods that are often stored at different locations or property with an unusual antique or collector's value.

- o General liability insurance covers businesses for any liability resulting from bodily injury and property damage arising from its general business operations, accidents on its premises and its products manufactured or sold.
- o Umbrella insurance supplements existing insurance policies by covering losses from a broad range of insurance risks that attach at a level above the primary insurance policy up to a specified limit.

Insurance companies derive a significant amount of their total revenues from earned premiums, investment income and net gains and losses from sales of securities. Earned premiums represent premiums paid by insureds, which are recognized as revenue over the period of time during which insurance coverage is provided (i.e., ratably over the life of the policy). Investment income, consisting primarily of interest earned on fixed maturity investments and dividends earned on equity securities, is derived from investing funds on hand, including funds supporting unpaid loss and loss adjustment expense reserves and unearned premium reserves. Net realized investment gains and losses result from sales of securities from an insurer's investment portfolio. Because the timing and magnitude of such gains or losses depend on conditions in the securities markets, it is difficult to accurately forecast realized gains or losses.

Insurance companies incur a significant amount of their total expenses from policyholder losses, which are commonly referred to as "claims". As part of the settlement of policyholder losses, insurance companies also incur various loss adjustment expenses, including insurance adjusters' fees and litigation expenses. Insurance companies also incur expenses in the form of commissions payable to agents and expenses related to the underwriting process, such as salaries for actuarial staff.

An underwriting profit or loss is determined by subtracting losses, loss adjustment expenses and other underwriting expenses from earned premiums. A key measure of relative underwriting performance is the combined ratio. An insurer's combined ratio under generally accepted accounting principles is

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calculated by adding the ratio of incurred loss and loss adjustment expenses to premiums earned (the "loss ratio") and the ratio of underwriting expenses to premiums earned (the "expense ratio"). A combined ratio of 100% or less indicates an underwriting profit, while a ratio greater than 100% indicates an underwriting loss. When considering investment income and realized gains or losses, insurance companies operating at a combined ratio of greater than 100% can be profitable despite incurring an underwriting loss.

#### ONEBEACON

OneBeacon is a multi-line property and casualty insurer that writes policies exclusively through independent agents in the United States. Headquartered in Boston, Massachusetts, OneBeacon is currently licensed and writing business in all 50 states and the District of Columbia, with a strong presence in the Northeast region. OneBeacon's principal insurance operating subsidiaries are currently rated "A" (Excellent) by A.M. Best Company.

Most insurance subsidiaries of OneBeacon participate in an intercompany pooling agreement whereby 100% of all property and casualty business written by the participating companies is ceded to the lead company (OneBeacon Insurance Company), which in turn retrocedes the premiums and losses associated with the business back to the participating companies based on a specified percentage of the pool's total written premium. Two other subsidiaries, National Farmers Union Property and Casualty Company and subsidiaries ("NFU") and Houston General Insurance Company and subsidiaries ("HG"), operate outside of this pooling arrangement but are nonetheless included in OneBeacon's consolidated results.

Under the terms of the Renewal Rights Agreement, on November 1, 2001 Liberty Mutual began to assume all new and renewal business subject to the Renewal Rights Agreement. OneBeacon will retain all of the existing balance sheet liabilities, including loss and loss adjustment expense reserves and unearned premium reserves, related to the transferred business. Additionally, OneBeacon will reinsure 66 2/3% of the net premiums written and the net liability for loss and loss adjustment expenses of all renewal policies subject to the Renewal Rights Agreement during the first twelve months after November 1, 2001 and 33 1/3% of such net premiums written and net liability for loss and loss adjustment expenses during the following twelve months. As a result of the Renewal Rights Agreement, OneBeacon expects to become a Northeast regional personal and commercial lines insurance company with some select specialty markets in other regions. The Renewal Rights Agreement is contained in the Company's Current Report on Form 8-K dated November 1, 2001.

During the six months ended June 30, 2001, OneBeacon had net written premiums of \$1.9 billion prior to giving effect to reinsurance obtained from National Indemnity Company (the "NICO Cover") and from General Re Corporation (the "GRC Cover"), of which \$1.1 billion would not have been subject to the Renewal Rights Agreement had it been effective at the beginning of the

applicable period. During 2000, 1999 and 1998, OneBeacon had net written premiums of \$4.3 billion, \$4.2 billion and \$4.1 billion, respectively, of which \$2.3 billion, \$2.2 billion and \$2.0 billion, respectively, would not have been subject to the Renewal Rights Agreement had it been effective at the beginning of each applicable period. OneBeacon had total assets of \$15.1 billion and shareholder's equity of \$3.2 billion at June 30, 2001 and had total assets of \$14.2 billion and \$14.0 billion and shareholder's equity of \$3.2 billion and \$3.8 billion at December 31, 2000 and 1999, respectively.

National Indemnity Company and General Re Corporation are wholly-owned subsidiaries of Berkshire Hathaway Inc. ("Berkshire"). Through the exercise of fully vested warrants to acquire common shares held by Berkshire, Berkshire has the right to acquire 1,714,285 common shares of White Mountains at an exercise price of \$175.00 per share. The warrants represented 17% of the total outstanding common shares of White Mountains at September 30, 2001 on a fully-converted basis.

**LINES OF BUSINESS AND GEOGRAPHIC CONCENTRATION**

**BUSINESS LINES.** OneBeacon writes three main lines of business: commercial lines, personal lines and specialty products which for the six months ended June 30, 2001, prior to giving effect to the NICO Cover and the GRC Cover, represented 48%, 40% and 12% of its net written premiums, respectively. OneBeacon's net written premiums by line of business for the six months ended June 30, 2001, prior to giving effect to the NICO Cover and the GRC Cover, and the years ended December 31, 2000, 1999 and 1998 were as follows:

Six Months Ended Year Ended	December 31, June	2000	1999	1998
Business line 2001				
Commercial	\$ 924.0	\$ 2,063.4	\$ 2,017.2	\$ 1,947.8
Personal	753.6	1,695.2	1,741.8	1,814.0
Specialty	225.6	535.5	489.7	351.6
<b>Total</b>	<b>\$ 1,903.2</b>	<b>\$ 4,294.1</b>	<b>\$ 4,248.7</b>	<b>\$ 4,113.4</b>





unprofitable product lines. Since the acquisition of OneBeacon, White Mountains has been focused on strengthening OneBeacon's future insurance operations through such actions as more selective and disciplined underwriting practices, the implementation of price increases and the elimination of poor and marginal accounts and agents. Additionally, as a result of the Renewal Rights Agreement, the Company is seeking to focus its efforts on improving the ongoing operations of OneBeacon in the Northeast region, where the Company believes that these actions will have the greatest effect on improving OneBeacon's underwriting results.

#### CLAIMS

Claims handling is another significant competitive factor in the property and casualty insurance marketplace. Effective claims management is a key ingredient to achieving satisfactory underwriting results. Additionally, claims servicing is a means by which property and casualty insurance companies seek to differentiate the products they sell from similar products available in the marketplace.

Claims handling is managed by OneBeacon's home office and is performed in various regional and local branch offices. OneBeacon maintains an experienced staff of appraisers, medical specialists, managers, attorneys and field adjusters strategically located throughout its operating territories. OneBeacon also maintains a special investigative unit designed to detect insurance fraud and abuse.

Since the acquisition of OneBeacon by White Mountains, management has been seeking to improve its claim function in order to reduce ultimate loss and loss adjustment expense payments. Improvements include implementing systems applications designed to improve the availability and scope of claims related data and increasing staffing levels in certain claims functions. Such actions are expected to increase the amount of indirect expenses associated with claims handling but reduce the amount of loss and loss adjustment expenses in total.

#### LOSS AND LOSS ADJUSTMENT EXPENSE RESERVES

OneBeacon establishes loss and loss adjustment expense reserves that are estimates of future amounts needed to pay claims and related expenses with respect to insured events that have occurred. Loss and loss adjustment expense reserves have two components: case reserves, which are reserves for reported losses, and incurred but not reported ("IBNR") reserves. Case reserves are estimated based on the experience and knowledge of claims personnel regarding the nature and value of each claim. OneBeacon periodically adjusts case reserves as additional information becomes known or payments are made. OneBeacon determines its IBNR reserves considering historical patterns of paid and reported claim development experience, supplemented by reported industry data, and the level of OneBeacon's IBNR claim reserves relative to earned premium applied by accident year, line of business and type of insurance written by OneBeacon.

The process of estimating loss and loss adjustment expense reserves involves a considerable degree of judgment by management. During the claims settlement period, which may extend over a long period of time, additional facts regarding claims and trends may become known which may cause OneBeacon to adjust its estimates of the ultimate liability. As a result, actual loss and loss adjustment expenses may deviate, perhaps substantially, from estimates reflected in OneBeacon's consolidated financial statements.

The following table presents the development of OneBeacon's year-end property and casualty losses for the ten-year period from 1990 to 2000. Section I of the table shows the gross and net (of reinsurance) estimated liabilities that were recorded at the end of each of the indicated years for all current and prior year unpaid loss and loss adjustment expenses ("LAE"). Section II shows the re-estimate of the net liabilities made in each succeeding year. Section III shows the cumulative net liabilities paid of such previously recorded liabilities. Section IV shows the cumulative net deficiency representing the aggregate change in the liability from the original balance sheet dates.

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OneBeacon  
Loss and  
Loss  
Adjustment  
Expenses



(1) Year  
Ended  
December  
31, - - - - -  
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Dollars in  
Millions  
1990 (2)  
1991 (2)  
1992 1993  
1994 1995  
1996 1997  
1998 (3)  
1999 2000 -  
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I.

Liability  
for unpaid  
losses and  
LAE: Gross  
balance \$ \_  
\$ \_ \$  
5,652.8 \$  
5,562.5 \$  
5,535.4 \$  
5,844.4 \$  
5,804.4 \$  
5,655.9 \$  
6,944.0 \$  
6,368.8 \$  
6,982.7

Less:  
reins.  
recoverables  
on unpaid  
losses and  
LAE - -  
(1,392.6)  
(1,191.6)  
(1,069.8)  
(1,307.4)  
(1,260.4)  
(1,159.2)  
(1,651.9)  
(1,285.6)  
(1,276.4) -  
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- Net

balance  
\$3,167.0  
\$3,638.2 \$  
4,260.2 \$  
4,370.9 \$  
4,465.6 \$  
4,537.0 \$  
4,544.0 \$  
4,496.7 \$  
5,292.1 \$  
5,083.2 \$  
5,706.3 - -  
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II.  
Liability  
re-  
estimated  
as of: 1  
year later  
3,271.5  
3,782.7  
4,365.9  
4,411.5  
4,494.1  
4,584.7  
4,627.8  
5,370.1  
5,305.3  
5,893.6 2  
years later  
3,449.9  
3,904.4  
4,413.4  
4,450.3  
4,552.1  
4,667.1  
5,476.0  
5,424.7  
5,985.4 3  
years later  
3,582.9  
3,992.2  
4,510.5  
4,501.0  
4,642.8  
5,460.6  
5,549.0  
5,965.0 4  
years later  
3,689.1  
4,147.5  
4,610.3  
4,602.8  
5,406.5  
5,510.6  
5,924.8 5  
years later  
3,903.5  
4,257.6  
4,705.8  
5,353.2  
5,431.8  
5,779.5 6  
years later  
4,004.0  
4,356.3  
5,446.4  
5,353.5  
5,632.0 7  
years later  
4,097.8  
5,093.6  
5,439.2  
5,523.8 8  
years later  
4,824.2  
5,080.7  
5,587.1 9  
years later  
4,812.8  
5,217.2 10  
years later  
4,932.5 - -  
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III.  
Cumulative  
amount of

liability  
 paid  
 through: 1  
 year later  
 1,081.8  
 1,075.7  
 1,461.0  
 1,367.3  
 1,390.1  
 1,476.6  
 1,591.9  
 1,687.3  
 1,815.2  
 1,966.5 2  
 years later  
 1,619.6  
 1,928.3  
 2,254.8  
 2,152.5  
 2,240.8  
 2,372.6  
 2,621.3  
 2,735.4  
 2,954.8 3  
 years later  
 2,184.8  
 2,438.5  
 2,761.5  
 2,711.5  
 2,821.9  
 3,083.3  
 3,331.1  
 3,518.0 4  
 years later  
 2,514.0  
 2,734.0  
 3,135.8  
 3,089.5  
 3,328.3  
 3,571.3  
 3,872.2 5  
 years later  
 2,691.6  
 2,994.5  
 3,394.6  
 3,464.3  
 3,672.7  
 3,961.5 6  
 years later  
 2,876.7  
 3,182.3  
 3,693.0  
 3,720.2  
 3,978.3 7  
 years later  
 3,016.5  
 3,434.1  
 3,882.1  
 3,979.3 8  
 years later  
 3,229.3  
 3,591.6  
 4,122.9 9  
 years later  
 3,369.1  
 3,813.0 10  
 years later  
 3,578.5 - -  
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IV.  
 Cumulative  
 deficiency  
 \$1,765.5  
 \$1,579.0 \$  
 1,326.9 \$  
 1,152.9 \$  
 1,166.4 \$  
 1,242.5 \$  
 1,380.8 \$  
 1,468.3 \$  
 693.3 \$  
 810.4 \$ -  
 Percent



4,496.7 Net  
 loss and  
 LAE  
 reserves  
 acquired -  
 HG (1) - -  
 - 6.4 Net  
 loss and  
 LAE  
 reserves  
 acquired -  
 NFU (2) - -  
 - 56.8  
 Cumulative  
 effect of  
 accounting  
 change -  
 guaranty  
 fund  
 assessments  
 - - 14.4 -  
 Loss and  
 LAE  
 incurred  
 relating  
 to: Current  
 year losses  
 1,862.9  
 3,484.0  
 3,194.9  
 3,106.3  
 Prior year  
 losses  
 (1,021.2)  
 818.0 57.5  
 840.6 -----  
 -----  
 -----  
 --- Total  
 loss and  
 LAE  
 incurred  
 841.7  
 4,302.0  
 3,252.4  
 3,946.9  
 Loss and  
 LAE paid  
 relating  
 to: Current  
 year losses  
 (911.8)  
 (1,706.6)  
 (1,611.7)  
 (1,639.9)  
 Prior year  
 losses  
 (963.2)  
 (1,972.3)  
 (1,864.0)  
 (1,574.8) -  
 -----  
 -----  
 -----  
 Total loss  
 and LAE  
 paid  
 (1,875.0)  
 (3,678.9)  
 (3,475.7)  
 (3,214.7)  
 Gross  
 beginning  
 balance \$  
 4,673.0 \$  
 5,706.3 \$  
 5,083.2 \$  
 5,292.1  
 Plus ending  
 reinsurance  
 recoverables  
 on unpaid  
 losses and  
 LAE 2,272.8  
 1,276.4  
 1,285.6  
 1,651.9 ---  
 -----  
 -----  
 -----  
 ----- Gross  
 ending

balance \$
6,945.8 \$
6,982.7 \$
6,368.8 \$
6,944.0 - -
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- (1) Reinsurance recoverables on unpaid losses and LAE acquired in the HG acquisition were \$286.8 million.
- (2) Reinsurance recoverables on unpaid losses and LAE acquired in the NFU acquisition were \$9.0 million.

OneBeacon discounts certain loss and loss adjustment expenses relating to long-term workers' compensation reserves. These liabilities on an undiscounted basis were \$541.3 million at June 30, 2001 and were \$482.9 million, \$447.4 million and \$375.1 million at December 31, 2000, 1999 and 1998, respectively. Discounting these reserves served to reduce loss and loss adjustment expense liabilities by \$263.7 million at June 30, 2001 and by \$230.7 million, \$227.3 million and \$167.6 million at December 31, 2000, 1999 and 1998, respectively. The discount rate used to value such reserves was approximately 7% over the periods presented.

OneBeacon strengthened prior year loss reserves in 1998 by \$840.6 million primarily for environmental and asbestos claims (\$614.0 million) and for certain long-tailed business.

OneBeacon strengthened prior year loss reserves in 1999 by \$57.5 million.

Subsequent to the execution of the definitive agreement for the acquisition of OneBeacon by White Mountains, OneBeacon increased prior year loss reserves by \$818.0 million in 2000 primarily for adverse loss development on auto liability coverage (\$204.4 million) and certain commercial workers' compensation (\$149.3 million), general liability (\$136.9 million) and special multi-peril coverage (\$256.5 million).

During the first six months of 2001, prior year loss reserve reductions and a net increase in reinsurance recoverables of \$1,021.2 million and \$996.4 million, respectively, were almost entirely related to the NICO Cover and the GRC Cover. The NICO Cover and the GRC Cover, which were contingent on, and occurred contemporaneously with the Acquisition, qualify for prospective reinsurance accounting treatment under the Financial Accounting Standards Board's Emerging Issues Task Force Topic No. D-54 which characterizes the protection as an indemnification by the seller for increases in the liabilities for loss and loss adjustment expenses that existed at the acquisition date.

ENVIRONMENTAL AND ASBESTOS LIABILITIES

OneBeacon has estimated its environmental and asbestos loss and loss adjustment expense liabilities based upon several factors, including facts surrounding reported cases (such as policy limits and deductibles), current law, past and projected claim activity and past settlement values for similar claims. Immediately prior to the acquisition of OneBeacon by White Mountains, CGNU (OneBeacon's former parent) caused OneBeacon to purchase the NICO Cover for \$1,114.8 million in cash. Pursuant to the NICO Cover, OneBeacon obtained \$2.5 billion in total coverage against its asbestos, environmental, and certain other latent exposures, including lead paint, and ceded net nominal loss reserves of \$747.6 million. As a result, OneBeacon believes that its net exposure to liabilities related to damage or injury from environmental pollution or from asbestos injury claims arising out of product or general liability coverage is limited. However, as case law expands, OneBeacon may become subject to environmental and asbestos loss and loss adjustment expense liabilities beyond those intended by policy coverage. White Mountains believes that it is unlikely that any such liabilities would have a material adverse effect on its financial condition or its cash flows. However, loss reserve additions arising from future unfavorable expansion of case law cannot be reasonably estimated at the present time, and future increases in environmental and asbestos loss reserves may emerge which would adversely affect the Company's financial position.

The following table summarizes loss and loss adjustment expense reserves for environmental and asbestos exposures, including coverage dispute costs, at June 30, 2001 and December 31, 2000 and 1999:

	December 31, 1999		June 30, 2000		June 30, 2001		Dollars in Millions	
Gross of reinsurance	\$ 981.3	\$ 1,039.6	\$ 1,353.1	\$ 1,353.1	\$ 1,353.1	\$ 1,353.1	\$ 1,353.1	Net of reinsurance
	15.6	\$ 786.5	\$ 956.0					

## CONSTRUCTION DEFECT AND MOLD CLAIMS

Construction defect claims represent a subset of claims that arise from coverage provided by general liability insurance. Construction defect claims arise from alleged defective work performed by contractors and subcontractors in the construction of large dwellings, such as apartments, condominiums and large developments of single family dwellings. In addition to damages arising directly from the

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alleged defective work, construction defect claims often allege that the economic value of the structure has been diminished. Mold claims also represent a subset of claims that arise from coverage provided by general liability insurance. The existence of certain airborne mold spores, resulting from moisture trapped in confined areas, has been alleged to cause severe health and environmental hazards. OneBeacon has sought to limit its potential future exposure to construction defect and mold claims by including exclusionary language in its insurance policies or ceasing to write business in jurisdictions where the exposure to such claims is large. As a result, OneBeacon believes that its net exposure to these claims is limited and that its reserves for such liabilities are adequate. However, as case law expands, OneBeacon may be subject to construction defect and mold loss and loss adjustment expense liabilities beyond those intended by policy coverage. White Mountains believes that it is unlikely that any such liabilities would have a material adverse effect on its financial condition or its cash flows. However, loss reserve additions arising from future unfavorable expansion of case law cannot be reasonably estimated at the present time and future increases in construction defect and mold loss reserves may emerge which would adversely affect the Company's financial position.

## THIRD PARTY REINSURANCE

In the ordinary course of its business, OneBeacon cedes various risks to high quality, highly rated, third party reinsurers in order to provide greater diversification of its business and minimize its net loss arising from large risks or catastrophic events.

Catastrophe losses are unpredictable and the level of catastrophic losses experienced in any year could potentially be material to OneBeacon's results of operations and financial position. Examples of catastrophes include losses caused by earthquakes, wildfires, hurricanes and other types of storms, tornadoes and terrorist acts. The extent of losses caused by catastrophes is both a function of the total amount of insured exposure in an area affected by the event and the severity of the event.

OneBeacon continually assesses and develops strategies to manage its exposure to catastrophe losses through individual risk selection, by limiting the concentration of insurance written in catastrophe-prone areas (such as coastal regions) and through the purchase of catastrophe reinsurance. OneBeacon has a catastrophe reinsurance program in place for the 2001 calendar year whereby the first \$125.0 million of losses resulting from any one catastrophe are retained by OneBeacon. Catastrophe losses from a single event in excess of \$125.0 million up to \$650.0 million are reinsured with a syndicate of reinsurers for either 95.0% or 97.5% of the loss, depending upon the aggregate amount of all losses incurred as a result of the catastrophe.

Reinsurance contracts do not relieve OneBeacon of its primary obligation to its policyholders. Therefore, the financial position and solvency of OneBeacon's reinsurers is critical to the collectibility of its reinsurance coverages. OneBeacon is selective with regard to its reinsurers, placing reinsurance with only those reinsurers with strong financial strength ratings. OneBeacon monitors the financial strength of its reinsurers on an ongoing basis. As a result, uncollectible amounts have not historically been significant.

OneBeacon ceded 74.0% of its gross premiums written during the six months ended June 30, 2001. When adjusted for the one-time impact of the NICO Cover and the GRC Cover, OneBeacon ceded 7.5% of its gross premiums written during the six months ended June 30, 2001. OneBeacon ceded 9.3%, 6.7% and 8.1% of its gross premiums written during the years ended December 31, 2000, 1999 and 1998, respectively.

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## PROPERTY AND CASUALTY REINSURANCE

### OVERVIEW

Reinsurance is an arrangement in which a reinsurance company (the "reinsurer") agrees to indemnify an insurance company (the "ceding company") for all or a portion of the insurance risks underwritten by the ceding company under one or more insurance policies. Reinsurance can benefit a ceding company in a number of ways, including reducing net liability exposure on individual risks, providing catastrophe protections from large or multiple losses, stabilizing financial results and assisting in maintaining acceptable operating leverage ratios. Reinsurance can also provide a ceding company with additional underwriting capacity by permitting it to accept larger risks and underwrite a greater number of risks without a corresponding increase in its capital or

surplus. Reinsurers may also purchase reinsurance, known as retrocessional reinsurance, to cover their own risks assumed from primary ceding companies. Reinsurance companies often enter into retrocessional agreements for many of the same reasons that ceding companies enter into reinsurance agreements.

A significant period of time normally elapses between the receipt of reinsurance premiums and the disbursement of reinsurance claims ("float"). The claims process generally begins upon the occurrence of an event causing an insured loss followed by: (1) the reporting of the loss to the ceding company; (2) the reporting of the loss by the ceding company to reinsurer; (3) the ceding company's adjustment and payment of the loss; and (4) the payment to the ceding company by reinsurer. During this time, the reinsurer earns investment income on the float. Therefore, even if a reinsurer's combined ratio is higher than that of a property and casualty insurance company it may still earn an equivalent or superior return on equity.

#### FOLKSAMERICA

Folksamerica, through its wholly-owned subsidiary, Folksamerica Reinsurance Company (a New York-domiciled reinsurance company), is a multi-line broker-market reinsurer which provides reinsurance to insurers of property and casualty and accident and health risks in the United States, Canada, Latin America and the Caribbean. Folksamerica Reinsurance Company is currently rated "A-" (Excellent) by A.M. Best Company. During the 2000 fourth quarter and the 2001 second quarter, certain insurance operating subsidiaries of White Mountains were contributed to Folksamerica. These operations, which in the aggregate are not significant to White Mountains, are excluded from the following discussion of Folksamerica.

During the six months ended June 30, 2001, Folksamerica had net written premiums of \$228.9 million. During 2000, 1999 and 1998, Folksamerica had net written premiums of \$332.6 million, \$201.7 million and \$212.6 million, respectively. At June 30, 2001, Folksamerica had total assets of \$2.7 billion and shareholder's equity of \$534.4 million. At December 31, 2000 and 1999, Folksamerica had total assets of \$2.8 billion and \$1.3 billion, respectively, and shareholder's equity of \$339.7 million and \$249.4 million, respectively.

Folksamerica writes both treaty and facultative reinsurance. Treaty reinsurance is an agreement whereby the ceding company is obligated to cede, and the reinsurer is obligated to assume, a specified portion or category of risk under all qualifying policies issued by the ceding company during the term of a treaty. In the underwriting of treaty reinsurance, the reinsurer does not evaluate each individual risk assumed and generally accepts the original underwriting decisions made by the ceding insurer.

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Facultative reinsurance is underwritten on a risk-by-risk basis whereby Folksamerica applies its own pricing to an individual exposure. Facultative reinsurance is normally purchased by insurance companies for individual risks not covered under reinsurance treaties or for amounts in excess of limits on risks covered under reinsurance treaties. The majority of Folksamerica's premiums are derived from treaty reinsurance contracts both on an excess of loss and quota share basis, which in 2000 amounted to 23.2% and 67.1% of its total earned premiums, respectively. Folksamerica derives its business from a spectrum of ceding insurers including national, regional, specialty and excess and surplus lines writers. Folksamerica determines which risks it accepts based on the anticipated underwriting results of the transaction, which are evaluated on a variety of factors including the quality of the reinsured, the attractiveness of the reinsured's insurance rates, policy conditions and the adequacy of the proposed reinsurance terms.

Folksamerica commenced writing business in 1980 as one of a host of newly formed, foreign-owned reinsurers capitalized with minimum surplus. In 1991, recognizing that surplus size would become an increasingly important business issue, Folksamerica launched an aggressive strategy to increase its resources and capacity through the acquisition of select broker-market reinsurance and property and casualty insurance companies. Since 1991, Folksamerica has acquired several other reinsurers which has served to raise Folksamerica's surplus and contributed a number of important business relationships. Folksamerica's more recent acquisitions included USF Re Insurance Co. ("USF Re"), PCA Property & Casualty Insurance Company ("PCA"), substantially all the reinsurance operations of Risk Capital Reinsurance Company ("Risk Capital") and C-F Insurance Company. Folksamerica may acquire additional insurance and reinsurance operations in the future.

#### LINES OF BUSINESS AND GEOGRAPHIC CONCENTRATION

**BUSINESS LINES.** Folksamerica writes three main lines of reinsurance: liability reinsurance, property reinsurance and accident and health reinsurance, which for the six months ended June 30, 2001 represented 62%, 27% and 6% of its net written premiums, respectively.

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Folksamerica's net written premiums by line of business and by geographic region for the six months ended June 30, 2001 and the years ended December 31, 2000, 1999 and 1998 were as follows:

Six Months Year Ended December 31, ended June 30, ----- Business



Line (\$ in millions)	2001	2000	1999	1998 (1)					
					Liability	\$ 141.3	\$ 208.4	\$ 122.6	\$
122.0	Property	61.7	91.6	68.9	87.2	Accident and Health	12.7	26.4	- - Other
3.4									13.2 6.2 10.2
					Total	\$ 228.9	\$ 332.6	\$ 201.7	\$ 212.6

Six Months Year Ended December 31, ended June 30, Geographic region (\$ in millions)	2001	2000	1999	1998 (1)					
					United States	\$ 205.5	\$		
296.7	\$ 172.2	\$ 190.9	Canada	12.3	21.6	21.0	13.9	Latin America and the Caribbean	11.1
14.3	8.5	7.8						Total	\$ 228.9 \$ 332.6 \$ 201.7 \$
									212.6

(1) White Mountains acquired all the outstanding capital stock of Folksamerica in August 1998. Prior to that date, White Mountains owned a 50% economic interest in Folksamerica.

#### MARKETING

Folksamerica obtains most of its reinsurance business through brokers and reinsurance intermediaries that represent the ceding company in negotiations for the purchase of reinsurance. The process of effecting a brokered reinsurance placement typically begins when a ceding company enlists the aid of a reinsurance broker in structuring a reinsurance program. Often the ceding company and the broker will consult with one or more lead reinsurers as to the pricing and contract terms for the reinsurance protection being sought. Once the ceding company has approved the terms quoted by the lead reinsurer, the broker will offer participation to qualified reinsurers until the program is fully subscribed by reinsurers at terms agreed to by all parties.

Folksamerica generally pays ceding companies a ceding commission under quota share reinsurance treaties. The ceding commission is generally based on the ceding company's cost of acquiring the business being reinsured (commissions, premium taxes and certain miscellaneous expenses). During the six months ended June 30, 2001 and the year ended December 31, 2000, Folksamerica received no more than 10% of its gross reinsurance premiums from any individual ceding company. Additionally, Folksamerica pays reinsurance brokers' commissions based on negotiated percentages of the premium it writes. These commissions, which average approximately 5% of premium, constitute a significant portion of Folksamerica's total acquisition costs and are included in its underwriting expenses. During the six-month period ended June 30, 2001 and the year ended December 31, 2000, Folksamerica received approximately 54.8% and 56.4%, respectively, of its gross reinsurance premiums written from three major reinsurance brokers as follows: (1) AON Re, Inc. - 19.8% and 17.2%, respectively; (2) Benfield Blanch - 19.3% and 21.6%, respectively; and (3) Guy Carpenter - 15.7% and 17.6%, respectively.

#### UNDERWRITING AND PRICING

Folksamerica's actuaries separately evaluate each underwriting opportunity presented by Folksamerica's reinsurance brokers in order to determine price. Folksamerica prices its products by assessing the desired return on the capital needed to write a given contract and by estimating future loss and loss adjustment expenses and investment income to be earned on net cash flow from the contract. Folksamerica will only accept contracts with a high likelihood of generating acceptable returns on equity. Folksamerica's estimates are based on a number of underwriting factors including historical analysis of results, estimates of future loss costs, a review of other programs displaying similar exposure characteristics, the primary insurer's underwriting and claims experience and the primary insurer's financial condition.

#### CLAIMS

Folksamerica maintains a staff of experienced reinsurance claim specialists that work closely with reinsurance intermediaries to obtain specific claims information from its customers. Folksamerica's claims staff also regularly perform onsite claim reviews of Folksamerica's customers to improve the insured's claim-handling ability, which can, in turn, reduce the total losses ceded by the insured to Folksamerica. In addition, Folksamerica's claim specialists often review loss information provided to Folksamerica by the insured for adequacy and appropriateness. The results of Folksamerica's onsite claim reviews are shared with its actuaries and underwriters to ensure that they are making the correct assumptions in pricing its products and that Folksamerica's loss reserves are appropriately stated.

#### LOSS AND LOSS ADJUSTMENT EXPENSE RESERVES

Folksamerica establishes loss and loss adjustment expense reserves that are estimates of future amounts needed to pay claims and related expenses with respect to insured events that have occurred. Loss and loss adjustment expense reserves have two components: case reserves and IBNR reserves. Reserve estimates reflect the judgment of both the ceding company and the reinsurer, based on the experience and knowledge of their respective claims personnel, regarding the nature and value of the claim. The ceding company may periodically adjust the amount of the case reserves as additional information becomes known or partial payments are made. Upon notification of a loss from a ceding company, Folksamerica establishes case reserves, including loss adjustment expense

reserves, based upon Folksamerica's share of the amount of reserves established by the ceding company and Folksamerica's independent evaluation of the loss. Where appropriate, Folksamerica establishes case reserves in excess of its share of the reserves established by the ceding company.

Folksamerica uses a combination of actuarial methods to determine its IBNR reserves. These methods fall into two general categories: (1) methods by which ultimate claims are estimated based upon historical patterns of paid and reported claim development experienced by Folksamerica, as supplemented by reported industry patterns, and (2) methods in which the level of Folksamerica's IBNR claim reserves are established based upon the application of expected loss ratios relative to earned premium by accident year, line of business and type of reinsurance written by Folksamerica.

The process of estimating loss and loss adjustment expense reserves involves a considerable degree of judgment by management. During the claims settlement period, which may extend over a long period of time, additional facts regarding claims and trends may become known which may cause Folksamerica to adjust its estimates of the ultimate liability. As a result, actual loss and loss adjustment

expenses may deviate, perhaps substantially, from estimates reflected in the Company's consolidated financial statements.

The following table presents the subsequent development of the year-end reinsurance losses for the ten-year period from 1990 to 2000. Section I of the table shows the estimated liabilities that were recorded at the end of each of the indicated years for all current and prior year unpaid losses and loss adjustment expenses. Section II shows the re-estimate of the liabilities made in each succeeding year. Section III shows the cumulative liabilities paid of such previously recorded liabilities. Section IV shows the cumulative deficiency representing the aggregate change in the liability from the original balance sheet dates:

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Reinsurance  
Loss and  
Loss  
Adjustment  
Expenses  
(1), (3)  
Year Ended  
December  
31, - - - - -

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-- Dollars  
in Millions  
1990 (2)  
1991 (2)  
1992 1993  
1994 1995  
1996 1997  
1998 1999  
2000 - - - - -

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--- I.  
Liability  
for unpaid  
losses and  
LAE: Gross  
balance \$ -  
\$ - \$ 758.3

\$ 798.4 \$  
856.2 \$  
981.5  
\$1,578.7  
\$1,461.3  
\$1,437.6  
\$1,210.7  
\$1,500.7  
Less:  
reins.  
recoverables  
on unpaid  
losses and  
LAE - -  
(172.0)  
(154.4)  
(182.4)  
(201.0)  
(390.2)  
(352.0)  
(397.9)  
(324.1)  
(702.8) ---  
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----- Net  
balance \$  
431.8 \$  
506.3 \$  
586.3 \$  
644.0 \$  
673.8 \$  
780.5  
\$1,188.5  
\$1,109.3  
\$1,039.7 \$  
886.6 \$  
797.9 - ---  
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---- II.  
Liability  
re-  
estimated  
as of: 1  
year later  
466.3 543.4  
601.5 672.5  
701.8 834.1  
1,222.6  
1,125.5  
1,036.0  
914.4 2  
years later  
494.3 542.9  
626.0 706.0  
748.6 855.4  
1,224.6  
1,108.5  
1,047.8 3  
years later  
489.2 567.6  
653.2 746.3  
763.7 862.7  
1,206.4  
1,114.5 4  
years later  
508.0 589.2  
680.7 761.3  
767.0 874.9  
1,214.2 5  
years later  
522.9 610.2  
694.8 764.1  
778.8 874.2  
6 years  
later 539.1  
623.0 699.6  
772.8 779.2  
7 years

later 551.3  
 630.6 706.5  
 774.2 8  
 years later  
 559.3 637.1  
 709.1 9  
 years later  
 567.1 635.7  
 10 years  
 later 566.7  
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III.

Cumulative  
 amount of  
 liability  
 paid

through: 1  
 year later  
 113.0 136.7  
 165.1 219.8  
 201.9 225.5  
 322.6 277.5  
 291.4 102.3  
 2 years  
 later 179.8  
 202.6 289.8  
 337.3 323.4  
 363.6 506.7  
 472.0 390.6  
 3 years  
 later 219.8  
 290.9 366.2  
 418.2 412.8  
 457.0 656.6  
 582.4 4  
 years later  
 286.3 343.4  
 423.9 481.2  
 474.3 542.8  
 774.0 5  
 years later  
 322.5 382.1  
 467.9 521.4  
 530.8 608.2  
 6 years  
 later 352.3  
 415.8 495.2  
 565.8 572.7  
 7 years  
 later 377.4  
 439.1 530.6  
 596.3 8  
 years later  
 394.4 480.7  
 551.0 9  
 years later  
 421.1 488.4  
 10 years  
 later 439.1  
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IV.

Cumulative  
 \$ 134.9 \$  
 129.4 \$  
 122.8 \$  
 130.2 \$  
 105.4 \$  
 93.7 \$ 25.7  
 \$ 5.2 \$ 8.1  
 \$ 27.8 \$ -  
 deficiency  
 Percent  
 deficient  
 31.2% 25.6%

20.9% 20.2%  
 15.6% 12.0%  
 2.2% 0.5%  
 0.8% 3.1% -  
 % - -----  
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- (1) The table excludes certain other insurance operations of White Mountains whose liability for unpaid losses and LAE totaled \$55.6 million, \$68.9 million, \$88.5 million, \$71.9 million and \$65.4 million as of December 31, 2000, 1999, 1998, 1997 and 1996, respectively.
- (2) For the years 1990 and 1991 liabilities are shown net of reinsurance recoverables on paid and unpaid losses and LAE, as was the accounting practice prior to the implementation of SFAS 113.
- (3) The above table includes the complete loss development history for all periods presented for all companies acquired by Folksamerica through an instrument of Transfer and Assumption approved by the appropriate insurance regulators. Under the instrument, insurance regulators require that Folksamerica report reserve development on loss and loss adjustment expense reserve liabilities as if the companies had been combined from their inception.

The following table summarizes Folksamerica's loss and loss adjustment expense reserve activity for the six months ended June 30, 2001 and the years ended December 31, 2000 and 1999 and 1998:

Six Months Ended Year Ended	December 31, 2001	June 30, 2000	December 31, 1999	December 31, 1998
Millions				
(3) -				
Gross beginning balance \$	1,500.7	\$ 782.1	\$ 723.2	\$ 739.1
Less beginning reinsurance recoverables on unpaid losses and LAE (702.8)	(136.2)	(129.0)	(122.8)	---
Net loss and LAE reserves	797.9	645.9	594.2	616.3
Loss and LAE reserves acquired - USF Re (1)				

- - 106.5 -
Loss and
LAE
reserves
acquired -
PCA (1) -
253.8 - -
Loss and
LAE
reserves
acquired -
Risk
Capital (1)
- 312.6 - -
Loss and
LAE
reserves
transferred
and assumed
(2) 4.0
(270.2) - -
Loss and
LAE
incurred
relating
to: Current
year losses
169.1 247.9
152.9 167.1
Prior year
losses 9.1
22.9 29.3
3.2 -----
-----
-----
---- Total
incurred
loss and
LAE 178.2
270.8 182.2
170.3 Loss
and LAE
paid
relating
to: Current
year losses
(16.9)
(16.0)
(55.4)
(37.1)
Prior year
losses
(226.3)
(399.0)
(181.6)
(155.3) ---
-----
-----
-----
Total loss
and LAE
payments
(243.2)
(415.0)
(237.0)
(192.4) Net
ending
balance
736.9 797.9
645.9 594.2
Plus ending
reinsurance
recoverables
on unpaid
losses and
LAE 763.2
702.8 136.2
129.0 -----
-----
-----
-----
Gross
ending
balance \$
1,500.1
\$1,500.7 \$
782.1 \$
723.2 - ---
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- (1) Reinsurance recoverables on unpaid losses and LAE acquired in the Risk Capital, PCA and USF Re acquisitions were \$59.1 million, \$153.3 million and \$21.8 million, respectively.
  - (2) Includes \$270.6 million of loss and LAE reserves ceded to a third party during 2000.
  - (3) White Mountains acquired all the outstanding capital stock of Folksamerica in August 1998. Prior to that date, White Mountains owned a 50% economic interest in Folksamerica.

Prior year reserve strengthening of \$9.1 million for the six months ended June 30, 2001 was primarily from higher than expected reported losses in Folksamerica's property excess line recorded during the 2001 first quarter.

Prior year reserve strengthening of \$22.9 million and \$29.3 million in 2000 and 1999, respectively, was primarily from additions to the reserves acquired with USF Re and Risk Capital and additions resulting from asbestos, environmental liability and breast implant exposures.

Since 1991, Folksamerica has acquired several other insurers and reinsurers, which has increased Folksamerica's surplus and contributed a number of important business relationships. The structure of Folksamerica's acquisitions often provides effective economic protections to offset potential post-acquisition loss development. Folksamerica's statutory combined ratios generally do not reflect such protections which are usually recorded at the holding company level. For the six months ended June 30, 2001 and the years ended December 31, 2000 and 1999, Folksamerica recorded \$7.1 million, \$27.8 million and \$20.3 million of net after tax benefits, respectively, resulting from favorable purchase structures which mitigate the impact of future adverse loss development from such acquisitions. These benefits for the six-month period ended June 30, 2001 consisted entirely of deferred credit amortization. These benefits for 2000 consisted of a \$6.8 million after tax reduction in the note issued in connection with Folksamerica's acquisition of USF Re (the "USF Re Seller Note"), \$10.0 million of various purchase price adjustments and \$11.0 million of net after-tax deferred credit amortization. These benefits

for 1999 consisted of a \$14.0 million after-tax reduction in the USF Re Seller Note and \$6.3 million of net after-tax deferred credit amortization.

COMPETITION

PROPERTY AND CASUALTY INSURANCE

Property and casualty insurance is highly competitive and stringently regulated by state insurance departments. As a result, it is often difficult for insurance companies to differentiate their products to consumers. The two most significant competitive factors for most insurance products offered by OneBeacon are price and service. As a property and casualty insurer that writes exclusively through independent agents, OneBeacon believes that most property and casualty insurance customers value the counsel of a professional independent agent, and that its exclusive use of independent agents is a competitive advantage over direct-response writers. OneBeacon is able to offer independent agents broader product offerings (including both commercial and personal lines) and greater financial strength than many smaller carriers who are its primary competitors in the independent agent channel. As a result of the Renewal Rights Agreement, OneBeacon expects to become a large Northeast regional company. As a sizable regional company, OneBeacon expects that it can continue to provide broad product offerings yet believes that its narrower focus will allow OneBeacon to provide more responsive and comprehensive service to its agents and customers.

PROPERTY AND CASUALTY REINSURANCE

In general, competition among primary companies has caused insurers to reduce their own premium writings or restructure their reinsurance programs, thereby reducing the amount of reinsurance they purchase. As a result of consolidation within the industry, many ceding companies are now larger and financially stronger, thereby enabling them to retain more risk. In addition, increasingly intense competition in the reinsurance markets caused by increased industry capital has historically driven reinsurance prices on many programs below levels which Folksamerica will accept. However, modest improvements in overall reinsurance pricing have emerged at recent renewal dates due to a reduction in capacity of some reinsurers. The significant insured losses resulting from the terrorist attacks on September 11, 2001 will likely cause reinsurance pricing, terms and conditions to improve significantly in the coming months. Folksamerica's management believes that the reinsurance industry, including the intermediary market, will continue to undergo further consolidation. Management further believes that size and financial strength will become increasingly important factors in selecting reliable reinsurance

partners.

## REGULATION

White Mountains' insurance and reinsurance operations are subject to regulation and supervision in each of the jurisdictions where they are domiciled and licensed to conduct business. Generally, regulatory authorities have broad supervisory and administrative powers over such matters as licenses, standards of solvency, premium rates, policy forms, investments, security deposits, methods of accounting, form and content of financial statements, reserves for unpaid loss and loss adjustment expenses, reinsurance, minimum capital and surplus requirements, dividends and other distributions to shareholders, periodic examinations and annual and other report filings. In general, such regulation is for the protection of policyholders rather than shareholders. Over the last several years most states have implemented laws that establish standards for current, as well as continued, state accreditation. In

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addition, the National Association of Insurance Commissioners ("NAIC") has adopted risk-based capital ("RBC") standards for property and casualty companies as a means of monitoring certain aspects affecting the overall financial condition of insurance companies. The current RBC ratios of White Mountains' active insurance and reinsurance subsidiaries are believed to be satisfactory and such ratios are not expected to result in any adverse regulatory action. White Mountains is not aware of any current recommendations by regulatory authorities that would be expected to have a material effect on its results of operations or liquidity.

As a condition of its license to do business in certain states, White Mountains' insurance operations are required to participate in mandatory shared market mechanisms. Each state dictates the types of insurance and the level of coverage that must be provided. The most common type of shared market mechanism in which White Mountains is required to participate is an assigned risk plan. Many states, including New Jersey and New York, operate assigned risk plans. These plans require insurers licensed within the applicable state to accept the applications for insurance policies of individuals who are unable to obtain insurance in the voluntary market. The total amount of such policies an insurer is required to accept is based on its market share of voluntary business in the state. Underwriting results related to assigned risk plans are typically adverse. Reinsurance facilities are another type of shared market mechanism. Reinsurance facilities require an insurance company to accept all applications submitted by certain state designated agents. As a result, an insurer could be underwriting policies with a higher risk of loss than it would normally accept. The reinsurance facility then allows the insurer to cede some of its business to the reinsurance facility so that the facility will reimburse the insurer for claims paid on ceded business. Typically, however, reinsurance facilities operate at a deficit, which is funded through assessments against the same insurers.

The insurance laws of many states generally provide that property and casualty insurers doing business in those states belong to a statutory property and casualty guaranty association. The purpose of these guaranty associations is to protect policyholders by requiring that solvent property and casualty insurers pay certain insurance claims of insolvent insurers. These guaranty associations generally pay these claims by assessing solvent insurers proportionately based on the insurer's share of voluntary premiums written in the state. While most guaranty associations provide for recovery of assessments through rate increases, surcharges or premium tax credits, there is no assurance that insurers will ultimately recover these assessments.

Many states have laws and regulations that limit an insurer's ability to exit a market. For example, certain states limit a private passenger auto insurer's ability to cancel and non-renew policies. Furthermore, certain states prohibit an insurer from withdrawing one or more lines of insurance business from the state, except pursuant to a plan that is approved by the state insurance regulators who can refuse to approve such plans on the grounds that they could lead to market disruption. Such laws and regulations may restrict White Mountains' ability to exit unprofitable markets.

Nearly all states have insurance laws requiring personal property and casualty insurers to file price schedules, policy or coverage forms, and other information with the state's regulatory authority. In most cases, such price schedules and/or policy forms must be approved prior to use. While pricing laws vary from state to state, their objectives are generally to ensure that prices are adequate, not excessive and not unfairly discriminatory.

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White Mountains' insurance subsidiaries are subject to state laws and regulations that require investment portfolio diversification and that limit the amount of investment in certain categories. Non-compliance may cause non-conforming investments to be ignored in measuring statutory surplus and, in some instances, may require divestiture. White Mountains investment portfolio at June 30, 2001 complied with such laws and regulations in all material respects.

One of the primary sources of cash inflows for the Company and certain of its intermediary holding companies is dividends received from its operating subsidiaries. Under the insurance laws of the states and countries under which White Mountains' insurance subsidiaries are domiciled, an insurer is restricted



with respect to the timing or the amount of dividends it may pay without prior approval by regulatory authorities. In a given calendar year, the insurance subsidiaries can generally dividend without prior regulatory approval up to the greater of 10% of their statutory surplus at the beginning of the year or the prior year's statutory net income, subject to the availability of unassigned funds (the statutory accounting equivalent of retained earnings). Larger dividends can be paid only upon regulatory approval. Accordingly, there is no assurance regarding the amount of such dividends that may be paid by such subsidiaries in the future.

White Mountains is subject to regulation under certain state insurance holding company acts. These regulations contain reporting requirements relating to the capital structure, ownership, financial condition and general business operations of White Mountains' insurance and reinsurance subsidiaries. These regulations also contain special reporting and prior approval requirements with respect to certain transactions among affiliates.

While the federal government does not directly regulate the insurance business, federal legislation and administrative policies affect the insurance industry. In addition, legislation has been introduced from time to time in recent years that, if enacted, could result in the federal government assuming a more direct role in the regulation of the insurance industry. A number of enacted and pending legislative measures could lead to increased consolidation and increased competition for business and for capital in the financial services industry. White Mountains cannot predict whether any state or federal measures will be adopted to change the nature or scope of the regulation of the insurance business or what effect such measures may have on its insurance and reinsurance operations.

Environmental pollution cleanup of polluted waste sites is subject to both federal and state regulation. The Comprehensive Environmental Response Compensation and Liability Act of 1980 ("Superfund") and comparable state statutes ("mini-Superfund") govern the cleanup and restoration of waste sites by "Potentially Responsible Parties" ("PRPs"). Superfund and the mini-Superfunds establish a mechanism to pay for cleanup of waste sites if PRPs fail to do so, and to assign liability to PRPs. The extent of liability allocated to a PRP is dependent on a variety of factors and the extent of cleanup necessary and the process of assigning liability remains in dispute. The insurance industry in general is involved in extensive litigation regarding coverage issues arising out of the cleanup of waste sites by insured PRPs and as a result has disputed many such claims. Superfund reform proposals have been introduced in Congress, but none has yet been enacted. At this time, it remains unclear as to whether Superfund reform legislation will be enacted or that any such legislation will provide for a fair, effective and cost-efficient system for settlement of Superfund related claims. The NICO Cover is designed to protect OneBeacon from such exposures; however, there can be no assurance that the coverage provided under the NICO Cover will ultimately prove to be adequate.

## RATINGS

Insurance and reinsurance companies are evaluated by various rating agencies in order to provide a basis for measuring the financial strength of individual insurance companies. Higher ratings generally indicate financial stability and a stronger ability to pay claims. A.M. Best Company, a rating agency which specializes in the insurance and reinsurance industry, currently rates OneBeacon's principal operating insurance subsidiaries "A" (Excellent) and Folksamerica's principal reinsurance operating subsidiary "A-" (Excellent). White Mountains believes that strong ratings are important factors in the marketing of insurance products to agents and consumers.

## INVESTMENTS

### INVESTMENT PHILOSOPHY AND STRATEGY

At June 30, 2001, White Mountains' investment portfolio consisted of \$7,667.1 million (86%) of fixed maturity investments, \$988.8 million (11%) of short-term investments and \$279.5 million (3%) of common stocks and other investments. White Mountains' fixed maturity portfolio at June 30, 2001 consisted principally of high grade corporate debt securities (45%), U.S. government and agency securities (31%) and mortgage-backed securities (19%).

White Mountains' investment philosophy is to invest all assets with a view towards maximizing its after-tax total return over extended periods of time. Under this approach, each dollar of after-tax investment income, realized gains and losses and unrealized gains and losses is valued equally. White Mountains' current investment portfolio consists primarily of fixed maturity investments. White Mountains' overall fixed maturity investment strategy is to purchase securities that are attractively priced in relation to perceived credit risks. White Mountains generally manages the interest rate risk associated with holding fixed maturity investments by actively monitoring and maintaining the average duration of the portfolio with a view towards achieving an adequate after-tax total return without subjecting the portfolio to an unreasonable level of interest rate risk.

Management further believes that the investment assets of its insurance and reinsurance operations should be invested in a "balanced portfolio" consisting of a mixture of fixed income investments, equity securities and other investments (primarily investments in limited partnership interests that invest in common equity securities) in order to maximize returns over extended periods of time. White Mountains' Investment Committee, comprised of certain officers

and key managers of OneBeacon and other investment professionals, oversee White Mountains' investment activities. The Investment Committee regularly monitors the overall investment results of White Mountains, reviews the results of each of White Mountains' various investment managers, reviews compliance with established investment guidelines, approves all purchases and sales of investment securities and ultimately reports the overall investment results to the Company's Board of Directors.

As previously stated, the investment portfolios of White Mountains' insurance and reinsurance operations consist primarily of fixed maturity investments but also consist, in part, of common equity securities and other investments. White Mountains' management believes that modest investments of common equity securities and other investments within its investment portfolio are likely to enhance after tax total returns without significantly increasing the risk profile of the portfolio when considered over long periods of time.

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Historically, the fixed maturity portfolios of both White Mountains and OneBeacon has been comprised primarily of investment grade corporate debt securities, U.S. government and agency securities and mortgage-backed securities (i.e., greater than 99% of such securities received a rating from the National Association of Insurance Commissioners of 1 or 2). Nearly all the fixed income securities currently held by White Mountains are publicly traded. White Mountains expects to continue to invest primarily in high-quality fixed maturity investments.

#### EMPLOYEES

As of June 30, 2001, White Mountains employed approximately 6,995 persons (consisting of five persons at the Company, approximately 190 persons at Folksamerica and approximately 6,800 persons at OneBeacon). As a result of the Renewal Rights Agreement, the Company expects approximately 2,700 of its employees to be transferred to Liberty Mutual. Management believes that White Mountains has satisfactory relations with its employees and with its agents.

#### PROPERTIES

The company maintains two professional offices in Hamilton, Bermuda which serve as its headquarters and its registered office. In addition, the company and certain of its subsidiaries maintain a professional office in Hanover, New Hampshire which serves, in part, as its principal executive office. The home offices of OneBeacon and Folksamerica are located in Boston, Massachusetts and New York, New York, respectively. In addition, OneBeacon and Folksamerica maintain branch offices in various cities throughout the United States. White Mountains' principal executive office, its home offices and most of its branch offices are leased with the exception of branch offices located in Florida, Illinois, New Jersey, New York, Tennessee and Washington, which are owned by OneBeacon. Additionally, OneBeacon owns office facilities in Illinois, Pennsylvania and Oregon, which serve as regional headquarter locations. Management considers its office facilities suitable and adequate for its current level of operations. See White Mountains' and OneBeacon's consolidated financial statements for the three years ended December 31, 2000, which are incorporated by reference herein, for further information concerning commitments and contingencies concerning its owned and leased properties.

#### LEGAL PROCEEDINGS

We, in common with the insurance and reinsurance industry in general, are subject to litigation and arbitration in the normal course of business. As of June 30, 2001, we were not a party to any material litigation or arbitration other than as routinely encountered in the insurance and reinsurance industry, none of which is expected by management to have a material adverse effect on our financial condition.

#### DESCRIPTION OF OTHER OBLIGATIONS

THE FOLLOWING SUMMARY OF OUR OTHER OBLIGATIONS DOES NOT PURPORT TO BE COMPLETE AND IS QUALIFIED BY REFERENCE TO THE DEFINITIVE DOCUMENTATION FOR SUCH OBLIGATIONS.

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#### FUND AMERICAN CREDIT FACILITY

##### GENERAL

In connection with the acquisition of OneBeacon, a credit facility was provided by a syndicate of banks, financial institutions and other entities, with Lehman Brothers Inc. as the advisor, lead arranger and book manager, Fleet National Bank as the syndication agent, Bank of America, N.A., as documentation agent and Lehman Commercial Paper Inc. as the administrative agent.

The credit facility is comprised of two term loan facilities and a revolving credit facility. The term loan facilities are comprised of a \$300.0 million Tranche A Loan with a five-year maturity and a \$400.0 million Tranche B Loan with a six-year maturity. The revolving credit facility provides for revolving credit loans of up to \$175.0 million, including up to \$25.0 million available for the issuance of letters of credit. The revolving credit facility

matures on June 1, 2006.

#### INTEREST RATE, FEES

All borrowings under the credit facility bear interest, at Fund American's election, at a rate per annum equal to either: (a) the base rate (generally, the higher of (x) the prime lending rate of the British Banking Association and (y) the Federal funds rate as established by the Federal Reserve Bank of New York plus 0.50%) plus (i) 0.50% to 1.75%, in the case of the revolving credit facility and the Tranche A Loan, and (ii) 1.50% to 2.50%, in the case of the Tranche B Loan, or (b) the eurodollar rate (the rate based on a formula relating to the rate for dollar deposits in the interbank eurodollar market for a given interest period) plus (i) 1.50% to 2.75%, in the case of the revolving credit facility and the Tranche A Loan, and (ii) 2.50% to 3.50%, in the case of the Tranche B Loan.

A commitment fee calculated at a rate of between 0.25% and 0.375% per annum is payable on the average daily unused portion of the revolving credit facility.

#### INTEREST RATE SWAPS

Since June 2001, Fund American has entered into a series of interest rate swaps with large financial institutions that were undertaken to achieve a fixed interest rate on the term loans under the credit facility. The interest rate swaps consist of a \$200.0 million notional contract that was executed in June 2001, which is indexed to a 6.050% ten-year rate, a \$200.0 million notional contract that was executed in September 2001, which is indexed to a 3.955% three-year rate, and \$100.0 million and \$200.0 million notional contracts that were executed in October 2001, which are indexed to a 3.825% three-year rate.

Pursuant to Statement of Financial Accounting Standard ("SFAS") No. 133, the interest rate swap investments are carried at fair value on our balance sheet with changes in their fair value reported directly through the income statement as the swap investments do not satisfy the criteria for hedge accounting under SFAS No. 133.

#### REPAYMENT, PREPAYMENTS

The Tranche A Loan and the Tranche B Loan are repaid quarterly in amounts equal to a specified percentage rate multiplied by the principal amount borrowed.

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The term loans may be prepaid at any time without premium or penalty with the exception that any payments on the Tranche B Loan on or prior to December 1, 2002, shall include a prepayment premium ranging from 0.5% to 1.5%.

The credit facilities are subject to mandatory prepayments with (i) 50% of the net proceeds in excess of \$5.0 million from certain equity issuances and (ii) 100% of the net proceeds in excess of \$10.0 million from certain assets sales.

#### GUARANTEES, SECURITY

The obligations of Fund American in respect of the credit facility are unconditionally guaranteed by OneBeacon, each of its subsidiaries (other than insurance company subsidiaries, certain foreign subsidiaries, and A.W.G. Dewar) and Fund American Enterprises Holdings, Inc. ("Enterprises").

The obligations of Fund American and each guarantor in respect of the credit facility are secured by a perfected first priority security interest in all their assets including the capital stock of their non- insurance company subsidiaries (other than A.W.G. Dewar) and each of their first-tier insurance company subsidiaries.

#### CERTAIN COVENANTS

The credit facility contains affirmative covenants which include:

- reporting requirements;
- conduct of business and compliance with laws;
- requirements to maintain properties and insurance; and
- requirements to maintain interest rate protection.

The credit facility also contains negative covenants that restrict the ability to:

- incur indebtedness and issue preferred stock;
- incur liens;
- engage in mergers, acquisitions, consolidations and asset sales;
- declare dividends or redeem or repurchase capital stock;
- make investments;

- make payments in respect of, or modify the terms of, subordinated indebtedness and other debt instruments;
- transact with affiliates; and
- enter into sale and leaseback transactions.

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In addition, the credit facility requires compliance with various financial covenants, including minimum interest and fixed charge coverage, maximum leverage, minimum net worth and statutory surplus and a minimum risk-based capital ratio.

#### EVENTS OF DEFAULT

The credit facility contains customary events of default including payment defaults, breaches of representations and warranties, covenant defaults, cross-default to certain other indebtedness, bankruptcy and insolvency events, ERISA violations, material judgments, invalidity of any guarantee or security document and a change of control.

#### ENTERPRISES SUBORDINATED SELLER NOTE

In connection with the acquisition of OneBeacon, Enterprises issued to CGNU plc a \$260.0 million aggregate principal amount note. The note matures on December 1, 2002 and pays interest as described below. The full amount of the principal and interest is payable at maturity in cash. However, subject to certain exceptions, White Mountains has the option to purchase the note at a purchase price equal to the aggregate principal amount thereof plus accrued interest, such purchase price to be paid in common shares of White Mountains at a deemed value of \$245 per share. In the event the note is paid in common shares, the recipients of such shares would be entitled to three demand and unlimited piggyback registration rights. The note contains customary anti-dilution protection and events of default such as failure to pay, bankruptcy events and cross-acceleration to other debt.

The note bears interest equal to the six-month LIBOR rate plus the sum of (i) 0.5% and (ii) the weighted average of the eurodollar margin rate for the (x) revolving credit facility and the Tranche A Loan and (y) the Tranche B Loan. The interest rate is reset every six months from issuance until the principal and interest are paid in full.

#### FUND AMERICAN PREFERRED STOCK

In connection with the acquisition of OneBeacon, Fund American issued and sold 300,000 shares of Series A Preferred Stock, par value \$1.00 per share ("Fund American Preferred Stock"), to Berkshire. The Fund American Preferred Stock pays cumulative dividends at a rate of 2.35475% per quarter on March 31, June 30, September 30 and December 31 of each year. If any dividend is not paid, Fund American is prohibited from paying any dividends or making any distributions on any stock junior to the Fund American Preferred Stock until all such dividends are paid.

If Fund American's dividend payments are no longer eligible for the dividends received deduction or the dividends are treated as extraordinary, in each case pursuant to the Internal Revenue Code, Fund American will reimburse the holder of the Fund American Preferred Stock for the additional taxes, interest and penalties due to the loss of all or a portion of the deduction or the treatment of such dividends as extraordinary.

The holders of the Fund American Preferred Stock will not be entitled to any voting rights other than those provided in Fund American's certificate of incorporation or as required by law. However, the consent of the holders of two-thirds of the Fund American Preferred Stock is required to amend, alter or repeal Fund American's certificate of incorporation or the certificate of designation relating to the Fund American Preferred Stock. In addition, subject to certain exceptions, as long as any shares of Fund American Preferred Stock are outstanding, Fund American shall not declare or pay any dividend or

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distribution on any stock junior to the Fund American Preferred Stock or repurchase any junior stock, or make any loan to, or guarantee any indebtedness of, White Mountains or any subsidiary that is intermediate between White Mountains and Fund American, without the consent of the holders of a majority of the Fund American Preferred Stock.

Fund American must redeem the Fund American Preferred Stock on May 31, 2008, at a redemption price of \$1,000 per share plus accrued and unpaid dividends to the date of payment.

In the event of any liquidation, dissolution or winding up of Fund American, the holders of the Fund American Preferred Stock will be entitled to receive a liquidation preference amount of \$1,000 per share plus accrued and unpaid dividends to the date of payment.

#### ENTERPRISES PREFERRED STOCK

On May 31, 2001, Enterprises issued and sold 20,000 shares of Series A

Preferred Stock, par value \$1.00 per share ("Enterprises Preferred Stock"), to Zenith Insurance Company. The Enterprises Preferred Stock pays cumulative dividends at a rate of (i) on or prior to June 30, 2007, 10% per annum, and (ii) after June 30, 2007, 14% per annum. Dividends are payable in arrears quarterly on March 31, June 30, September 30 and December 31 of each year. If Enterprises fails to pay a dividend when due or if the stock does not meet specific rating criteria of, and is valued below \$950 by, the National Association of Insurance Commissioners, the dividend rate shall increase by 0.50% per annum each quarterly period to a maximum of 18%. The dividend rate shall decrease to the applicable rate once all accrued dividends are paid in full or, in the case that the stock meets the specific rating criteria and valuation, the dividend rate will decrease by 0.50% per annum each quarter to a minimum of the applicable dividend rate.

Subject to specific exceptions, in the event that Enterprises' dividend payments are no longer eligible for the dividends received deduction, the deduction percentage is reduced, or the dividends are treated as extraordinary, in each case pursuant to the Internal Revenue Code, Enterprises will reimburse the holder of the Enterprises Preferred Stock or adjust the dividend rate for the additional taxes, interest and penalties due to the loss of all or a portion of the deduction or the treatment of such dividends as extraordinary, as applicable. In the event that the deduction percentage is reduced due to an amendment of the Internal Revenue Code, Enterprises will only adjust the dividend rate to compensate for reductions in the deduction percentage between 70% and 50%. If the deduction percentage is reduced to below 50%, Enterprises will only adjust the dividend rate to the level to which the dividend rate would have been adjusted had the deduction percentage been reduced to 50%.

The holders of the Enterprises Preferred Stock will not be entitled to any voting rights other than those provided in Enterprises' certificate of incorporation or as required by law. However, the consent of the holders of two-thirds of the Enterprises Preferred Stock is required (1) to amend, alter or repeal Enterprises' certificate of incorporation or the certificate of designation relating to the Enterprises Preferred Stock, (2) for certain mergers, consolidations or sale of all or substantially all of Enterprises' assets, (3) the liquidation or dissolution of Enterprises and (4) any issuance or authorization of a class of capital stock that ranks senior to the Enterprises Preferred Stock. Additionally, if Enterprises fails to declare and pay dividends on the Enterprises Preferred Stock in an amount equal to six quarterly payments, the holders of a majority of the then outstanding stock will have the exclusive right to nominate and elect two members to the Board of Directors of Enterprises.

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Enterprises must redeem the Enterprises Preferred Stock on May 31, 2011 or promptly following any time at which its consolidated net worth becomes less than \$200.0 million. At any time on or after June 30, 2007, Enterprises may, at its sole option, redeem all or a portion of the Enterprises Preferred Stock. In each case, the redemption price shall be \$1,000 per share plus accrued and unpaid dividends to the redemption date. A change of control of Enterprises would require the payment of the redemption price.

In the event of any liquidation, dissolution or winding up of Enterprises, the holders of the Enterprises Preferred Stock will be entitled to receive a liquidation preference amount of \$1,000 per share plus accrued and unpaid dividends to the date of payment.

#### GENERAL DESCRIPTION OF SECURITIES

The Issuers may offer preference shares, debt securities, junior subordinated debt securities, trust preferred securities or any combination of them either individually or as units consisting of one or more securities under this prospectus.

THE SECURITIES TO BE OFFERED MAY INVOLVE A HIGH DEGREE OF RISK. YOU SHOULD CONSIDER THE RISK FACTORS DISCUSSED IN THIS PROSPECTUS BEGINNING ON PAGE 3 AND THE RISK FACTORS SET FORTH IN ANY PROSPECTUS SUPPLEMENT BEFORE INVESTING IN THE SECURITIES.

#### DESCRIPTION OF PREFERENCE SHARES

The following description of White Mountains' preference shares, together with the additional information included in any prospectus supplement, summarizes the material terms and provisions of these types of securities. We encourage you to read the Memorandum of Continuance and the Bye-laws of White Mountains, referred to below, which have been filed with the SEC and which are incorporated herein by reference.

The Memorandum of Continuance and the Bye-Laws of White Mountains provide that the authorized common share capital of White Mountains is limited to 50,000,000 common shares, par value U.S. \$1.00 per share ("Common Shares"), and 20,000,000 preference shares having a par value of U.S. \$1.00 per share ("Preference Shares"). As of September 30, 2001, 8,165,529 Common Shares were issued and outstanding. As of September 30, 2001, no Preference Shares were issued and outstanding.

Under White Mountains' Bye-Laws and pursuant to authority delegated by its shareholders, the Board of Directors of White Mountains has the full power to issue any unissued shares of White Mountains on such terms and conditions as it may, in its absolute discretion, determine. The Board of Directors may authorize the issue of Preference Shares in one or more series, may establish from time to

time the number of shares to be included in each such series and may fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof.

The authority of the Board of Directors with respect to each such series shall include, but not be limited to, determination of the following:

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- o the number of shares constituting that series and the distinctive designation of that series;
- o the dividend rate on the shares of that series, whether dividends shall be cumulative, and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series;
- o whether that series shall have voting rights, in addition to the voting rights provided by law, and, if so, the terms of such voting rights;
- o whether that series shall have conversion or exchange privileges (including, without limitation, conversion into Common Shares), and, if so, the terms and conditions of such conversion or exchange, including provision for adjustment of the conversion or exchange rate in such events as the Board of Directors shall determine;
- o whether or not the shares of that series shall be redeemable, and, if so, the terms and conditions of such redemption, including the manner of selecting shares for redemption if less than all shares are to be redeemed, the date or dates upon or after which they shall be redeemable, and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates;
- o whether that series shall have a sinking fund for the redemption or purchase of shares of that series, and, if so, the terms and amount of such sinking fund;
- o the right of the shares of that series to the benefit of conditions and restrictions upon the creation of indebtedness of White Mountains or any subsidiary, upon the issue of any additional shares (including additional shares of such series or any other series) and upon the payment of dividends or the making of other distributions on, and the purchase, redemption or other acquisition by White Mountains or any subsidiary of any outstanding shares of White Mountains;
- o the rights of the shares of that series in the event of voluntary or involuntary liquidation, dissolution or winding up of White Mountains, and the relative rights of priority, if any, of payment of shares of that series; and
- o any other relative participating, optional or other special rights, qualifications, limitations or restrictions of that series.

Any Preference Shares of any series which have been redeemed (whether through the operation of a sinking fund or otherwise) or which, if convertible or exchangeable, have been converted into or exchanged for shares of any other class or classes shall have the status of authorized and unissued Preference Shares of the same series and may be reissued as a part of the series of which they were originally a part or may be reclassified and reissued as part of a new series of Preference Shares to be created by resolution or resolutions of the Board of Directors or as part of any other series of Preference Shares, all subject to the conditions and the restrictions on issuance set forth in the resolution or resolutions adopted by the Board of Directors providing for the issue of any series of Preference Shares.

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#### DESCRIPTION OF DEBT SECURITIES

White Mountains and Fund American (each, an "Issuer") may offer, from time to time, unsecured general obligations, which may be senior (the "Senior Debt Securities") or subordinated (the "Subordinated Debt Securities", and together with the Senior Debt Securities, the "Debt Securities"). The following description summarizes the general terms and provisions of the Debt Securities to which any prospectus supplement may relate. We will describe the specific terms of the Debt Securities and the extent, if any, to which the general provisions summarized below may apply to any series of the Debt Securities in the prospectus supplement relating to the series.

The Issuer may issue Senior Debt Securities from time to time, in one or more series under a senior indenture (the "Senior Indenture"), between White Mountains (as issuer or guarantor), Fund American and Bank One, National Association, as senior trustee, or another senior trustee named in a prospectus supplement (the "Senior Trustee"). The form of Senior Indenture is filed as an exhibit to this registration statement. The Issuer may issue the Subordinated Debt Securities from time to time, in one or more series under a subordinated indenture (the "Subordinated Indenture"), between White Mountains (as issuer or guarantor), Fund American and Bank One, National Association, as subordinated trustee, or another subordinated trustee named in a prospectus supplement (the

"Subordinated Trustee"). The form of Subordinated Indenture is filed as an exhibit to this registration statement. Together, the Senior Indenture and the Subordinated Indenture are referred to as the "Indentures", and together the Senior Trustee and the Subordinated Trustee are referred to as the "Debt Trustees". None of the Indentures will limit the amount of Debt Securities that may be issued. The applicable Indenture will provide that Debt Securities may be issued up to an aggregate principal amount authorized by the Issuer and may be payable in any currency or currency unit designated by the Issuer or in amounts determined by reference to an index.

#### GENERAL

The Senior Debt Securities will be unsecured and will rank equally with the Issuer's other unsecured and unsubordinated debt, if any, unless the Issuer is required to secure the Senior Debt Securities as described below under "--Senior Debt Securities". The Issuer's obligations under any Subordinated Debt Securities will be subordinate in right of payment to all of its senior indebtedness and will be described in an accompanying prospectus supplement. The Issuer will issue Debt Securities from time to time and offer the Debt Securities on terms determined by market conditions at the time of sale.

The Issuer may issue the Debt Securities in one or more series with the same or various maturities, at par, at a premium, or at a discount. Any Debt Securities bearing no interest or interest at a rate which at the time of issuance is below market rates will be sold at a discount, which may be substantial, from their stated principal amount. We will describe the Federal income tax consequences and other special considerations applicable to any substantially discounted Debt Securities in the related prospectus supplement.

You should refer to the prospectus supplement for the following terms of the Debt Securities offered hereby:

- o the designation, aggregate principal amount and authorized denominations of the Debt Securities;
  - o the percentage of the principal amount at which the Issuer will issue the Debt Securities;
  - o the date or dates on which the Debt Securities will mature;
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- o the annual interest rate or rates of the Debt Securities, or the method of determining the rate or rates;
  - o the date or dates on which any interest will be payable, the date or dates on which payment of any interest will commence and the regular record dates for the interest payment dates;
  - o the terms of any mandatory or optional redemption, including any provisions for any sinking, purchase or other similar funds, or repayment options;
  - o the currency, currencies or currency units for which the Debt Securities may be purchased and in which the principal, any premium and any interest may be payable;
  - o if the currency, currencies or currency units for which the Debt Securities may be purchased or in which the principal, any premium and any interest may be payable is at the Issuer's election or the purchaser's election, the manner in which the election may be made;
  - o if the amount of payments on the Debt Securities is determined by an index based on one or more currencies or currency units, or changes in the price of one or more securities or commodities, the manner in which the amounts may be determined;
  - o the extent to which any of the Debt Securities will be issuable in temporary or permanent global form, and the manner in which any interest payable on a temporary or permanent global security will be paid;
  - o the terms and conditions upon which the Debt Securities may be convertible into or exchanged for Common Shares, Preference Shares, or indebtedness or other securities of any kind;
  - o information with respect to book-entry procedures, if any;
  - o a discussion of the Federal income tax, accounting and other special considerations, procedures and limitations with respect to the Debt Securities; and
  - o any other specific terms of the Debt Securities not inconsistent with the applicable Indenture.

If the Issuer sells any of the Debt Securities for one or more foreign currencies or foreign currency units or if the principal of, premium on, if any, or interest on any series of Debt Securities will be payable in one or more foreign currencies or foreign currency units, it will describe the restrictions, elections, Federal income tax consequences, specific terms and other information with respect to the issue of Debt Securities and the currencies or currency units in the related prospectus supplement.

Unless specified otherwise in a prospectus supplement, the principal of, premium on, and interest on the Debt Securities will be payable, and the Debt Securities will be transferable, at the corporate trust office of the applicable Debt Trustee in New York, New York. However, the Issuer may make payment of interest at its option by check mailed on or before the payment date to the address of the person entitled to the interest payment as it appears on the registry books of the Issuer or its agents.

Unless specified otherwise in a prospectus supplement, the Issuer will issue the Debt Securities only in fully registered form and in denominations of \$1,000 and any integral multiple of \$1,000. No service charge will be made for any transfer or exchange of any Debt Securities, but the Issuer may, except in

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specific cases not involving any transfer, require payment of a sufficient amount to cover any tax or other governmental charge payable in connection with the transfer or exchange. Unless we specify otherwise in the prospectus supplement, the Issuer will pay interest on outstanding Debt Securities to holders of record on the date 15 days immediately prior to the date the interest is to be paid.

The Issuer's rights and the rights of its creditors, including holders of Debt Securities, to participate in any distribution of assets of any of the Issuer's subsidiaries upon its liquidation or reorganization or otherwise is subject to the prior claims of creditors of the subsidiary, except to the extent that the Issuer's claims as a creditor of the subsidiary may be recognized. The Issuer's operations are conducted through subsidiaries and, therefore, the Issuer is dependent upon the earnings and cash flow of its subsidiaries to meet its obligations, including obligations under the Debt Securities. The Debt Securities will be effectively subordinated to all indebtedness of the Issuer's subsidiaries.

#### WHITE MOUNTAINS GUARANTEE

White Mountains will irrevocably and unconditionally guarantee to each holder of Debt Securities issued by Fund American the due and punctual payment of the principal of, and any premium and any interest on, those Debt Securities, when and as the same becomes due and payable, whether at maturity, upon acceleration or otherwise. White Mountains has:

- o agreed that its obligations under the guarantees, upon the occurrence and continuance of an event of default with respect to any guaranteed Debt Securities, 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 guaranteed Debt Securities or the applicable Indenture, and
- o waived its right to require the Debt Trustee or the holders of guaranteed Debt Securities to pursue or exhaust their legal or equitable remedies against Fund American prior to exercising their rights under the Guarantees.

White Mountains' guarantee of Fund American's obligations under any Debt Security will be subordinated in right of payment to same extent as Fund American's obligations under such Debt Security.

#### GLOBAL SECURITIES

The Issuer may issue Debt Securities of a series in whole or in part in the form of one or more global securities and will deposit them with or on behalf of a depositary identified in the prospectus supplement relating to that series. The Issuer may issue global securities only in fully registered form and in either temporary or permanent form. Unless and until it is exchanged in whole or in part for the individual Debt Securities represented thereby, a global security may not be transferred except as a whole by the depositary for the global security to a nominee of the depositary or by a nominee of the depositary to the depositary or another nominee of the depositary or by the depositary or any nominee of the depositary to a successor or any nominee.

The specific terms of the depositary arrangement relating to a series of Debt Securities will be described in the prospectus supplement relating to that series. It is anticipated that the following provisions will generally apply to depositary arrangements.

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Upon the issuance of a global security, the depositary for the global security or its nominee will credit on its book entry registration and transfer system the principal amounts of the individual Debt Securities represented by the global security to the accounts of persons that have accounts with the depositary. The accounts will be designated by the dealers, underwriters or agents with respect to the Debt Securities or by the Issuer if the Debt Securities are offered and sold directly by it. Ownership of beneficial interests in a global security will be limited to persons that have accounts with the applicable depositary participants or persons that hold interests through participants. Ownership of beneficial interests in the global security will be shown on, and the transfer of that ownership will be effected only through, records maintained by:



- o the applicable depository or its nominee, with respect to interests of participants, and
- o the records of participants, with respect to interests of persons other than participants.

The laws of some states require that purchasers of securities take physical delivery of the securities in definitive form. These limits and laws may impair the ability to transfer beneficial interests in a global security.

So long as the depository for a global security or its nominee is the registered owner of the global security, the depository or the nominee will be considered the sole owner or holder of the Debt Securities represented by the global security for all purposes under the applicable Indenture. Except as provided below, owners of beneficial interests in a global security will:

- o not be entitled to have any of the individual Debt Securities of the series represented by the global security registered in their names;
- o not receive or be entitled to receive physical delivery of any Debt Security of that series in definitive form;
- o not be considered the owners or holders thereof under the applicable Indenture governing the Debt Securities.

Payments of principal of, any premium on and any interest on individual Debt Securities represented by a global security registered in the name of a depository or its nominee will be made to the depository or its nominee as the registered owner of the global security representing the Debt Securities. Neither the Issuer, the applicable Debt Trustee for the Debt Securities, any paying agent, nor the security registrar for the Debt Securities will have any responsibility or liability for the records relating to or payments made on account of beneficial ownership interests of the global security for the Debt Securities or for maintaining, supervising or reviewing any records relating to the beneficial ownership interests.

The Issuer expects that the depository for a series of Debt Securities or its nominee, upon receipt of any payment of principal, premium or interest in respect of a permanent global security representing any of the Debt Securities, will immediately credit participants' accounts with payments in amounts proportionate to their beneficial interests in the principal amount of the global security for the Debt Securities as shown on the records of the depository or its nominee. The Issuer also expects that payments by participants to owners of beneficial interests in the global security held through the participants will be governed by standing instructions and customary practices, as is now the case with securities held for the accounts of customers in bearer form or registered in "street name". The payments will be the responsibility of those participants.

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If the depository for a series of Debt Securities is at any time unwilling, unable or ineligible to continue as depository and a successor depository is not appointed by the Issuer within 90 days, the Issuer will issue individual Debt Securities of that series in exchange for the global security representing that series of Debt Securities. In addition, the Issuer may at any time and in its sole discretion, subject to any limitations described in the prospectus supplement relating to the Debt Securities, determine not to have any Debt Securities of a series represented by one or more global securities. In that event, the Issuer will issue individual Debt Securities of that series in exchange for the global security or Securities representing that series of Debt Securities. Further, if the Issuer so specifies with respect to the Debt Securities of a series, an owner of a beneficial interest in a global security representing Debt Securities of that series may, on terms acceptable to the Issuer, the applicable Debt Trustee and the depository for such global security, receive individual Debt Securities of that series in exchange for the beneficial interests, subject to any limitations described in the prospectus supplement relating to the Debt Securities. In any such instance, an owner of a beneficial interest in a global security will be entitled to physical delivery of individual Debt Securities of the series represented by the global security equal in principal amount to the beneficial interest and to have the Debt Securities registered in its name. Individual Debt Securities of the series so issued will be issued in denominations, unless otherwise specified by the Issuer, of \$1,000 and integral multiples of \$1,000.

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

Each Indenture prohibits, without the consent of the holders of the applicable Debt Securities, the Issuer's amalgamation, consolidation with or merger into any other entity or the transfer of the Issuer's properties and assets substantially as an entirety to any other entity, unless:

- o the successor entity is organized and existing under the laws of the United States, any State thereof, the District of Columbia or Bermuda, and expressly assumes by a supplemental indenture the punctual payment of the principal of, premium on and interest on all the outstanding Debt Securities and the performance of every covenant in the applicable Indenture to be performed or observed on the Issuer's part;
- o immediately after giving effect to the transaction, no event of default has happened and is continuing; and

- o the Issuer has delivered to the applicable Debt Trustee an officers' certificate stating that the amalgamation, consolidation, merger, conveyance or transfer and the supplemental indenture comply with the foregoing provisions relating to the transaction.

In case of any amalgamation, consolidation, merger, conveyance or transfer, the successor corporation will succeed to and be substituted for the Issuer as obligor on the Debt Securities, with the same effect as if it had been named as the Issuer in the applicable Indenture. If the Issuer of Debt Securities is Fund American, the above restriction on amalgamation, consolidation, merger, conveyance or transfer will also apply to White Mountains, as guarantor of the Debt Securities. Unless otherwise specified in a prospectus supplement, other than the restrictions on liens described below, the Indentures and the Debt Securities do not contain any covenants or other provisions designed to protect holders of Debt Securities in the event of a highly leveraged transaction involving the Issuer or any Subsidiary.

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#### EVENTS OF DEFAULT; WAIVER AND NOTICE OF DEFAULT; DEBT SECURITIES IN FOREIGN CURRENCIES

An event of default when used in an Indenture will mean any of the following as to any series of Debt Securities:

- o default for 30 days in payment of any interest, or, in the case of the Subordinated Indenture, for a period of 90 days;
- o default in payment of principal of or any premium at maturity;
- o default in payment of any sinking or purchase fund or similar obligation;
- o default by the Issuer in the performance of any other covenant or warranty contained in the applicable Indenture for the benefit of that series which has not been remedied for a period of 90 days after notice is given; or
- o events of the Issuer's bankruptcy, insolvency and reorganization.

A default under the Issuer's other indebtedness will not be a default under the Indentures and a default under one series of Debt Securities will not necessarily be a default under another series.

Each Indenture provides that if an event of default described in the first four bullet points above has occurred and is continuing with respect to any series, and the event of default under the fourth bullet point is with respect to less than all series of Debt Securities then outstanding, either the applicable Debt Trustee or the holders of not less than 25% in aggregate principal amount of the Debt Securities of the series then outstanding, each series acting as a separate class, may declare the principal or, in the case of original issue discount securities, the portion specified in the terms thereof, of all outstanding Debt Securities of the series and the accrued interest to be due and payable immediately. Each Indenture further provides that if an event of default described in the fourth or fifth bullet point above has occurred and is continuing, and the event of default under the fourth bullet point is with respect to all series of Debt Securities then outstanding, either the applicable Debt Trustee or the holders of at least 25% in aggregate principal amount of all Debt Securities then outstanding, treated as one class, may declare the principal or, in the case of original issue discount securities, the portion specified in the terms thereof, of all Debt Securities then outstanding and the accrued interest to be due and payable immediately. However, upon certain conditions the declarations may be annulled and past defaults, except for defaults in the payment of principal of, premium on, or interest on, the Debt Securities and in compliance with certain covenants, may be waived by the holders of a majority in aggregate principal amount of the Debt Securities of the series then outstanding.

Under each Indenture the applicable Debt Trustee must give notice to the holders of each series of Debt Securities of all uncured defaults known to it with respect to that series within 90 days after a default occurs. The term "default" includes the events specified above without notice or grace periods. However, in the case of any default of the type described in the fourth bullet point above, no notice may be given until at least 90 days after the occurrence of the event. The Debt Trustee will be protected in withholding notice if it in good faith determines that the withholding of notice is in the interests of the holders of the Debt Securities, except in the case of default in the payment of principal of, premium on, or interest on any of the Debt Securities, or default in the payment of any sinking or purchase fund installment or analogous obligations.

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No holder of any Debt Securities of any series may institute any action under either Indenture unless:

- o the holder has given the Debt Trustee written notice of a continuing event of default with respect to that series;

- o the holders of not less than 25% in aggregate principal amount of the Debt Securities of the series then outstanding have requested the Debt Trustee to institute proceedings in respect of the event of default;
- o the holder or holders have offered the Debt Trustee reasonable indemnity as the Debt Trustee may require;
- o the Debt Trustee has failed to institute an action for 60 days; and
- o no inconsistent direction has been given to the Debt Trustee during the 60-day period by the holders of a majority in aggregate principal amount of Debt Securities of the series then outstanding.

The holders of a majority in aggregate principal amount of the Debt Securities of any series affected and then outstanding will have the right, subject to limitations, to direct the time, method and place of conducting any proceeding for any remedy available to the applicable Debt Trustee or exercising any trust or power conferred on the Debt Trustee with respect to a series of Debt Securities. Each Indenture provides that if an event of default occurs and is continuing, the Debt Trustee will be required to use the degree of care of a prudent person in the conduct of that person's own affairs in exercising its rights and powers under the Indenture. Each Indenture further provides that the Debt Trustee will not be required to expend or risk its own funds in the performance of any of its duties under the Indenture unless it has reasonable grounds for believing that repayment of the funds or adequate indemnity against the risk or liability is reasonably assured to it.

The Issuer must furnish to the Debt Trustees within 120 days after the end of each fiscal year a statement signed by one of its officers to the effect that a review of its activities during the year and of its performance under the applicable Indenture and the terms of the Debt Securities has been made, and, to the knowledge of the signatories based on the review, the Issuer has complied with all conditions and covenants of the Indenture through the year or, if the Issuer is in default, specifying the default.

To determine whether the holders of the requisite principal amount of Debt Securities have taken action as described above when the Debt Securities are denominated in a foreign currency, the principal amount of the Debt Securities will be deemed to be that amount of United States dollars that could be obtained for the principal amount based on the applicable spot rate of exchange as of the date the action is taken as evidenced to the Debt Trustee as provided in the Indenture.

To determine whether the holders of the requisite principal amount of Debt Securities have taken action as described above when the Debt Securities are original issue discount securities, the principal amount of the Debt Securities will be deemed to be the portion of the principal amount that would be due and payable at the time the action is taken upon a declaration of acceleration of maturity.

#### MODIFICATION OF THE INDENTURES

The Indentures provide that the Issuer and the applicable Debt Trustee may, without the consent of any holders of Debt Securities, enter into supplemental indentures for the purposes, among other things, of:

- o adding to the Issuer's covenants;
- o adding additional events of default;
- o establishing the form or terms of any series of Debt Securities; or
- o curing ambiguities or inconsistencies in the Indenture or making other provisions.

With specific exceptions, the applicable Indenture or the rights of the holders of the Debt Securities may be modified by the Issuer and the applicable Debt Trustee with the consent of the holders of a majority in aggregate principal amount of the Debt Securities of each series affected by the modification then outstanding, but no modification may be made without the consent of the holder of each outstanding Debt Security affected which would:

- o change the maturity of any payment of principal of, or any premium on, or any installment of interest on any Debt Security;
- o reduce the principal amount of or the interest or any premium on any Debt Security;
- o change the method of computing the amount of principal of or interest on any date;
- o change any place of payment where, or the currency in which, any Debt Security or any premium or interest is payable;
- o impair the right to sue for the enforcement of any payment on or after the maturity thereof, or, in the case of redemption or repayment, on or after the redemption date or the repayment date;
- o reduce the percentage in principal amount of the outstanding Debt Securities of any series, the consent of the holders of which is

required for any modification of, or waiver of compliance with provisions of, the applicable Indenture or specific defaults and their consequences provided for in the Indenture; or

- o modify any of the provisions of specific sections of the applicable Indenture, including the provisions summarized in this section, except to increase any required consent percentage or to provide that other provisions of the Indenture cannot be modified or waived without the consent of the holder of each outstanding Debt Security affected thereby.

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

The Indentures will generally cease to be of any further effect with respect to a series of Debt Securities if the Issuer delivers all Debt Securities of that series, with limited exceptions, for cancellation to the applicable Debt Trustee or all Debt Securities of that series not previously delivered for cancellation to the applicable Debt Trustee have become due and payable or will become due and

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payable or called for redemption within one year, and the Issuer has deposited with the applicable Debt Trustee as trust funds the entire amount sufficient to pay at maturity or upon redemption all the Debt Securities, no default with respect to the Debt Securities has occurred and is continuing on the date of the deposit, and the deposit does not result in a breach or violation of, or default under, the applicable Indenture or any other agreement or instrument to which the Issuer is a party.

The Issuer has a "legal defeasance option" under which it may terminate, with respect to the Debt Securities of a particular series, all of its obligations under the Debt Securities and the applicable Indenture. In addition, the Issuer has a "covenant defeasance option" under which it may terminate, with respect to the Debt Securities of a particular series, the Issuer's obligations with respect to the Debt Securities under specified covenants contained in the applicable Indenture. If the Issuer exercises its legal defeasance option with respect to a series of Debt Securities, payment of the Debt Securities may not be accelerated because of an event of default. If the Issuer exercises its covenant defeasance option with respect to a series of Debt Securities, payment of the Debt Securities may not be accelerated because of an event of default related to the specified covenants.

The Issuer may exercise its legal defeasance option or its covenant defeasance option with respect to the Debt Securities of a series only if:

- o the Issuer deposits in trust with the applicable Debt Trustee cash or debt obligations of the United States of America or its agencies or instrumentalities for the payment of principal, premium and interest with respect to the Debt Securities to maturity or redemption;
- o the Issuer delivers to the applicable Debt Trustee a certificate from a nationally recognized firm of independent public accountants expressing their opinion that the cash or debt obligations described above on deposit with the applicable Debt Trustee will provide cash sufficient to pay the principal, premium, and interest when due with respect to all the Debt Securities of that series to maturity or redemption;
- o 91 days pass after the deposit is made and during the 91-day period no default described in the fifth bullet point under "--Events of Default, Waiver and Notice Of Default; Debt Securities in Foreign Currencies" above with respect to the Issuer occurs that is continuing at the end of the period;
- o no default has occurred and is continuing on the date of the deposit;
- o the deposit does not constitute a default under any other agreement binding on the Issuer;
- o the Issuer delivers to the applicable Debt Trustee an opinion of counsel to the effect that the trust resulting from the deposit does not constitute a regulated investment company under the Investment Company Act of 1940;
- o the Issuer has delivered to the applicable Debt Trustee an opinion of counsel addressing specific Federal income tax matters relating to the defeasance; and
- o the Issuer delivers to the applicable Debt Trustee an officers' certificate and an opinion of counsel stating that all conditions to the defeasance and discharge of the Debt Securities of that series have been complied with.

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The applicable Debt Trustee will hold in trust cash or debt obligations of the United States of America or its agencies or instrumentalities deposited with it as described above and will apply the deposited cash and the proceeds from deposited debt obligations of the United States of America or its agencies or instrumentalities to the payment of principal, premium, and interest with

respect to the Debt Securities of the defeased series.

#### CONCERNING THE DEBT TRUSTEES

The Issuer will identify the Debt Trustee for the Senior Debt Securities and the Debt Trustee for the Subordinated Debt Securities in the relevant prospectus supplement. In specific instances, the Issuer or the holders of a majority of the then outstanding principal amount of the Debt Securities issued under an Indenture may remove the Debt Trustee and appoint a successor Debt Trustee. The Debt Trustee may become the owner or pledgee of any of the Debt Securities with the same rights, subject to conflict of interest restrictions, it would have if it were not the Debt Trustee. The Debt Trustee and any successor trustee must be a corporation organized and doing business as a commercial bank or trust company under the laws of the United States or of any state thereof, authorized under those laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000 and subject to examination by Federal or state authority. Subject to applicable law relating to conflicts of interest, the Debt Trustee may also serve as trustee under other indentures relating to debt securities issued by the Issuer or its affiliated companies and may engage in commercial transactions with the Issuer and its affiliated companies. The initial Debt Trustee under each Indenture is Bank One, National Association.

#### SENIOR DEBT SECURITIES

In addition to the provisions previously described in this prospectus and applicable to all Debt Securities, the following description of the Senior Debt Securities summarizes the general terms and provisions of the Senior Debt Securities to which any prospectus supplement may relate. The Issuer will describe the specific terms of the Senior Debt Securities offered by any prospectus supplement and the extent, if any, to which the general provisions summarized below may apply to any series of its Senior Debt Securities in the prospectus supplement relating to that series.

#### RANKING OF SENIOR DEBT SECURITIES

Unless we specify otherwise in a prospectus supplement for a particular series of Debt Securities, all series of Senior Debt Securities will be the Issuer's senior indebtedness and will be direct, unsecured obligations of the Issuer ranking equally with all of the Issuer's other unsecured and unsubordinated indebtedness. Because the Issuer is a holding company, the Debt Securities will be effectively subordinated to all existing and future liabilities, including indebtedness, of the Issuer's subsidiaries.

#### COVENANTS

The Senior Indenture contains the covenants summarized below, which will apply to the Issuer and, in the case of issuances of Senior Debt Securities by Fund American, will also apply to White Mountains as guarantor of Fund American's obligations under the Senior Debt Securities. The covenants will be applicable, unless waived or amended, so long as any of the Senior Debt Securities are outstanding, unless stated otherwise in the prospectus supplement.

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#### LIMITATIONS ON LIENS

The Issuer will not, and will not permit any subsidiary to, create, incur, assume or permit to exist any lien on any stock or indebtedness of a subsidiary or property of the Issuer or any subsidiary, to secure any debt of any subsidiary or any other person, or permit any subsidiary so to do, without securing the Senior Debt Securities equally and ratably with such debt for so long as such debt shall be so secured, subject to certain exceptions. Exceptions include:

- o existing liens;
- o liens on stock or indebtedness of corporations at the time they become subsidiaries or existing upon stock or indebtedness of a subsidiary at the time of acquisition of such stock or indebtedness;
- o liens upon property of entities existing at the time they become subsidiaries;
- o liens existing on properties when acquired, or incurred to finance the purchase price or construction thereof;
- o liens to extend, renew or replace any liens referred to above;
- o certain liens relating to certain permitted sale and leaseback transactions;
- o liens in favor of the Issuer or one or more subsidiaries granted by the Issuer or a subsidiary to secure any intercompany obligations;
- o mechanics', landlords' and similar liens;
- o liens arising out of legal proceedings being contested;
- o liens for taxes not yet due, or being contested;

- o easements and similar liens not impairing the use or value of the property involved;
- o pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation;
- o deposits to secure performance of letters of credit, bids, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;
- o any interest or title of a lessor under any lease entered into in the ordinary course of business;
- o liens on assets of any subsidiary which is required to be licensed as an insurer or reinsurer (or any subsidiary of such subsidiary) securing indebtedness incurred to provide short-term liquidity to facilitate claims payments in the event of catastrophes; and
- o liens otherwise prohibited by this covenant, securing indebtedness which, together with the value of certain sale and leaseback transactions described under "Limitation on Sale and Leasebacks", does not exceed 15% of shareholders equity.

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#### LIMITATION ON SALE AND LEASEBACKS

The Issuer will not, and will not permit any subsidiary to, enter into any arrangement with any person pursuant to which the Issuer or any subsidiary leases any property that has been or is to be sold or transferred by the Issuer or the subsidiary to such person (a "sale and leaseback transaction"), except that a sale and leaseback transaction is permitted if the Issuer or such subsidiary would be entitled to secure the property to be leased (without equally and ratably securing the outstanding Senior Debt Securities) in an amount equal to the present value of the lease payments with respect to the term of the lease remaining on the date as of which the amount is being determined under the provisions described in "Limitation on Liens" above.

In addition, permitted sale and leaseback transactions not subject to the limitation above and the provisions described in "Limitations on Liens" above include:

- o leases for a term, including renewals at the option of the lessee, of not more than five years;
- o leases between the Issuer and a subsidiary or between subsidiaries; and
- o leases of property executed by the time of, or within 12 months after the latest of, the acquisition, the completion of construction or improvement, or the commencement of commercial operation of the property.

#### SUBORDINATED DEBT SECURITIES

In addition to the provisions previously described in this prospectus and applicable to all Debt Securities, the following description of the Subordinated Debt Securities summarizes the general terms and provisions of its Subordinated Debt Securities to which any prospectus supplement may relate. We will describe the specific terms of the Subordinated Debt Securities offered by any prospectus supplement and the extent, if any, to which the general provisions summarized below may apply to any series of Subordinated Debt Securities in the prospectus supplement relating to that series.

#### RANKING OF SUBORDINATED DEBT SECURITIES

The Subordinated Debt Securities will be subordinated in right of payment to the Issuer's other indebtedness to the extent set forth in the applicable prospectus supplement. If the Issuer of Subordinated Debt Securities is Fund American, White Mountains' guarantee of Fund American's obligations thereunder will be subordinated in right of payment to the same extent as Fund American's obligations thereunder.

The payment of the principal of, premium, if any, and interest on the Subordinated Debt Securities will be subordinated in right of payment to the prior payment in full of all of the Issuer's senior indebtedness and equally with its trade creditors. The Issuer may not make payment of principal of, premium, if any, or interest on the Subordinated Debt Securities and may not acquire or make payment on account of any sinking fund for, the Subordinated Debt Securities unless full payment of amounts then due for principal, premium, if any, and interest then due on all senior indebtedness by reason of the maturity thereof has been made or duly provided for in cash or in a manner satisfactory to the holders of the senior indebtedness. In addition, the Subordinated Indenture provides that if a default has occurred giving the holders of the senior indebtedness the right to accelerate the maturity of that senior indebtedness, or an event has occurred which, with the giving of notice, or lapse of time, or both, would constitute an event of default, then unless and until that event has been cured or waived or has ceased to

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exist, no payment of principal, premium, if any, or interest on the Subordinated Debt Securities and no acquisition of, or payment on account of a sinking fund for, the Subordinated Debt Securities may be made. The Issuer will give prompt written notice to the Subordinated Trustee of any default under any senior indebtedness or under any agreement pursuant to which senior indebtedness may have been issued. The Subordinated Indenture provisions described in this paragraph, however, do not prevent the Issuer from making a sinking fund payment with Subordinated Debt Securities acquired prior to the maturity of senior indebtedness or, in the case of default, prior to the default and notice thereof. Upon any distribution of assets in connection with the Issuer's dissolution, liquidation or reorganization, all senior indebtedness must be paid in full before the holders of the Subordinated Debt Securities are entitled to any payments whatsoever. As a result of these subordination provisions, in the event of the Issuer's insolvency, holders of the Subordinated Debt Securities may recover ratably less than the Issuer's senior creditors.

For purposes of the description of the Subordinated Debt Securities, the term "senior indebtedness" means the principal of and premium, if any, and interest on the following, whether outstanding on the date of execution of the Subordinated Indenture or incurred or created after the execution:

- o the Issuer's indebtedness for money borrowed by it, including purchase money obligations with an original maturity in excess of one year, or evidenced by securities, other than the Subordinated Debt Securities or Junior Subordinated Debt Securities, notes, bankers' acceptances or other corporate Debt Securities or similar instruments issued by the Issuer;
- o obligations with respect to letters of credit;
- o the Issuer's indebtedness constituting a guarantee of indebtedness of others of the type referred to in the preceding two bullet points; or
- o renewals, extensions or refundings of any of the indebtedness referred to in the preceding three bullet points unless, in the case of any particular indebtedness, renewal, extension or refunding, under the express provisions of the instrument creating or evidencing the same, or pursuant to which the same is outstanding, the indebtedness or the renewal, extension or refunding thereof is not superior in right of payment to the Subordinated Debt Securities.

#### DESCRIPTION OF JUNIOR SUBORDINATED DEBT SECURITIES

Fund American may offer, from time to time, junior subordinated debt securities (the "Junior Subordinated Debt Securities"). The following description summarizes the general terms and provisions of the Junior Subordinated Debt Securities to which any prospectus supplement may relate. Fund American will describe the specific terms of the Junior Subordinated Debt Securities and the extent, if any, to which the general provisions summarized below may apply to any series of its Junior Subordinated Debt Securities in the prospectus supplement relating to that series.

Fund American may issue its Junior Subordinated Debt Securities from time to time in one or more series under a junior subordinated indenture (the "Junior Subordinated Indenture"), between Fund American, White Mountains (as guarantor) and Bank One, National Association, as junior subordinated trustee, or another junior subordinated trustee named in a prospectus supplement (the "Junior Subordinated Trustee"). The form of Junior Subordinated Indenture is filed as an exhibit to the registration statement.

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#### GENERAL

The Junior Subordinated Debt Securities will be unsecured, junior subordinated obligations of Fund American. The Junior Subordinated Indenture does not limit the amount of additional indebtedness Fund American or any of its subsidiaries may incur. Since Fund American is a holding company, Fund American's rights and the rights of its creditors, including the holders of Junior Subordinated Debt Securities, to participate in the assets of any subsidiary upon the latter's liquidation or recapitalization will be subject to the prior claims of the subsidiary's creditors, except to the extent that Fund American may itself be a creditor with recognized claims against the subsidiary.

The Junior Subordinated Indenture does not limit the aggregate principal amount of indebtedness which may be issued thereunder and provides that Junior Subordinated Debt Securities may be issued thereunder from time to time in one or more series. The Junior Subordinated Debt Securities are issuable in one or more series pursuant to a board resolution or an indenture supplemental to the Junior Subordinated Indenture. Fund American will issue Junior Subordinated Debt Securities from time to time and offer its Junior Subordinated Debt Securities on terms determined by market conditions at the time of sale.

In the event Junior Subordinated Debt Securities are issued to any Fund American Trust or a trustee of the applicable Fund American Trust in connection with the issuance of preferred securities by the applicable Fund American Trust, the Junior Subordinated Debt Securities held by the applicable Fund American Trust subsequently may be distributed pro rata to the holders of the applicable preferred securities in connection with the dissolution of the applicable Fund American Trust upon the occurrence of the events described in the applicable prospectus supplement. Only one series of Junior Subordinated Debt Securities

will be issued to each Fund American Trust or a trustee of such Fund American Trust in connection with the issuance of preferred securities by such Fund American Trust.

You should refer to the applicable prospectus supplement for the following terms of the Junior Subordinated Debt Securities offered hereby:

- o the designation, aggregate principal amount and authorized denominations of the Junior Subordinated Debt Securities;
- o the percentage of the principal amount at which Fund American will issue the Junior Subordinated Debt Securities;
- o the date or dates on which the Junior Subordinated Debt Securities will mature;
- o the annual interest rate or rates of the Junior Subordinated Debt Securities, or the method of determining the rate or rates;
- o the date or dates on which any interest will be payable, the date or dates on which payment of any interest will commence and the regular record dates for the interest payment dates;
- o the terms of any mandatory or optional redemption, including any provisions for any sinking, purchase or other similar funds or repayment options;
- o the currency, currencies or currency units for which the Junior Subordinated Debt Securities may be purchased and in which the principal, any premium and any interest may be payable;

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- o if the currency, currencies or currency units for which the Junior Subordinated Debt Securities may be purchased or in which the principal, any premium and any interest may be payable is at Fund American's election or the purchaser's election, the manner in which the election may be made;
- o if the amount of payments on the Junior Subordinated Debt Securities is determined by an index based on one or more currencies or currency units, or changes in the price of one or more securities or commodities, the manner in which the amounts may be determined;
- o the extent to which any of the Junior Subordinated Debt Securities will be issuable in temporary or permanent global form, or the manner in which any interest payable on a temporary or permanent global security will be paid;
- o the terms and conditions upon which the Junior Subordinated Debt Securities may be convertible into or exchanged for Common Shares, Preference Shares, or indebtedness or other securities of any kind;
- o information with respect to book-entry procedures, if any;
- o a discussion of the Federal income tax, accounting and other special considerations, procedures and limitations with respect to the Junior Subordinated Debt Securities; and
- o any other specific terms of the Junior Subordinated Debt Securities not inconsistent with the Junior Subordinated Indenture.

If Fund American sells any of the Junior Subordinated Debt Securities for one or more foreign currencies or foreign currency units or if the principal of, premium, if any, or interest on any series of Junior Subordinated Debt Securities will be payable in one or more foreign currencies or foreign currency units, we will describe the restrictions, elections, Federal income tax consequences, specific terms and other information with respect to the issue of Junior Subordinated Debt Securities and the currencies or currency units in the applicable prospectus supplement.

Unless specified otherwise in the prospectus supplement, the principal of, premium on, and interest on the Junior Subordinated Debt Securities will be payable, and the Junior Subordinated Debt Securities will be transferable, at the Corporate Trust Office of the Junior Subordinated Trustee in New York, New York. However, Fund American may make payment of interest at its option by check mailed on or before the payment date to the address of the person entitled to the interest payment as it appears on the registry books of Fund American or its agents.

Unless specified otherwise in the prospectus supplement, Fund American will issue the Junior Subordinated Debt Securities only in fully registered form and in denominations of \$1,000 and any integral multiple of \$1,000. No service charge will be made for any transfer or exchange of any Junior Subordinated Debt Securities, but Fund American may, except in specific cases not involving any transfer, require payment of a sufficient amount to cover any tax or other governmental charge payable in connection with the transfer or exchange. Unless specified otherwise in the prospectus supplement, Fund American will pay interest on outstanding Junior Subordinated Debt Securities to holders of record on the date 15 days immediately prior to the date the interest is to be paid.



Fund American rights and the rights of its creditors, including holders of Junior Subordinated Debt Securities, to participate in any distribution of assets of any of the its subsidiaries upon its liquidation or reorganization or otherwise is subject to the prior claims of creditors of the subsidiary, except to the extent that Fund American's claims as a creditor of the subsidiary may be recognized. Fund American's operations are conducted through subsidiaries and, therefore, Fund American is dependent upon the earnings and cash flow of its subsidiaries to meet its obligations, including obligations under the Junior Subordinated Debt Securities. The Junior Subordinated Debt Securities will be effectively subordinated to all indebtedness of Fund American's subsidiaries.

#### WHITE MOUNTAINS GUARANTEE

White Mountains will irrevocably and unconditionally guarantee, on a subordinated basis, to each holder of Junior Subordinated Debt Securities issued by Fund American the due and punctual payment of the principal of, and any premium and any interest on, those Junior Subordinated Debt Securities, when and as the same becomes due and payable, whether at maturity, upon acceleration or otherwise. White Mountains has:

- o agreed that its obligations under the guarantees, upon the occurrence and continuance of an event of default with respect to any guaranteed Junior Subordinated Debt Securities, 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 guaranteed Junior Subordinated Debt Securities or the Junior Subordinated Indenture, and
- o waived its right to require the Junior Subordinated Trustee or the holders of guaranteed Junior Subordinated Debt Securities to pursue or exhaust their legal or equitable remedies against Fund American prior to exercising their rights under the Guarantees.

White Mountains' guarantee of Fund American's obligations under any Junior Subordinated Debt Security will be subordinated in right of payment to same extent as Fund American's obligations under such Junior Subordinated Debt Security.

#### GLOBAL SECURITIES

Fund American may issue Junior Subordinated Debt Securities of a series in whole or in part in the form of one or more global securities that will be deposited with or on behalf of a depository identified in the prospectus supplement relating to that series. Fund American may issue global securities only in fully registered form and in either temporary or permanent form. Unless and until it is exchanged in whole or in part for the individual Junior Subordinated Debt Securities represented thereby, a global security may not be transferred except as a whole by the depository for the global security to a nominee of the depository or by a nominee of the depository to the depository or another nominee of the depository or by the depository or any nominee of the depository to a successor or any nominee.

The specific terms of the depository arrangement relating to a series of Junior Subordinated Debt Securities will be described in the prospectus supplement relating to that series.

#### AMALGAMATION, CONSOLIDATION, MERGER, CONVEYANCE OR TRANSFER

The Junior Subordinated Indenture prohibits Fund American's or White Mountains' amalgamation or consolidation with or merger into any other entity or the transfer of its properties and assets substantially as an entirety to any entity, unless:

- o the successor entity is organized and existing under the laws of the United States, any State thereof, the District of Columbia or Bermuda, and expressly assumes by a supplemental indenture the punctual payment of the principal of, premium on and interest on, all the outstanding Junior Subordinated Debt Securities and the performance of every covenant in the Junior Subordinated Indenture to be performed or observed on Fund American's or White Mountains' part, as applicable;
- o immediately after giving effect to the transaction, no event of default has happened and is continuing; and
- o Fund American or White Mountains, as applicable, or the successor entity has delivered to the Junior Subordinated Trustee an officers' certificate stating that the amalgamation, consolidation, merger, conveyance or transfer and the supplemental indenture comply with the foregoing provisions relating to the transaction.

In case of any amalgamation, consolidation, merger, conveyance or transfer, the successor entity will succeed to and be substituted for Fund American or White Mountains, as applicable, as obligor or guarantor, as applicable, on the Junior Subordinated Debt Securities, with the same effect as if it had been named as the obligor or the guarantor, as applicable, in the Junior Subordinated Indenture. Unless the prospectus supplement states otherwise, the Junior Subordinated Indenture and the Junior Subordinated Debt

Securities do not contain any covenants or other provisions designed to protect holders of Junior Subordinated Debt Securities in the event of a highly leveraged transaction involving White Mountains, Fund American or any of their subsidiaries.

#### EVENTS OF DEFAULT; WAIVER AND NOTICE OF DEFAULT; JUNIOR SUBORDINATED DEBT SECURITIES IN FOREIGN CURRENCIES

An event of default when used in the Junior Subordinated Indenture will mean any of the following as to any series of Junior Subordinated Debt Securities:

- o default for 90 days in payment of any interest on the Junior Subordinated Debt Securities;
- o default in payment of principal or any premium at maturity;
- o default in payment of any sinking or purchase fund or similar obligation;
- o default by Fund American in the performance of any other covenant or warranty contained in the Junior Subordinated Indenture for the benefit of that series which has not been remedied for a period of 90 days after notice is given; or
- o events of Fund American's bankruptcy, insolvency and reorganization.

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A default under Fund American's other indebtedness will not be a default under the Junior Subordinated Indenture and a default under one series of Junior Subordinated Debt Securities will not necessarily be a default under another series.

The Junior Subordinated Indenture provides that if an event of default described in the first four bullet points above has occurred and is continuing with respect to any series, and the event of default under the fourth bullet point is with respect to less than all series of Junior Subordinated Debt Securities then outstanding, either the Junior Subordinated Trustee or the holders of not less than 25% in aggregate principal amount of the Junior Subordinated Debt Securities of the series then outstanding, each series acting as a separate class, may declare the principal or, in the case of original issue discount securities, the portion specified in the terms thereof, of all outstanding Junior Subordinated Debt Securities of that series and the accrued interest to be due and payable immediately. The Junior Subordinated Indenture further provides that if an event of default described in the fourth or fifth bullet point above has occurred and is continuing, and the event of default under the fourth bullet point is with respect to all series of Junior Subordinated Debt Securities then outstanding, either the Junior Subordinated Debt Trustee or the holders of at least 25% in aggregate principal amount of all Junior Subordinated Debt Securities then outstanding, treated as one class, may declare the principal or, in the case of original issue discount securities, the portion specified in the terms thereof, of all Junior Subordinated Debt Securities then outstanding and the accrued interest to be due and payable immediately. However, upon certain conditions the declarations may be annulled and past defaults, except for defaults in the payment of principal of, premium on, or interest on, the Junior Subordinated Debt Securities and in compliance with certain covenants, may be waived by the holders of a majority in aggregate principal amount of the Junior Subordinated Debt Securities of that series then outstanding, subject to the consent of the holders of the preferred securities and the common securities of any Fund American Trust as required by its declaration of trust in the event that the Junior Subordinated Debt Securities are held as assets of the applicable Fund American Trust prior to a security exchange.

When used with respect to the Junior Subordinated Debt Securities that are held as trust assets of any Fund American Trust pursuant to the declaration of trust of such Fund American Trust, the term "security exchange" means the distribution of the Junior Subordinated Debt Securities held by such Fund American Trust in exchange for the preferred securities and the common securities of such Fund American Trust in dissolution of such Fund American Trust pursuant to the declaration of trust of such Fund American Trust.

Under the Junior Subordinated Indenture, the Junior Subordinated Trustee must give notice to the holders of each series of Junior Subordinated Debt Securities of all uncured defaults known to it with respect to that series within 90 days after a default occurs. The term "default" includes the events specified above without notice or grace periods. However, in the case of any default of the type described in the fourth bullet point above, no notice may be given until at least 90 days after the occurrence of the event. The Junior Subordinated Debt Trustee will be protected in withholding notice if it in good faith determines that the withholding of notice is in the interests of the holders of the Junior Subordinated Debt Securities, except in the case of default in the payment of principal of, premium on, or interest on, any of the Junior Subordinated Debt Securities, or default in the payment of any sinking or purchase fund installment or analogous obligations.

No holder of any Junior Subordinated Debt Securities of any series may institute any action under the indenture unless:

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- o the holder has given the Junior Subordinated Trustee written notice of a continuing event of default with respect to that series;
- o the holders of not less than 25% in aggregate principal amount of the Junior Subordinated Debt Securities of that series then outstanding have requested the Junior Subordinated Trustee to institute proceedings in respect of the event of default;
- o the holder or holders have offered the Junior Subordinated Trustee reasonable indemnity as the Junior Subordinated Trustee may require;
- o the Junior Subordinated Trustee has failed to institute an action for 60 days after the notice, request and indemnity have been made as described above; and
- o no inconsistent direction has been given to the Junior Subordinated Trustee during the 60-day period by the holders of a majority in aggregate principal amount of Junior Subordinated Debt Securities of the series then outstanding, subject to the consent of the holders of the preferred securities and the common securities of any Fund American Trust as required by its declaration of trust in the event that the Junior Subordinated Debt Securities are held as assets of the applicable Fund American Trust prior to a security exchange.

The Junior Subordinated Indenture provides that if an event of default occurs and is continuing, the Junior Subordinated Trustee will be required to use the degree of care of a prudent person in the conduct of the person's own affairs in exercising its rights and powers under the indenture. The Junior Subordinated Indenture further provides that the Junior Subordinated Trustee will not be required to expend or risk its own funds in the performance of any of its duties under the indenture unless it has reasonable grounds for believing that repayment of the funds or adequate indemnity against the risk or liability is reasonably assured to it.

Fund American must furnish to the Junior Subordinated Trustee within 120 days after the end of each fiscal year a statement signed by one of its officers to the effect that a review of its activities during the year and of its performance under the Junior Subordinated Indenture and the terms of the Junior Subordinated Debt Securities has been made, and, to the knowledge of the signatories based on the review, Fund American has complied with all conditions and covenants of the indenture through the year or, if Fund American is in default, specifying the default.

If any Junior Subordinated Debt Securities are denominated in a currency other than that of the United States, then for the purposes of determining whether the holders of the requisite principal amount of Junior Subordinated Debt Securities have taken any action as described in this prospectus, the principal amount of the Junior Subordinated Debt Securities will be deemed to be that amount of United States dollars that could be obtained for the principal amount on the basis of the spot rate of exchange into United States dollars for the currency in which the Junior Subordinated Debt Securities are denominated as of the date the taking of the action by the holders of the requisite principal amount is evidenced to the Junior Subordinated Trustee as provided in the Junior Subordinated Indenture.

If any Junior Subordinated Debt Securities are original issue discount securities, then for the purposes of determining whether the holders of the requisite principal amount of Junior Subordinated Debt Securities have taken any action described in this prospectus, the principal amount of the Junior Subordinated Debt Securities will be deemed to be the portion of the principal amount that would be due and payable at the time of the taking of the action upon a declaration of acceleration of maturity thereof.

#### MODIFICATION OF THE JUNIOR SUBORDINATED INDENTURE

The Junior Subordinated Indenture provides that Fund American and the Junior Subordinated Trustee may, without the consent of any holders of Junior Subordinated Debt Securities, enter into supplemental indentures for the purposes, among other things, of adding to Fund American's covenants, adding additional events of default, establishing the form or terms of any series of Junior Subordinated Debt Securities or curing ambiguities or inconsistencies in the indenture or making other provisions.

With specific exceptions, the Junior Subordinated Indenture or the rights of the holders of the Junior Subordinated Debt Securities may be modified by Fund American and the Junior Subordinated Trustee with the consent of the holders of a majority in aggregate principal amount of the Junior Subordinated Debt Securities of each series affected by the modification then outstanding, subject to the consent of the holders of the preferred securities and the common securities of the Fund American Trust as required by its declaration of trust in the event that the Junior Subordinated Debt Securities are held as assets of the Fund American Trust prior to a security exchange, but no modification may be made without the consent of the holder of each outstanding Junior Subordinated Debt Security affected, subject to the consent of the holders of the preferred securities and the common securities of any Fund American Trust as required by its declaration of trust in the event that the Junior Subordinated Debt Securities are held as assets of the applicable Fund American Trust prior to a security exchange, which would:

- o change the maturity of any payment of principal of, or any premium on, or any installment of interest on any Junior Subordinated Debt Security;
- o reduce the principal amount of or the interest or any premium on any Junior Subordinated Debt Security;
- o change the method of computing the amount of principal of or interest on any date;
- o change any place of payment where, or the currency in which, any Junior Subordinated Debt Security or any premium or interest is payable;
- o impair the right to sue for the enforcement of any payment on or after the maturity thereof or, in the case of redemption or repayment, on or after the redemption date or the repayment date;
- o reduce the percentage in principal amount of the outstanding Junior Subordinated Debt Securities of any series, the consent of the holders of which is required for any modification of, or waiver of compliance with the provisions of, the Junior Subordinated Indenture or specific defaults and their consequences provided for in the indenture; or
- o modify any of the provisions of specific sections of the Junior Subordinated Indenture, including the provisions summarized in this section, except to increase any required consent percentage or to provide that other provisions of the indenture cannot be modified or waived without the consent of the holder of each outstanding Junior Subordinated Debt Security affected thereby.

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

The Junior Subordinated Indenture will generally cease to be of any further effect with respect to a series of Junior Subordinated Debt Securities if Fund American delivers all Junior Subordinated Debt Securities of that series, with limited exceptions, for cancellation to the Junior Subordinated Trustee or all Junior Subordinated Debt Securities of that series not previously delivered for cancellation to the Junior Subordinated Trustee have become due and payable or will become due and payable or called for redemption within one year, and Fund American has deposited with the Junior Subordinated Trustee as trust funds the entire amount sufficient to pay at maturity or upon redemption all the Junior Subordinated Debt Securities, no default with respect to the Junior Subordinated Debt Securities has occurred and is continuing on the date of the deposit, and the deposit does not result in a breach or violation of, or default under, the Junior Subordinated Indenture or any other agreement or instrument to which Fund American is a party.

Fund American has a "legal defeasance option" under which it may terminate, with respect to the Junior Subordinated Debt Securities of a particular series, all of its obligations under the Junior Subordinated Debt Securities and the Junior Subordinated Indenture. In addition, Fund American has a "covenant defeasance option" under which it may terminate, with respect to the Junior Subordinated Debt Securities of a particular series, its obligations with respect to the Junior Subordinated Debt Securities under specified covenants contained in the Junior Subordinated Indenture. If Fund American exercises its legal defeasance option with respect to a series of Junior Subordinated Debt Securities, payment of the Junior Subordinated Debt Securities may not be accelerated because of an event of default. If Fund American exercises its covenant defeasance option with respect to a series of Junior Subordinated Debt Securities, payment of the Junior Subordinated Debt Securities may not be accelerated because of an event of default related to the specified covenants.

Fund American may exercise its legal defeasance option or its covenant defeasance option with respect to the Junior Subordinated Debt Securities of a series only if:

- o Fund American deposits in trust with the Junior Subordinated Trustee cash or debt obligations of the United States of America or its agencies or instrumentalities for the payment of principal, premium and interest with respect to the Junior Subordinated Debt Securities to maturity or redemption;
- o Fund American delivers to the Junior Subordinated Trustee a certificate from a nationally recognized firm of independent public accountants expressing their opinion that the cash or debt obligations described above on deposit with the Junior Subordinated Trustee will provide cash sufficient to pay the principal, premium, and interest when due with respect to all the Junior Subordinated Debt Securities of that series to maturity or redemption;
- o 91 days pass after the deposit is made and during the 91-day period no default described in the fifth bullet point under "--Events of Default, Waiver and Notice of Default; Junior Subordinated Debt Securities in Foreign Currencies" above with respect to Fund American occurs that is continuing at the end of the period;
- o no default has occurred and is continuing on the date of the deposit;
- o the deposit does not constitute a default under any other agreement

- o Fund American delivers to the Junior Subordinated Trustee an opinion of counsel to the effect that the trust resulting from the deposit does not constitute a regulated investment company under the Investment Company Act of 1940;
- o Fund American has delivered to the Junior Subordinated Trustee an opinion of counsel addressing specific Federal income tax matters relating to the defeasance; and
- o Fund American delivers to the Junior Subordinated Trustee an officers' certificate and an opinion of counsel stating that all conditions to the defeasance and discharge of the Junior Subordinated Debt Securities of that series have been complied with.

The Junior Subordinated Trustee will hold in trust cash or debt obligations of the United States of America or its agencies or instrumentalities deposited with it as described above and will apply the deposited cash and the proceeds from deposited debt obligations of the United States of America or its agencies or instrumentalities to the payment of principal, premium, and interest with respect to the Junior Subordinated Debt Securities of the defeased series.

#### CONCERNING THE JUNIOR SUBORDINATED TRUSTEE

The Junior Subordinated Trustee for the Junior Subordinated Debt Securities will be identified in the relevant prospectus supplement. In specific instances, Fund American or the holders of a majority of the then outstanding principal amount of the Junior Subordinated Debt Securities issued under an indenture may remove the Junior Subordinated Trustee and appoint a successor Junior Subordinated Trustee. The Junior Subordinated Trustee may become the owner or pledgee of any of the Junior Subordinated Debt Securities with the same rights, subject to conflict of interest restrictions, it would have if it were not the Junior Subordinated Trustee. The Junior Subordinated Trustee and any successor trustee must be a corporation organized and doing business as a commercial bank or trust company under the laws of the United States or of any state thereof, authorized under those laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000 and subject to examination by Federal or state authority. Subject to applicable law relating to conflicts of interest, the Junior Subordinated Trustee may also serve as trustee under other indentures relating to Debt Securities or Junior Subordinated Debt Securities issued by White Mountains or its affiliated companies and may engage in commercial transactions with White Mountains and its affiliated companies. The initial Junior Subordinated Trustee under the Junior Subordinated Indenture is Bank One, National Association.

#### CERTAIN COVENANTS OF WHITE MOUNTAINS AND FUND AMERICAN APPLICABLE TO THE JUNIOR SUBORDINATED DEBT SECURITIES

If Junior Subordinated Debt Securities are issued to a Fund American Trust in connection with the issuance of preferred securities by the Fund American Trust, each of White Mountains and Fund American covenants in the Junior Subordinated Indenture that, so long as the preferred securities of the Fund American Trust remain outstanding, it will not declare or pay any dividends on, or redeem, purchase, acquire or make a distribution or liquidation payment with respect to, any shares of its common stock or preferred stock if at the time:

- o an event of default with respect to the Junior Subordinated Debt Securities has occurred;
- o White Mountains is in default with respect to its payment of any obligations under its guarantee of the preferred securities of the Fund American Trust; or

- o Fund American has given notice of its election to defer payments of interest on the Junior Subordinated Debt Securities by extending the interest payment period as provided in the terms of the Junior Subordinated Debt Securities and the period, or any extension thereof, is continuing.

However, the foregoing restrictions will not apply to:

- o dividends, distributions, redemptions, purchases, acquisitions or payments made with capital stock;
- o any declaration or payment of a dividend in connection with the implementation of a shareholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto;
- o payments of accrued dividends on preferred stock upon the redemption, exchange or conversion of any preferred stock as may be outstanding from time to time;
- o the purchase of fractional interests in shares of preferred stock upon the redemption, exchange or conversion of such preferred stock;

- o purchases or acquisitions of shares of common stock in connection with the satisfaction of obligations under any employee benefit plan or other contractual obligation; or
- o dividends, distributions, redemptions, purchases, acquisitions or payments as a result of a reclassification of capital stock or the exchange or conversion of one class or series capital stock for another class or series of capital stock.

In addition, if Junior Subordinated Debt Securities are issued to a Fund American Trust in connection with the issuance of preferred securities of the Fund American Trust, for so long as the preferred securities of the Fund American Trust remain outstanding, Fund American has agreed:

- o to maintain directly, or indirectly through a wholly owned subsidiary, 100% ownership of the common securities of such Fund American Trust, provided, however, that any permitted successor of Fund American under the Junior Subordinated Indenture may succeed to Fund American's ownership of such common securities;
- o not to voluntarily terminate, windup or liquidate such Fund American Trust, except in connection with a distribution of Junior Subordinated Debt Securities to the holders of the preferred securities in liquidation of such Fund American Trust or in connection with certain mergers, consolidations or amalgamations permitted by the declaration of trust of such Fund American Trust; and
- o to use its reasonable best efforts, consistent with the terms and provisions of the declaration of trust of such Fund American Trust, to cause such Fund American Trust to remain classified as a grantor trust and not as an association taxable as a corporation for United States Federal income tax purposes.

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#### SUBORDINATION OF THE JUNIOR SUBORDINATED DEBT SECURITIES

The Junior Subordinated Debt Securities will be subordinated and junior in right of payment to Fund American's other indebtedness to the extent set forth in the applicable prospectus supplement.

The payment of the principal of, premium, if any, and interest on the Junior Subordinated Debt Securities will be subordinated in right of payment to the prior payment in full of all of Fund American's senior indebtedness and will rank equally with its trade creditors. No payment on account of principal of, premium, if any, or interest on the Junior Subordinated Debt Securities and no acquisition of, or payment on account of any sinking fund for, the Junior Subordinated Debt Securities may be made unless full payment of amounts then due for principal, premium, if any, and interest then due on all senior indebtedness by reason of the maturity thereof, by lapse of time, acceleration or otherwise, has been made or duly provided for in cash or in a manner satisfactory to the holders of the senior indebtedness. In addition, the Junior Subordinated Indenture provides that if a default has occurred giving the holders of the senior indebtedness the right to accelerate the maturity thereof, or an event has occurred which, with the giving of notice, or lapse of time, or both, would constitute an event of default, then unless and until that event has been cured or waived or has ceased to exist, no payment on account of principal, premium, if any, or interest on the Junior Subordinated Debt Securities and no acquisition of, or payment on account of a sinking fund for, the Junior Subordinated Debt Securities may be made. Fund American will give prompt written notice to the Junior Subordinated Trustee of any default under any senior indebtedness or under any agreement pursuant to which senior indebtedness may have been issued. Upon any distribution of Fund American's assets in connection with its dissolution, liquidation or reorganization, all senior indebtedness must be paid in full before the holders of the Junior Subordinated Debt Securities are entitled to any payments whatsoever. As a result of these subordination provisions, in the event of Fund American's insolvency, holders of the Junior Subordinated Debt Securities may recover ratably less than Fund American's senior creditors.

#### SUBORDINATION OF WHITE MOUNTAINS' GUARANTEE OF THE JUNIOR SUBORDINATED DEBT SECURITIES

White Mountains' guarantee of the Junior Subordinated Debt Securities will be subordinated and junior in right of payment to White Mountains' other indebtedness to the extent set forth in the applicable prospectus supplement.

The payment of the principal of, premium, if any, and interest on the Junior Subordinated Debt Securities will be subordinated in right of payment to the prior payment in full of all of White Mountains' senior indebtedness and will rank equally with its trade creditors. No payment on account of principal of, premium, if any, or interest on the Junior Subordinated Debt Securities and no acquisition of, or payment on account of any sinking fund for, the Junior Subordinated Debt Securities may be made unless full payment of amounts then due for principal, premium, if any, and interest then due on all senior indebtedness by reason of the maturity thereof, by lapse of time, acceleration or otherwise, has been made or duly provided for in cash or in a manner satisfactory to the holders of the senior indebtedness. In addition, the Junior Subordinated Indenture provides that if a default has occurred giving the holders of the senior indebtedness the right to accelerate the maturity thereof, or an event has occurred which, with the giving of notice, or lapse of time, or both, would

constitute an event of default, then unless and until that event has been cured or waived or has ceased to exist, no payment on account of principal, premium, if any, or interest on the Junior Subordinated Debt Securities and no acquisition of, or payment on account of a sinking fund for, the Junior Subordinated Debt Securities may be made. White Mountains will give prompt written notice to the Junior Subordinated Trustee of any default under any senior indebtedness or under any agreement pursuant to which senior indebtedness may have been issued.

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Upon any distribution of White Mountains' assets in connection with its dissolution, liquidation or reorganization, all senior indebtedness must be paid in full before the holders of the Junior Subordinated Debt Securities are entitled to any payments whatsoever. As a result of these subordination provisions, in the event of White Mountains' insolvency, holders of the Junior Subordinated Debt Securities may recover ratably less than White Mountains' senior creditors.

For purposes of the description of the Junior Subordinated Debt Securities, the term senior indebtedness with respect to Fund American or White Mountains, as applicable, means the principal of and premium, if any, and interest on the following, whether outstanding on the date of execution of the Junior Subordinated Indenture or incurred or created after the execution:

- o indebtedness for money borrowed including purchase money obligations with an original maturity in excess of one year, or evidenced by securities, notes, bankers' acceptances or other corporate Debt Securities or similar instruments other than the Junior Subordinated Debt Securities;
- o obligations with respect to letters of credit;
- o indebtedness constituting a guarantee of indebtedness of others of the type referred to in the preceding two bullet points; or
- o renewals, extensions or refundings of any of the indebtedness referred to in the preceding three bullet points unless, in the case of any particular indebtedness, renewal, extension or refunding, under the express provisions of the instrument creating or evidencing the same, or pursuant to which the same is outstanding, the indebtedness or the renewal, extension or refunding thereof is not superior in right of payment to the Junior Subordinated Debt Securities.

#### DESCRIPTION OF TRUST PREFERRED SECURITIES

Each Fund American Trust may issue, from time to time, only one series of preferred securities having terms described in the prospectus supplement relating thereto. The declaration of trust under which each Fund American Trust is formed will be replaced by an amended and restated declaration of trust, which will authorize the regular trustees of the Fund American Trust to issue on behalf of the Fund American Trust one series of preferred securities. Each amended and restated declaration of trust will be qualified as an indenture under the Trust Indenture Act. The preferred securities will have terms, including distributions, redemption, voting, liquidation rights and other preferred, deferred or other special rights or restrictions as will be set forth in the related amended and restated declaration of trust or made part of the declaration by the Trust Indenture Act. Reference is made to any prospectus supplement relating to the preferred securities of any Fund American Trust for specific terms, including:

- o the specific designation of the preferred securities;
- o the number of preferred securities issued by the Fund American Trust;
- o the annual distribution rate, or method of calculation of the rate, for preferred securities issued by the Fund American Trust, the date or dates upon which the distributions will be payable and the record date or dates for the payment of the distributions;

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- o whether distributions on preferred securities issued by the Fund American Trust will be cumulative, and, in the case of preferred securities having cumulative distribution rights, the date or dates or method of determining the date or dates from which distributions on preferred securities issued by the Fund American Trust will be cumulative;
- o the amount or amounts which will be paid out of the assets of the Fund American Trust to the holders of preferred securities of the Fund American Trust upon voluntary or involuntary liquidation, dissolution, winding-up or termination of the Fund American Trust;
- o the obligation or right, if any, of the Fund American Trust to purchase or redeem preferred securities issued by the Fund American Trust and the price or prices at which, the period or periods within which and the terms and conditions upon which preferred securities issued by the Fund American Trust will or may be purchased or redeemed, in whole or in part, pursuant to an obligation or right;

- o the voting rights, if any, of preferred securities issued by the Fund American Trust in addition to those required by law, including the number of votes per preferred security and any requirement for the approval by the holders of preferred securities, or of preferred securities issued by one or more Fund American Trusts, or of both, as a condition to specified actions or amendments to the declaration of the Fund American Trust;
- o the terms and conditions upon which the preferred securities may be convertible into or exchanged for Common Shares, Preference Shares, Debt Securities, Junior Subordinated Debt Securities, or indebtedness or other securities of any kind of White Mountains or Fund American; and
- o any other relevant rights, preferences, privileges, limitations or restrictions of preferred securities issued by the Fund American Trust consistent with the declaration of the Fund American Trust or with applicable law.

All preferred securities offered hereby will be guaranteed by White Mountains as and to the extent set forth below under "Description of Trust Preferred Securities Guarantees". Federal income tax considerations applicable to any offering of preferred securities will be described in the applicable prospectus supplement.

In connection with any issuance of preferred securities, the applicable Fund American Trust will issue one series of common securities. The amended and restated declaration of the applicable Fund American Trust will authorize the regular trustees of the Fund American Trust to issue one series of common securities having terms including distributions, redemption, voting, liquidation rights or restrictions as set forth in the amended and restated declaration. The terms of the common securities issued by the Fund American Trust will be substantially identical to the terms of the preferred securities issued by the Fund American Trust. The common securities will rank equally with the preferred securities and payments on the common securities will be made on a pro rata basis with the preferred securities. However, if an event of default under the applicable amended and restated declaration of trust occurs and is continuing, the rights of the holders of the common securities to payment in respect of distributions and payments upon liquidation, redemption and maturity will be subordinated to the rights of the holders of the preferred securities. Generally, the common securities issued by a Fund American Trust will also carry the right to vote and to appoint, remove or replace any of the trustees of the Fund American Trust. All the common securities of a Fund American Trust will be owned by Fund American or its subsidiary.

As long as payments of interest and other payments are made when due on the Junior Subordinated Debt Securities, the payments will be sufficient to cover distributions and other payments due on the preferred securities primarily because the aggregate principal amount of Junior Subordinated Debt Securities held as trust assets will be equal to the sum of the aggregate stated liquidation amount of the preferred securities, and the interest rate and interest and other payment dates on the Junior Subordinated Debt Securities will match the distribution rate and distribution and other payment dates for the preferred securities.

If an event of default with respect to the amended and restated declaration of any Fund American Trust occurs and is continuing, then the holders of preferred securities of the Fund American Trust would rely on the enforcement by the property trustee (the "Property Trustee") of its rights as a holder of the Junior Subordinated Debt Securities deposited in the Fund American Trust against Fund American. In addition, the holders of a majority in liquidation amount of the preferred securities will have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Property Trustee or to direct the exercise of any power conferred upon the Property Trustee under the amended and restated declaration of trust, including the right to direct the Property Trustee to exercise the remedies available to it as a holder of the Junior Subordinated Debt Securities. If the Property Trustee fails to enforce its rights under the Junior Subordinated Debt Securities deposited in the Fund American Trust, any holder of the preferred securities may, to the extent permitted by applicable law, after a period of 60 days has elapsed from the holder's written request, institute a legal proceeding against Fund American and White Mountains to enforce the Property Trustee's rights under the Junior Subordinated Debt Securities without first instituting any legal proceeding against the Property Trustee or any other person or entity. If an event of default with respect to the amended and restated declaration of the Fund American Trust occurs and is continuing and the event is attributable to the failure of Fund American to pay interest or principal on the Junior Subordinated Debt Securities on the date the interest or principal is otherwise payable, or in the case of redemption, on the redemption date, then a holder of preferred securities of the Fund American Trust may also directly institute a proceeding for enforcement of payment to the holder of the principal of or interest on the Junior Subordinated Debt Securities having a principal amount equal to the aggregate liquidation amount of the preferred securities held by the holder on or after the respective due date specified in the Junior Subordinated Debt Securities without first directing the Property Trustee to enforce the terms of the Junior Subordinated Debt Securities or instituting a legal proceeding against Fund American and White Mountains to enforce the Property Trustee's rights under the Junior Subordinated Debt Securities. In connection with a direct action, the rights of Fund American or White Mountains,



as applicable, will be substituted for the rights of the holder of the preferred securities under the amended and restated declaration of trust to the extent of any payment made by Fund American or White Mountains, as applicable, to the holder of the preferred securities in a direct action. The holders of preferred securities of the Fund American Trust will not be able to exercise directly any other remedy available to the holders of the Junior Subordinated Debt Securities unless the Property Trustee first fails to do so.

Federal income tax considerations applicable to an investment in preferred securities will be described in the prospectus supplement relating thereto.

The Property Trustee and its affiliates may provide customary commercial banking services to White Mountains and its subsidiaries and participate in various financing agreements of White Mountains in the ordinary course of their business. Initially, the Property Trustee is Bank One, National Association.

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#### DESCRIPTION OF TRUST PREFERRED SECURITIES GUARANTEES

Set forth below is a summary of information concerning the guarantees (the "Guarantees") that will be executed and delivered from time to time by White Mountains for the benefit of the holders of preferred securities of the Fund American Trust. Each Guarantee will be separately qualified under the Trust Indenture Act and will be held by Bank One, National Association, acting in its capacity as guarantee trustee (the "Guarantee Trustee") with respect to the guarantee, for the benefit of holders of the preferred securities of the applicable Fund American Trust. The terms of each Guarantee will be set forth in the Guarantee or made part of the Guarantee by the Trust Indenture Act.

#### GENERAL

Pursuant to each Guarantee, White Mountains will irrevocably and unconditionally agree, to the extent set forth in the guarantee, to pay in full, to the holders of the preferred securities issued by the applicable Fund American Trust, the guarantee payments, to the extent not paid by the Fund American Trust, regardless of any defense, right of set-off or counterclaim that the Fund American Trust may have or assert. The following distributions and other payments with respect to preferred securities issued by a Fund American Trust to the extent not made or paid by the Fund American Trust, will be subject to the Guarantee without duplication:

- o any accrued and unpaid distributions on the preferred securities, but only to the extent that in each case Fund American has made a payment to the Property Trustee of interest on the Junior Subordinated Debt Securities;
- o the redemption price, including all accrued and unpaid distributions to the date of redemption, with respect to any preferred securities called for redemption by the Fund American Trust, but only to the extent that in each case Fund American has made a payment to the Property Trustee of interest or principal on the Junior Subordinated Debt Securities deposited in the Fund American Trust as trust assets; and
- o upon a voluntary or involuntary liquidation, dissolution, winding-up or termination of the Fund American Trust, other than in connection with the distribution of related Junior Subordinated Debt Securities to the holders of the preferred securities or the redemption of all the preferred securities upon the maturity or redemption of the Junior Subordinated Debt Securities, the lesser of:
  - (1) the aggregate of the liquidation amount and all accrued and unpaid distributions on the preferred securities to the date of payment, to the extent the Fund American Trust has funds available, and
  - (2) the amount of assets of the Fund American Trust remaining available for distribution to holders of the preferred securities upon liquidation of the Fund American Trust.

White Mountains' obligation to make a guarantee payment may be satisfied by direct payment of the required amounts by White Mountains to the holders of the applicable preferred securities or by causing the applicable Fund American Trust to pay the amounts to the holders.

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The Guarantee is a full and unconditional guarantee from the time of issuance of the applicable preferred securities, but the Guarantee covers distributions and other payments on the preferred securities only if and to the extent that Fund American has made a payment to the Property Trustee of interest or principal on the Junior Subordinated Debt Securities deposited in the applicable Fund American Trust as trust assets. If Fund American does not make interest or principal payments on the Junior Subordinated Debt Securities deposited in the applicable Fund American Trust as trust assets, the Property Trustee will not make distributions on the preferred securities of the Fund American Trust and the Fund American Trust will not have the necessary funds available to make these payments.

Fund American's obligations under the declaration for each Fund American

Trust, the Guarantee issued with respect to preferred securities issued by the Fund American Trust, the Junior Subordinated Debt Securities purchased by the Fund American Trust, the Junior Subordinated Indenture and the Guarantee issued with respect to the Junior Subordinated Debt Securities in the aggregate will provide a full, irrevocable and unconditional guarantee on a subordinated basis by White Mountains of payments due on the preferred securities issued by the Fund American Trust. No single document standing alone or operating in conjunction with fewer than all of the other documents constitutes such guarantee. It is only the combined operation of these documents that has the effect of providing a full, irrevocable and unconditional guarantee of the trust's obligations under the preferred securities.

#### CERTAIN COVENANTS OF WHITE MOUNTAINS

In each Guarantee, White Mountains will covenant that, so long as any preferred securities issued by the applicable Fund American Trust remain outstanding, White Mountains will not declare or pay any dividends on, or redeem, purchase, acquire or make a distribution with respect to, any of its Common Shares or Preferred Shares, if at the time:

- o White Mountains will be in default with respect to its guarantee payments or other payment obligations under the Guarantee;
- o any event of default under the related amended and restated declaration of trust has occurred; or
- o Fund American has given notice of its election to defer payments of interest on the Junior Subordinated Debt Securities by extending the interest payment period as provided in the terms of the Junior Subordinated Debt Securities and the period, or any extension thereof, is continuing.

However, the foregoing restrictions will not apply to:

- o dividends, distributions, redemptions, purchases, acquisitions or payments made with its capital stock;
- o any declaration or payment of a dividend in connection with the implementation of a shareholders' rights plan, or the issuance of shares under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto;
- o payments of accrued dividends on Preference Shares upon the redemption, exchange or conversion of any Preference Shares as may be outstanding from time to time;
- o the purchase of fractional interests in Preference Shares upon the redemption, exchange or conversion of such Preference Shares;

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- o purchases or acquisitions of Common Shares in connection with the satisfaction of obligations under any employee benefit plan or other contractual obligation; or
- o dividends, distributions, redemptions, purchases, acquisitions or payments as a result of a reclassification of capital stock or the exchange or conversion of one class or series capital stock for another class or series of capital stock.

#### AMENDMENTS AND ASSIGNMENT

Except with respect to any changes that do not adversely affect the rights of holders of the applicable preferred securities, in which case no consent will be required, each Guarantee may be amended only with the prior approval of the holders of not less than 66 2/3% in liquidation amount of the outstanding preferred securities issued by the applicable Fund American Trust. The manner of obtaining any such approval of holders of the preferred securities will be set forth in an accompanying prospectus supplement. All guarantees and agreements contained in a Guarantee will bind the successors, assignees, receivers, trustees and representatives of White Mountains and will inure to the benefit of the holders of the preferred securities of the applicable Fund American Trust then outstanding. Except in connection with a consolidation, merger, conveyance, or transfer of assets involving White Mountains that is permitted under the Junior Subordinated Indenture, White Mountains may not assign its obligations under any Guarantee.

#### TERMINATION OF THE GUARANTEES

Each Guarantee will terminate and be of no further force and effect as to the preferred securities issued by the Fund American Trust upon full payment of the redemption price of all preferred securities of the Fund American Trust, or upon distribution of the Junior Subordinated Debt Securities to the holders of the preferred securities of the Fund American Trust in exchange for all the preferred securities issued by the Fund American Trust, or upon full payment of the amounts payable upon liquidation of the Fund American Trust. Nevertheless, each Guarantee will continue to be effective or will be reinstated, as the case may be, if at any time any holder of preferred securities issued by the Fund American Trust must restore payment of any sums paid under the preferred securities or the Guarantee.

#### STATUS OF THE GUARANTEES

White Mountains' obligations to make the guarantee payments to the extent set forth in the applicable Guarantee will constitute an unsecured obligation of White Mountains and will rank subordinate and junior in right of payment to all other indebtedness, liabilities and obligations of White Mountains and any guarantees, endorsements or other contingent obligations of White Mountains, except those made on an equal basis or subordinate by their terms, and senior to all capital stock issued by White Mountains and to any guarantee entered into by White Mountains in respect of any of its capital stock. White Mountains' obligations under each Guarantee will rank equally with each other Guarantee. Because White Mountains is a holding company, White Mountains' obligations under each Guarantee are also effectively subordinated to all existing and future liabilities, including trade payables, of White Mountains' subsidiaries, except to the extent that White Mountains is a creditor of the subsidiaries recognized as such. Each amended and restated declaration of trust will provide that each holder of preferred securities issued by the applicable Fund American Trust, by acceptance thereof, agrees to the subordination provisions and other terms of the related Guarantee.

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The guaranteed party may institute a legal proceeding directly against White Mountains to enforce its rights under a Guarantee without first instituting a legal proceeding against any other person or entity. Each Guarantee will be deposited with the Guarantee Trustee, to be held for the benefit of the holders of the preferred securities issued by the Fund American Trust. The Guarantee Trustee will enforce the Guarantee on behalf of the holders of the preferred securities. The holders of not less than a majority in aggregate liquidation amount of the preferred securities issued by the Fund American Trust have the right to direct the time, method and place of conducting any proceeding for any remedy available in respect of the related Guarantee, including the giving of directions to the Guarantee Trustee. If the Guarantee Trustee fails to enforce a Guarantee as above provided, any holder of preferred securities issued by the Fund American Trust may institute a legal proceeding directly against White Mountains to enforce its rights under the Guarantee, without first instituting a legal proceeding against the Fund American Trust, or any other person or entity. However, if White Mountains has failed to make a guarantee payment, a holder of preferred securities may directly institute a proceeding against White Mountains for enforcement of the holder's right to receive payment under the Guarantee. White Mountains waives any right or remedy to require that any action be brought first against the Fund American Trust or any other person or entity before proceeding directly against White Mountains.

#### MISCELLANEOUS

White Mountains will be required to provide annually to the Guarantee Trustee a statement as to the performance by White Mountains of its obligations under each Guarantee and as to any default in the performance. White Mountains is required to file annually with the Guarantee Trustee an officer's certificate as to White Mountains' compliance with all conditions to be complied with by it under each Guarantee.

The Guarantee Trustee, prior to the occurrence of a default, undertakes to perform only those duties as are specifically set forth in the applicable Guarantee and, after default with respect to a Guarantee, will exercise the same degree of care as a prudent individual would exercise under the circumstances in the conduct of his or her own affairs. Subject to that provision, the Guarantee Trustee is under no obligation to exercise any of the powers vested in it by a Guarantee at the request of any holder of preferred securities unless it is offered reasonable security and indemnity against the costs, expenses and liabilities that might be incurred thereby.

#### PLAN OF DISTRIBUTION

Each Issuer may sell the securities being offered hereby in any one or more of the following ways:

- o directly to investors;
- o to investors through agents;
- o to broker-dealers as principals;
- o through underwriting syndicates led by one or more managing underwriters as such Issuer may select from time to time;
- o through one or more underwriters acting alone; or
- o through a selling shareholder.

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If an underwriter or underwriters are utilized in the sale, the specific managing underwriter or underwriters with respect to the offer and sale of the offered securities are set forth on the cover of the prospectus supplement relating to such offered securities and the members of the underwriting syndicate, if any, are named in the prospectus supplement.

Sales of the offered securities by underwriters may be in negotiated transactions, at a fixed offering price or at various prices determined at the

time of sale. The prospectus supplement describes the method of reoffering by the underwriters. The prospectus supplement also describes the discounts and commissions to be allowed or paid to the underwriters, if any, all other items constituting underwriting compensation, the discounts and commissions to be allowed or paid to dealers, if any, and the exchanges, if any, on which the securities offered thereby will be listed.

Each Issuer may authorize underwriters to solicit offers by certain institutions to purchase securities at the price set forth in the prospectus supplement pursuant to Delayed Delivery Contracts providing for payment and delivery at a future date.

If any securities are sold pursuant to an Underwriting Agreement, the several underwriters will ordinarily agree, subject to the terms and conditions set forth therein to purchase all the securities offered by the accompanying prospectus supplement if any of such securities are purchased. In the event of default by any underwriter, in certain circumstances, the purchase commitments may be increased or the Underwriting Agreement may be terminated.

Offers to purchase securities may be solicited directly by either of the Issuers or by agents designated by either Issuer from time to time. Any such agent, who may be deemed to be an underwriter as the term is defined in the Securities Act of 1933 (the "Act"), involved in the offer or sale of the offered securities in respect of which this prospectus is delivered will be named, and any commissions payable by either of the Issuers to such agent set forth, in a prospectus supplement. Any such agent will ordinarily be acting on a best efforts basis.

If a broker-dealer is utilized in the sale of the offered securities in respect of which this prospectus is delivered, the Issuers will sell such offered securities to the dealer, as principal. The dealer may then resell such offered securities to the public at varying prices to be determined by such dealer at the time of resale.

Agents, broker-dealers or underwriters may be entitled under agreements which may be entered into with an Issuer to indemnification or contribution by that Issuer in respect of certain civil liabilities, including liabilities under the Act, and may be customers of, engage in transactions with or perform services for that Issuer in the ordinary course of business.

The place and time of delivery for the offered securities in respect of which this prospectus is delivered are set forth in the accompanying prospectus supplement.

The offered securities may or may not be listed on a national securities exchange or a foreign securities exchange. The securities may not have an established trading market. No assurances can be given that there will be a market for the offered securities.

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#### LEGAL MATTERS

Certain legal matters with respect to United States and New York law will be passed upon for us by Cravath, Swaine & Moore, New York, New York. Mr. George J. Gillespie, III, a director of White Mountains who holds 1,000 of our Common Shares, is a partner at Cravath, Swaine & Moore. The validity of the preferred securities of the Fund American Trusts under Delaware law will be passed upon for us by Richards, Layton & Finger P.A., Wilmington, Delaware. Certain legal matters with respect to Bermuda law will be passed upon for us by Conyers Dill & Pearman. Certain legal matters will be passed upon for the underwriters or agents, if any, by counsel to be named in the prospectus supplement.

#### EXPERTS

The consolidated financial statements and the related financial statement schedules of White Mountains Insurance Group, Ltd. and consolidated subsidiaries included in our Annual Report on Form 10-K for the year ended December 31, 2000, as well as the consolidated financial statements of White Mountains Insurance Group, Ltd. and consolidated subsidiaries included as an exhibit to that Form 10-K, have been audited by PricewaterhouseCoopers and PricewaterhouseCoopers LLP, each independent auditors, as to the two years in the period ended December 31, 2000 and KPMG LLP, independent auditors, as to the year ended December 31, 1998, as set forth in their reports thereon incorporated by reference in this prospectus. The consolidated financial statements of OneBeacon and its consolidated subsidiaries included as an exhibit to Form 8-K/A dated June 1, 2001 (filed June 25, 2001), have been audited by PricewaterhouseCoopers LLP, independent auditors, as to each of the three years ended December 31, 2000, as set forth in their report thereon incorporated by reference in this prospectus. The financial statements referred to above are incorporated herein by reference in reliance upon such reports given upon the authority of such firms as experts in accounting and auditing.

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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 in connection with the issuance and distribution of the securities being registered, other than underwriting discounts and commissions:

	TOTAL(1) -----	Securities and Exchange Commission Registration	
Fee.....		\$250,000	Trustee Fees and
Expenses.....			25,000
Printing.....			
	100,000	Accounting	
Fees.....			150,000
		Legal	
Fees.....			
	450,000	Rating Agency	
Fees.....			200,000
Miscellaneous.....			
	100,000		

(1) All amounts except the SEC filing fee are estimated. White Mountains will pay all expenses.

ITEM 15. INDEMNIFICATION OF OFFICERS AND DIRECTORS.

WHITE MOUNTAINS

By-law 33 of the By-laws of White Mountains states:

"(1) The Company shall indemnify its officers and directors to the fullest extent possible except as prohibited by the Act. Without limiting the foregoing, the Directors, Secretary and other Officers (such term to include, for the purposes of this Bye-law, any Alternate Director or any person appointed to any committee by the Board or any person who is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (including, without limitation, any employee benefit plan)) and every one of them, and their heirs, executors and administrators, shall be indemnified and secured harmless out of the assets of the Company from and against all actions, costs, charges, losses, damages and expenses which they or any of them, their heirs, executors or administrators, shall or may incur or sustain by or by reason of any act done, concurred in or omitted (actual or alleged) in or about the execution of their duty, or supposed duty, or in their respective offices or trusts, and none of them shall be answerable for the acts, receipts, neglects or defaults of the others of them or for joining in any receipts for the sake of conformity, or for any bankers or other persons with whom any moneys or effects belonging to the Company shall or may be lodged or deposited for safe custody, or for insufficiency or deficiency of any security upon which any moneys of or belonging to the Company shall be placed out on or invested, or for any other loss, misfortune or damage which may happen in the execution of their respective offices or trusts, or in relation thereto, provided that this indemnity shall not extend to any matter in respect of which such person is, or may be, found guilty of fraud or dishonesty.

(2) The Company may purchase and maintain insurance to protect itself and any Director, Officer or other person entitled to indemnification pursuant to this Bye-law to the fullest extent permitted by law.

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(3) All reasonable expenses incurred by or on behalf of any person entitled to indemnification pursuant to Bye-law 33(1) in connection with any proceeding shall be advanced to such person by the Company within twenty (20) business days after the receipt by the Company of a statement or statements from such person requesting such advance or advances from time to time, whether prior to or after final disposition of such proceeding. Such statement or statements shall reasonably evidence the expenses incurred by such person and, if required by law or requested by the Company at the time of such advance, shall include or be accompanied by an undertaking by or on behalf of such person to repay the amounts advanced if it should ultimately be determined that such person is not entitled to be indemnified against such expenses pursuant to this Bye-law.

(4) The right of indemnification and advancement of expenses provided in this Bye-law shall not be exclusive of any other rights to which those seeking indemnification may otherwise be entitled, and the provisions of this Bye-law shall inure to the benefit of the heirs and legal representatives of any person entitled to indemnity under this Bye-law and shall be applicable to proceedings commenced or continuing after the adoption of this Bye-law, whether arising from acts or omissions occurring before or after such adoption. Any repeal or modification of the foregoing provisions of this section shall not adversely affect any right or protection existing at the time of such repeal or modification".

Reference is made to Section 98 of the Bermuda Companies Act of 1981 (the "Act"). The Act provides that a company may, in its bye-laws or in any contract or arrangement between the company and any officer or person employed as an auditor, exempt such officer or person from, or indemnify him in respect of, any loss arising or liability attaching to him by virtue of any rule of law in respect of any negligence, default, breach of duty or breach of trust of which

the officer or person may be guilty in relation to the company or any subsidiary thereof.

The Act further provides that any provision, whether contained in the bye-laws of a company or in any contract or arrangement between the company and any officer or person employed as an auditor, exempting such officer or person from or indemnifying him against any liability which by virtue of any rule of law would otherwise attach to him in respect of any fraud or dishonesty of which he may be guilty in relation to the company shall be void; provided, however, that

- (a) nothing in Section 98 of the Act shall operate to deprive any person of any exemption or right to be indemnified in respect of anything done or omitted to be done while any such provision was in force; and
- (b) notwithstanding anything in Section 98 of the Act, a company may, in pursuance of any such provision as aforesaid, indemnify any such officer or auditor against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favor or in which he is acquitted or when relief is granted to him by the Supreme Court under Section 281 of the Act.

#### FUND AMERICAN

Section 145(a) of the Delaware General Corporation Law (the "DGCL") provides in relevant part that a corporation may indemnify any officer or director who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (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 or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another entity, 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. Under Section 145(b) of the DGCL, such eligibility for indemnification may be further subject to the adjudication of the Delaware Court of Chancery.

The articles of incorporation and by-laws of Fund American provides that Fund American indemnifies its officers and directors to the maximum extent allowed by Delaware law.

Furthermore, Section 102(b)(7) of the DGCL provides that a corporation may in its certificate of incorporation eliminate or limit the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director except for liability: for any breach of the director's duty of loyalty to the corporation or its stockholders; for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; under Section 174 of the DGCL (pertaining to certain prohibited acts including unlawful payment of dividends or unlawful purchase or redemption of the corporation's capital stock); or for any transaction from which the director derived an improper personal benefit. Fund American eliminates such personal liability of its directors under such terms.

#### INDEMNIFICATION OF TRUSTEES OF THE FUND AMERICAN TRUSTS.

The amended and restated declaration of trust of each Fund American Trust will provide that no regular trustee, or affiliate of any regular trustee, or officer, director, shareholder, member, partner, employee, representative or agent of any regular trustee or of any such affiliate, or employee or agent of the applicable Fund American Trust or its affiliates, each an "Indemnified Person", shall be liable, responsible or accountable in damages or otherwise to such Fund American Trust or any employee or agent of such Fund American Trust or its affiliates for any loss, damage or claim incurred by reason or any act or omission performed or omitted by such Indemnified Person in good faith on behalf of such Fund American Trust and in a manner such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by such declaration of trust or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's gross negligence or willful misconduct with respect to such act or omission. Each amended and restated declaration of trust will also provide that to the fullest extent permitted by applicable law, Fund American shall indemnify and hold harmless each Indemnified Person from and against any loss, damage or claim incurred by such Indemnified Person by reason of any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the applicable Fund American Trust and in a manner such Indemnified Person reasonably believe to be within the scope of authority conferred on such Indemnified Person by such declaration of trust, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Indemnified Person by reason of gross negligence or willful misconduct with respect to such act or omission. Each amended and restated declaration of trust will further provide that, to the fullest extent permitted by applicable law, expenses, including legal fees, incurred by an Indemnified Person in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by Fund American prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnified

Person to repay such amount if it shall be determined that the Indemnified Person is not entitled to be indemnified for the underlying cause of action as authorized by such declaration of trust.

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ITEM 16. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES.

(a) Exhibits

- 1.1 Form of Underwriting Agreement (preference shares).\*
- 1.2 Form of Underwriting Agreement (debt).\*
- 1.3 Form of Underwriting Agreement (preferred securities).\*\*
- 3.1 Articles of Incorporation of Fund American Companies, Inc., as amended.\*
- 3.2 By-laws of Fund American Companies, Inc.\*
- 4.1 Form of Senior Indenture.\*
- 4.2 Form of Senior Debt Security (included in Form of Senior Indenture filed as Exhibit 4.1).
- 4.3 Form of Subordinated Indenture.\*
- 4.4 Form of Subordinated Debt Security (included in Form of Subordinated Indenture filed as Exhibit 4.3).
- 4.5 Form of Junior Subordinated Indenture.\*
- 4.6 Form of Junior Subordinated Debt Security (included in Form of Junior Subordinated Indenture filed as Exhibit 4.5).
- 4.7 Certificate of Trust of Fund American Trust I.\*
- 4.8 Certificate of Trust of Fund American Trust II.\*
- 4.9 Certificate of Trust of Fund American Trust III.\*
- 4.10 Declaration of Trust of Fund American Trust I.\*
- 4.11 Declaration of Trust of Fund American Trust II.\*
- 4.12 Declaration of Trust of Fund American Trust III.\*
- 4.13 Form of Amended and Restated Declaration of Trust of Fund American Trust I.\*
- 4.14 Form of Amended and Restated Declaration of Trust of Fund American Trust II.\*
- 4.15 Form of Amended and Restated Declaration of Trust of Fund American Trust III.\*
- 4.16 Form of Preferred Security of Fund American Trust I (included in Form of Amended and Restated Declaration of Trust of Fund American Trust I filed as Exhibit 4.13).
- 4.17 Form of Preferred Security of Fund American Trust II (included in Form of Amended and Restated Declaration of Trust of Fund American Trust II filed as Exhibit 4.14).
- 4.18 Form of Preferred Security of Fund American Trust III (included in Form of Amended and Restated Declaration of Trust of Fund American Trust III filed as Exhibit 4.15).
- 4.19 Form of Guarantee of Preferred Securities of Fund American Trust I.\*
- 4.20 Form of Guarantee of Preferred Securities of Fund American Trust II.\*
- 4.21 Form of Guarantee of Preferred Securities of Fund American Trust III.\*
- 5.1 Opinion of Cravath, Swaine & Moore (to be filed by amendment).
- 5.2 Opinion of Conyers Dill & Pearman (to be filed by amendment).
- 5.3 Opinion of Richards, Layton & Finger (to be filed by amendment).
- 12.1 Computation of Ratio of Earnings to Fixed Charges and Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends.\*
- 23.1 Consent of PricewaterhouseCoopers.\*
- 23.2 Consent of PricewaterhouseCoopers LLP.\*
- 23.3 Consent of KPMG LLP.\*
- 23.4 Consent of Cravath, Swaine & Moore (contained in Exhibit 5.1).
- 23.5 Consent of Conyers Dill & Pearman (contained in Exhibit 5.2).
- 23.6 Consent of Richards, Layton & Finger (contained in Exhibit 5.3).
- 24.1 Powers of Attorney (included on signature pages).
- 25.1 Statement of Eligibility and Qualification on Form T-1 of Bank One, National Association, as trustee under the Senior Indenture.\*
- 25.2 Statement of Eligibility and Qualification on Form T-1 of Bank One, National Association, as trustee under the Subordinated Indenture.\*
- 25.3 Statement of Eligibility and Qualification on Form T-1 of Bank One, National Association, as trustee under the Junior Subordinated Indenture.\*

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- 25.4 Statement of Eligibility and Qualification on Form T-1 of Bank One, National Association, as trustee under the Declaration of Trust of Fund American Trust I.\*
- 25.5 Statement of Eligibility and Qualification on Form T-1 of Bank One, National Association, as trustee under the Declaration of Trust of Fund American Trust II.\*
- 25.6 Statement of Eligibility and Qualification on Form T-1 of Bank One, National Association, as trustee under the Declaration of Trust of Fund American Trust III.\*
- 25.7 Statement of Eligibility and Qualification on Form T-1 of Bank One, National Association, as trustee under the Guarantee of Preferred Securities of Fund American Trust I.\*
- 25.8 Statement of Eligibility and Qualification on Form T-1 of Bank One, National Association, as trustee under the Guarantee of Preferred Securities of Fund American Trust II.\*

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\* Filed herewith

\*\* To be filed by subsequent Form 8-K.

ITEM 17. UNDERTAKINGS.

(a) The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
  - (i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;
  - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set 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 SEC 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 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 the SEC by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

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- (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 registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in said Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in



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

(d) The undersigned registrant hereby undertakes to deliver or cause to be delivered with the prospectus, to each person to whom the prospectus is sent or given, the latest annual report to security holders that is incorporated by reference in the prospectus and furnished pursuant to and meeting the requirements of Rule 14a-3 or Rule 14c-3 under the Securities Exchange Act of 1934; and, where interim financial information required to be presented by Article 3 of Regulation S-X are not set forth in the prospectus, to deliver, or cause to be delivered to each person to whom the prospectus is sent or given, the latest quarterly report that is specifically incorporated by reference in the prospectus to provide such interim financial information.

(e) 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.

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(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.

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

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the Town of Hanover, State of New Hampshire, on November 8, 2001.

WHITE MOUNTAINS INSURANCE GROUP,  
LTD.

By: /s/ J. BRIAN PALMER

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J. Brian Palmer  
Chief Accounting Officer

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POWER OF ATTORNEY

We, the undersigned officers and directors of White Mountains Insurance Group, Ltd. hereby severally constitute K. Thomas Kemp and Gordon S. Macklin, and each of them singly, our true and lawful attorneys with full power to them, and each of them singly, to sign for us and in our names in the capacities indicated below any and all amendments (including post-effective amendments) to this registration statement (or to any other registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act), and generally to do all such things in our names and in our capacities as officers and directors to enable White Mountains Insurance Group, Ltd. to comply with the provisions of the Securities Act of 1933 and all requirements of the Securities and Exchange Commission, hereby ratifying and confirming our signatures as they may be signed by our said attorneys, or any of them, to said registration statement and any and all amendments thereto.

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

SIGNATURE  
TITLE DATE  
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/s/  
RAYMOND  
BARRETTE

Director  
November  
8, 2001 -  
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- Raymond  
Barrette  
/s/ DENNIS  
P.  
BEAULIEU  
Corporate  
Secretary  
and  
Treasurer  
November  
8, 2001 -  
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-  
(Principal  
Financial  
Officer)  
Dennis P.  
Beaulieu  
/s/ JOHN  
J. BYRNE  
Chairman  
November  
8, 2001 -  
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- John J.  
Byrne /s/  
PATRICK M.  
BYRNE  
Director  
November  
8, 2001 -  
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- Patrick  
M. Byrne  
/s/ HOWARD  
L. CLARK,  
JR.  
Director  
November  
8, 2001 -  
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- Howard  
L. Clark,  
Jr. /s/  
ROBERT P.  
COCHRAN  
Director  
November  
8, 2001 -  
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- Robert  
P. Cochran  
/s/ STEVEN  
E. FASS  
Director  
November  
8, 2001 -  
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- Steven  
E. Fass  
/s/ GEORGE  
J.  
GILLESPIE,  
III  
Director  
November  
8, 2001 -  
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- George  
J.  
Gillespie,  
III /s/  
JOHN D.  
GILLESPIE  
Director  
November  
8, 2001 -  
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- John D.  
Gillespie  
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SIGNATURE  
TITLE DATE  
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/s/ K.  
THOMAS  
KEMP  
Director  
and  
President  
November  
8, 2001 -  
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(Principal  
Executive  
Officer)  
K. Thomas  
Kemp /s/  
GORDON S.  
MACKLIN  
Director  
and Deputy  
Chairman  
November  
8, 2001 -  
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- Gordon  
S. Macklin  
/s/ FRANK  
A. OLSON  
Director  
November  
8, 2001 -  
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- Frank A.  
Olson /S/  
J. BRIAN  
PALMER  
Chief  
Accounting  
Officer  
November  
8, 2001 -  
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-  
(Principal  
Accounting  
Officer)  
J. Brian  
Palmer /s/  
JOSEPH S.  
STEINBERG  
Director  
November  
8, 2001 -  
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- Joseph  
S.  
Steinberg  
/s/ ARTHUR  
ZANKEL

Director  
November  
8, 2001 -  
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- Arthur  
Zankel

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Boston, Commonwealth of Massachusetts, on November 8, 2001.

FUND AMERICAN COMPANIES, INC.

By: /s/ JAMES J. RITCHIE

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Name: James J. Ritchie  
Title: Managing Director and  
Chief Financial Officer

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POWER OF ATTORNEY

We, the undersigned officers and directors of Fund American Companies, Inc. hereby severally constitute Raymond Barrette and John J. Byrne, and each of them singly, our true and lawful attorneys with full power to them, and each of them singly, to sign for us and in our names in the capacities indicated below any and all amendments (including post-effective amendments) to this registration statement (or to any other registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act), and generally to do all such things in our names and in our capacities as officers and directors to enable Fund American Companies, Inc. to comply with the provisions of the Securities Act of 1933 and all requirements of the Securities and Exchange Commission, hereby ratifying and confirming our signatures as they may be signed by our said attorneys, or any of them, to said registration statement and any and all amendments thereto.

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

SIGNATURE  
TITLE

DATE ---

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- /s/

RAYMOND

BARRETTE

Director

and

President

November

8, 2001

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Raymond

Barrette

/s/ JOHN

J. BYRNE

Director

and

November

8, 2001

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Chief

Executive

Officer

John J.

Byrne

/s/ JOHN

D.

GILLESPIE

Director  
and  
Managing  
Partner  
November  
8, 2001  
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--- John  
D.  
Gillespie

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, each of Fund American Trust I, Fund American Trust II and Fund American Trust III 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 Boston, Commonwealth of Massachusetts, on November 8, 2001.

FUND AMERICAN TRUST I,  
a Delaware business trust

By: Fund American Companies, Inc.,  
as Depositor

By: /s/ JAMES J. RITCHIE

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James J. Ritchie  
Managing Director and  
Chief Financial Officer

FUND AMERICAN TRUST II,  
a Delaware business trust

By: Fund American Companies, Inc.,  
as Depositor

By: /s/ JAMES J. RITCHIE

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James J. Ritchie  
Managing Director and  
Chief Financial Officer

FUND AMERICAN TRUST III,  
a Delaware business trust

By: Fund American Companies, Inc.,  
as Depositor

By: /s/ JAMES J. RITCHIE

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James J. Ritchie  
Managing Director and  
Chief Financial Officer

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[ ] SHARES

WHITE MOUNTAINS INSURANCE GROUP, LTD.

PREFERENCE SHARES

FORM OF UNDERWRITING AGREEMENT

[Note: Appropriate modifications will be made for issuances of different types of Preference Shares]

[ ], 20[ ]

[Underwriters]  
c/o

Ladies and Gentlemen:

White Mountains Insurance Group Ltd., a company existing under the laws of Bermuda (the "Company"), proposes to sell to the several underwriters (the "Underwriters") named in Schedule I hereto [ ] of the Company's Preference Shares (the "Firm Shares"). The respective amounts of the Firm Shares to be so purchased by the several Underwriters are set forth opposite their names in Schedule I hereto. The Company also proposes to sell at the Underwriters' option an aggregate of up to an additional [ ] of the Company's Preference Shares (the "Option Shares") as set forth below.

As the Underwriters, you have advised the Company (a) that you are authorized to enter into this Agreement, and (b) that the Underwriters are willing, acting severally and not jointly, to purchase the numbers of Firm Shares set forth opposite their respective names in Schedule I, plus their pro rata portion of the Option Shares if you elect to

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exercise the over-allotment option in whole or in part. The Firm Shares and the Option Shares (to the extent the aforementioned option is exercised) are herein collectively called the "Shares".

In consideration of the mutual agreements contained herein and of the interests of the parties in the transactions contemplated hereby, the parties hereto agree as follows:

1. REPRESENTATIONS AND WARRANTIES OF THE COMPANY. The Company represents and warrants as follows:

(a) A registration statement on Form S-3 (File No. ) with respect to the Shares has been carefully prepared by the Company in conformity in all material respects with the requirements of the Securities Act of 1933, as amended (the "Act"), and the Rules and Regulations (the "Rules and Regulations") of the Securities and Exchange Commission (the "Commission") thereunder and has been filed with the Commission under the Act. The Company has complied with the conditions for the use of Form S-3. Copies of such registration statement, including any amendments thereto, the preliminary prospectuses (meeting the requirements of Rules 430A, 415 and 424(b) of the Rules and Regulations) contained therein and the exhibits, financial statements and schedules, as finally amended and revised, have heretofore been delivered by the Company to you. Such registration statement, together with any registration statement filed by the Company pursuant to Rule 462(b) of the Act, herein referred to as the "Registration Statement", which shall be deemed to include all information omitted therefrom in reliance upon Rule 430A and contained in the Prospectus referred to below, has been declared effective by the Commission under the Act and no post-effective amendment to the Registration Statement has been filed as of the date of this Agreement. "Prospectus" means (i) the form of prospectus and/or prospectus supplement first filed by the Company with the Commission pursuant to its Rule 424(b) or (ii) the last preliminary prospectus included in the Registration Statement filed prior to the time it becomes effective or filed pursuant to Rule 424(a) under the Act that is delivered by the Company to the Underwriters for delivery to purchasers of the Shares, together with any term sheet or abbreviated term sheet filed with the Commission

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pursuant to Rule 424(b)(7) under the Act. Each preliminary prospectus and/or preliminary prospectus supplement included in the Registration Statement prior to the time it becomes effective is herein referred to as a "Preliminary Prospectus". Except as specifically set forth herein, (i) any reference herein to any Preliminary Prospectus or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein, as of the date of such Preliminary Prospectus or Prospectus, as the case may be, and (ii) in the case of any reference herein to any Prospectus, also shall be deemed to include any documents incorporated by reference therein, and any supplements or amendments

thereto, filed with the Commission after the date of filing of the Prospectus under Rules 415, 424(b) and 430A, and prior to the termination of the offering of the Shares by the Underwriters.

(b) The Company has been duly organized and is validly existing as a corporation under the laws of Bermuda, with corporate power and authority to own or lease its properties and conduct its business as described in the Registration Statement; each of the subsidiaries of the Company as listed on Schedule II hereto (collectively, the "Subsidiaries") has been duly organized and, is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, with corporate power and authority to own or lease its properties and conduct its business as described in the Registration Statement; the Company and each of the Subsidiaries are duly qualified to transact business in all jurisdictions in which the conduct of their business requires such qualification and a failure to qualify would have a materially adverse effect upon the business or financial condition of the Company and the Subsidiaries taken as a whole; except as set forth on Schedule II hereto, the outstanding shares of capital stock of each of the Subsidiaries owned by the Company or a Subsidiary have been duly authorized and validly issued, are fully paid and nonassessable and are owned by the Company or another subsidiary free and clear of all liens, encumbrances and security interests and no options, warrants or other rights to purchase, agreements or other obligations to issue or other rights to convert any obligations into shares of

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capital stock or ownership interests in the Subsidiaries are outstanding.

(c) The authorized Preference Shares of the Company have been duly authorized. The outstanding Common Shares of the Company have been duly authorized and are validly issued, fully-paid and non-assessable; the Shares to be issued and sold by the Company have been duly authorized and when issued and paid for as contemplated herein will be validly issued, fully-paid and non-assessable; and no preemptive rights of stockholders exist with respect to any of the Shares or the issue and sale thereof. Neither the filing of the Registration Statement nor the offering or sale of the Shares as contemplated by this Agreement gives rise to any rights, other than those which have been waived or satisfied, for or relating to the registration of any Common Shares of the Company.

(d) This Agreement has been duly authorized, executed and delivered by the Company and is a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

(e) The information set forth under the caption "Capitalization" in the Prospectus is true and correct. The Shares conform in all material respects with the statements concerning them in the Registration Statement.

(f) The Commission has not issued an order preventing or suspending the use of any Prospectus relating to the proposed offering of the Shares nor instituted proceedings for that purpose. The Registration Statement contains and the Prospectus and any amendments or supplements thereto will contain all statements which are required to be stated therein by, and in all material respects conform or will conform, as the case may be, to the requirements of, the Act and the Rules and Regulations. The documents incorporated by reference in the Prospectus, at the time they were filed with the Commission conformed in all material respects to the requirements of the Securities Exchange Act of 1934 or the Act, as applicable, and the Rules and Regulations of the Commission thereunder. Neither the Registration Statement nor any amendment thereto, and neither the Prospectus nor any supplement thereto, including any documents incorporated by reference therein, contains or will contain, as the case may be, any untrue statement of a

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material fact or omits or will omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the Company makes no representations or warranties as to information contained in or omitted from the Registration Statement or the Prospectus, or any such amendment or supplement, or any documents incorporated by reference therein, in reliance upon, and in conformity with, written information furnished to the Company by or on behalf of any Underwriter, specifically for use in the preparation thereof.

(g) The consolidated financial statements of the Company and the Subsidiaries, together with related notes and schedules incorporated by reference in the Registration Statement, present fairly the financial position and the results of operations of the Company and its subsidiaries consolidated, at the indicated dates and for the indicated periods. Such financial statements have been prepared in accordance with generally accepted principles of accounting, consistently applied throughout the periods involved, and all adjustments necessary for a fair presentation of results for such periods have been made. The selected and summary financial and statistical data included in the Registration Statement present fairly the information shown therein and have been compiled on a basis consistent with the financial statements incorporated by reference therein and the books and records of the Company. The pro forma financial information included in the Registration Statement and the Prospectus present fairly the information shown therein, have been properly compiled on the pro forma bases described therein, and, in the opinion of the Company, the

assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions or circumstances referred to therein.

(h) Except for those license renewal applications of the Company or its Subsidiaries currently pending before the Federal Communications Commission (the "FCC"), a description of which is set forth on Schedule II hereto or as set forth in the Registration Statement, there is no

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action or proceeding pending or, to the knowledge of the Company, threatened against the Company or any of the Subsidiaries before any court or administrative agency which could reasonably be likely to result in any material adverse change in the earnings, business, management, properties, assets, rights, operations, condition (financial or otherwise) of the Company and of the Subsidiaries (taken as a whole).

(i) The Company and the Subsidiaries have good and marketable title to all of the properties and assets reflected in the financial statements hereinabove described (or as described in the Registration Statement) subject to no material lien, mortgage, pledge, charge or encumbrance of any kind, except those reflected in such financial statements or as described in the Registration Statement or set forth on Schedule II. The Company and the Subsidiaries occupy their leased properties under valid leases with such exceptions as are not material to the Company and the Subsidiaries taken as a whole and do not materially interfere with the use made and proposed to be made of such properties by the Company and the Subsidiaries.

(j) The Company and the Subsidiaries have filed all Federal, state and foreign income tax returns which have been required to be filed and have paid all taxes indicated by said returns and all assessments received by them or any of them to the extent that such taxes have become due and are not being contested in good faith. The Company has no knowledge of any tax deficiency that has been or might be asserted against the Company.

(k) Since the respective dates as of which information is given in the Registration Statement, as it may be amended or supplemented, there has not been any material adverse change or any development involving a prospective material adverse change in or affecting the earnings, business, management, properties, assets, rights, operations, condition (financial or otherwise) or business prospects of the Company and its Subsidiaries (taken as a whole), whether or not occurring in the ordinary course of business, other than general economic and industry conditions changes in the ordinary course of business and changes or transactions described or contemplated in the Registration Statement and there has not been any material

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transaction entered into by the Company or the Subsidiaries, other than transactions in the ordinary course of business and changes and transactions contemplated by the Registration Statement, as it may be amended or supplemented. None of the Company or the Subsidiaries have any material contingent obligations which are not disclosed in the Registration Statement, as it may be amended or supplemented.

(l) Neither the Company nor any of the Subsidiaries is or with the giving of notice or lapse of time or both, will be in default under its Articles of Incorporation or By-Laws or any agreement, lease, contract, indenture or other instrument or obligation to which it is a party or by which it, or any of its properties, is bound and which default is of material significance in respect of the business or financial condition of the Company and its Subsidiaries (taken as a whole). The execution and delivery of this Agreement and the consummation of the transactions herein contemplated and the fulfillment of the terms hereof will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust or other material agreement or instrument to which the Company or any Subsidiary is a party, or of the Articles of Incorporation or by-laws of the Company or any order, rule or regulation applicable to the Company or any Subsidiary, or of any court or of any regulatory body or administrative agency or other governmental body having jurisdiction, except in all cases a conflict, breach or default which would not have a materially adverse effect on the business or financial condition of the Company and the Subsidiaries (taken as a whole).

(m) Each approval, consent, order, authorization, designation, declaration or filing by or with any regulatory, administrative or other governmental body necessary in connection with the execution and delivery by the Company of this Agreement and the consummation of the transactions herein contemplated (except such additional steps as may be required by the National Association of Securities Dealers, Inc. (the "NASD") or the New York Stock

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Exchange ("NYSE") or may be necessary to qualify the Shares for public offering by the Underwriters under State securities or Blue Sky laws) has been obtained or made and is in full force and effect.



(n) The Company and each of the Subsidiaries hold all material licenses, certificates and permits from governmental authorities, including without limitation, the FCC, which are necessary to the conduct of their businesses; and neither the Company nor any of the Subsidiaries has received notice of any infringement of any material patents, patent rights, trade names, trademarks or copyrights, which infringement is material to the business of the Company and the Subsidiaries (taken as a whole).

(o) [ ], [ ] and [ ], each of whom have certified certain of the financial statements incorporated by reference in the Registration Statement and Prospectus, are to the knowledge of the Company independent public accountants as required by the Act and the Rules and Regulations.

(p) To the Company's knowledge, there are no affiliations or associations between any member of the NASD and any of the Company's officers, directors or 5% or greater security holders except as otherwise disclosed in writing to [name specific underwriter].

(q) Neither the Company, nor to the Company's knowledge, any of the Subsidiaries, has taken or may take, directly or indirectly, any action designed to cause or result in, or which has constituted or which might reasonably be expected to constitute, the stabilization or manipulation of the price of Common Shares of the Company to facilitate the sale or resale of the Shares. The Company acknowledges that the Underwriters may engage in passive market making transactions in the Shares on the NYSE in accordance (and in compliance) with Regulation M under the Exchange Act.

(r) Neither the Company nor any Subsidiary is an "investment company" within the meaning of such term under the Investment Company Act of 1940 and the rules and regulations of the Commission thereunder.

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(s) The Company maintains a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(t) The Company and each of its Subsidiaries carry, or are covered by, insurance in such amounts and covering such risks as is adequate for the conduct of their respective businesses and the value of their respective properties and as is customary for companies engaged in similar industries.

(u) The Company is in compliance in all material respects with all presently applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder ("ERISA"); no "reportable event" (as defined in ERISA) for which the Company would have any liability has occurred and is continuing; the Company has not incurred and does not expect to incur liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any "pension plan" or (ii) Sections 412 or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published interpretations thereunder (the "Code"); and each "pension plan" for which the Company would have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified in all material respects and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

(v) The information set forth in the Prospectus under the caption "Prospectus Summary-Recent Developments"

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is true and correct in all material respects.

Any certificate signed by any officer of the Company and delivered to the Underwriters in connection with the offering of the Shares should be deemed a representation and warranty of the Company, as to matters covered thereby, to each Underwriter.

2. PURCHASE, SALE AND DELIVERY OF THE SHARES. (a) On the basis of the representations, warranties and covenants herein contained, and subject to the conditions herein set forth, the Company agrees to sell to the Underwriters the Shares, and each Underwriter agrees, severally and not jointly, to purchase at a price of \$[ ] per share, the number of Firm Shares set forth opposite the name of each Underwriter in Schedule I hereof, subject to adjustments in accordance with Section 9 hereof.

(b) Payment for the Firm Shares to be sold hereunder by the Company is to be made via wire transfer of immediately available funds or such other payment procedures agreed to by the parties. Such payment and delivery are to be made at the offices of [name specific underwriter], at 10:00 a.m., time, on the third business day after the date of this Agreement or at such other time and date not later than five business days thereafter as you and the Company shall agree upon, such time and date being herein referred to as the "Closing Date."

(As used herein, "business day" means a day on which the New York Stock Exchange is open for trading and on which banks in New York are open for business and not permitted by law or executive order to be closed.) The certificates for the Firm Shares will be delivered in such denominations and in such registrations as the Underwriters request in writing not later than the second full business day prior to the Closing Date, and will be made available for inspection by the Underwriters at least one business day prior to the Closing Date.

(c) In addition, on the basis of representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company hereby grants an option to the several Underwriters to purchase the Option Shares at the price per share as set forth in the first paragraph of this Section 2. The option granted hereby may be exercised in whole or in part by giving written notice

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only once within 30 days after the date of this Agreement, by you, the Underwriters, to the Company, setting forth the number of Option Shares as to which the several Underwriters are exercising the option, the names and denominations in which the Option Shares are to be registered and the time and date at which such certificates are to be delivered. The time and date at which certificates for Option Shares are to be delivered shall be determined by the Underwriters but shall not be earlier than three nor later than ten full business days after the exercise of such option, nor in any event prior to the Closing Date (such time and date being herein referred to as the "Option Closing Date"). If the date of exercise of the option is three or more days before the Closing Date, the notice of exercise shall set the Closing Date as the Option Closing Date. The option with respect to the Option Shares granted hereunder may be exercised only to cover over-allotments in the sale of the Firm Shares by the Underwriters. You, the Underwriters, may cancel such option at any time prior to its expiration by giving written notice of such cancellation to the Company. To the extent, if any, that the option is exercised, payment for the Option Shares shall be made on the Option Closing Date via wire transfer of immediately available funds or other payment procedures agreed to by the parties against delivery of certificates therefor at the offices of [name specific underwriter].

3. OFFERING BY THE UNDERWRITERS. It is understood that the Underwriters are to make a public offering of the Firm Shares as soon as the Underwriters deem it advisable to do so. The Firm Shares are to be initially offered to the public at the public offering price set forth in the Prospectus. The Underwriters may from time to time thereafter change the public offering price and other selling terms. To the extent, if at all, that any Option Shares are purchased pursuant to Section 2 hereof, the Underwriters will offer them to the public on the foregoing terms.

It is further understood that you will act as the Underwriters in the offering and sale of the Shares will take place in accordance with a Master Agreement Among

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Underwriters entered into by you and the several other Underwriters.

4. COVENANTS OF THE COMPANY. The Company covenants and agrees with the several Underwriters that:

(a) The Company will (i) prepare and timely file with the Commission under Rule 424(b) of the Rules and Regulations a Prospectus containing information previously omitted at the time of effectiveness of the Registration Statement in reliance on Rule 430A of the Rules and Regulations, (ii) not file any amendment to the Registration Statement or any Rule 462(b) registration statement or supplement to the Prospectus or documents incorporated by reference therein of which the Underwriters shall not previously have been advised and furnished with a copy or to which the Underwriters shall have reasonably objected in writing or which is not in compliance with the Rules and Regulations and (iii) file on a timely basis all reports and any definitive proxy or information statements required to be filed by the Company with the Commission subsequent to the date of the Prospectus and prior to the termination of the offering of the Shares by the Underwriters.

(b) The Company will advise the Underwriters promptly of any request of the Commission for amendment of the Registration Statement or for supplement to the Prospectus or for any additional information, or of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the use of the Prospectus or of the institution of any proceedings for that purpose, and the Company will use reasonable efforts to prevent the issuance of any such stop order preventing or suspending the use of the Prospectus and to obtain as soon as possible the lifting thereof, if issued.

(c) The Company will deliver to, or upon the order of, the Underwriters, from time to time, as many copies of any Preliminary Prospectus as the Underwriters may reasonably request. The Company will deliver to, or upon the order of, the Underwriters during the period when delivery of a Prospectus is required under the Act, as many copies of the Prospectus in final form, or as thereafter amended or supplemented, as the Underwriters may reasonably request. The Company will deliver to the Underwriters at or

before the Closing Date, four signed copies of the Registration Statement and all amendments thereto including all exhibits filed therewith, and will deliver to the Underwriters such number of copies of the Registration Statement, but without exhibits, and of all amendments thereto, as the Underwriters may reasonably request, including documents incorporated by reference therein.

(d) The Company will make generally available to its security holders, as soon as it is practicable to do so, but in any event not later than 15 months after the effective date of the Registration Statement, an earnings statement (which need not be audited) in reasonable detail, covering a period of at least 12 consecutive months beginning after the effective date of the Registration Statement, which earnings statement shall satisfy the requirements of Section 11(a) of the Act and Rule 158 of the Rules and Regulations and will advise you in writing when such statement has been so made available.

(e) The Company will, for a period of five years from the Closing Date, deliver or make available to the Underwriters copies of annual reports and copies of all other documents, reports and information furnished by the Company to its stockholders or filed with any securities exchange pursuant to the requirements of such exchange or with the Commission pursuant to the Act or the Securities Exchange Act of 1934, as amended (the "Exchange Act").

(f) No offering, sale, short sale or other disposition of any Preference Shares of the Company or other securities convertible into or exchangeable or exercisable for Preference Shares of the Company will be made by the Company for a period of [ ] days after the date of this Agreement, directly or indirectly, by the Company otherwise than hereunder, or with the prior written consent of [name specific underwriter], except that the Company may, without such consent, grant options or issue Preference Shares of the Company pursuant to the exercise of options granted under the Company's current stock option plans and may offer or issue Preference Shares of the Company in connection with the acquisition of stock or assets of another person.

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(g) The Company will comply with the Act and the Rules and Regulations, and the Exchange Act, and the rules and regulations of the Commission thereunder, so as to permit the completion of the distribution of the Shares as contemplated in this Agreement and the Prospectus. If during the period in which a prospectus is required by law to be delivered by an Underwriter or dealer, any event shall occur as a result of which, in the judgment of the Company or in the reasonable opinion of the Underwriters, it becomes necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances existing at the time the Prospectus is delivered to a purchaser, not misleading, or, if it is necessary at any time to amend or supplement the Prospectus to comply with any law, the Company promptly will either (i) prepare and file with the Commission an appropriate amendment to the Registration Statement or supplement to the Prospectus or (ii) prepare and file with the Commission an appropriate filing under the Exchange Act which shall be incorporated by reference in the Prospectus so that the Prospectus as so amended or supplemented will not, in the light of the circumstances when it is so delivered, be misleading, or so that the Prospectus will comply with the law.

(h) The Company will use its best efforts to list, subject to notice of issuance, the Shares on the NYSE.

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(i) The Company shall not invest, or otherwise use the proceeds received by the Company from its sale of the Shares in such a manner as would require the Company or any of the Subsidiaries to register as an investment company under the Investment Company Act of 1940, as amended (the "1940 Act").

(j) The Company will maintain a transfer agent and, if necessary under the jurisdiction of incorporation of the Company, a registrar for the Preference Shares of the Company.

(k) The Company will not take, directly or indirectly, any action designed to cause or result in, or that has constituted or might reasonably be expected to constitute, the stabilization or manipulation of the price of any securities of the Company.

5. COSTS AND EXPENSES. The Company will pay all costs, expenses and fees incident to the performance of the obligations of the Company under this Agreement, including, without limiting the generality of the foregoing, the following: accounting fees of the Company; the fees and disbursements of counsel for the Company; the cost of printing and delivering to, or as requested by, the Underwriters copies of the Registration Statement, Preliminary Prospectuses, the Prospectus, this Agreement; fees and expenses related to Blue Sky matters; the filing fees of the Commission; and the filing fees of the NASD. The Company shall not, however, be required to pay for any of the Underwriters' expenses except that, if this Agreement shall not be consummated because the conditions in Section 8 hereof are not satisfied, or because this Agreement is terminated by the Underwriters pursuant to Section 7 hereof, or by reason of any failure,

refusal or inability on the part of the Company to perform any undertaking or satisfy any condition of this Agreement or to comply with any of the terms hereof on its part to be performed, unless such failure to satisfy said condition or to comply with said terms is due to the default or omission of any Underwriter, then the Company shall reimburse the several Underwriters for reasonable out-of-pocket expenses, including fees and

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disbursements of counsel, reasonably incurred in connection with investigating, marketing and proposing to market the Shares or in contemplation of performing their obligations hereunder; but the Company shall not in any event be liable to any of the several Underwriters for damages on account of loss of anticipated profits from the sale by them of the Shares.

6. CONDITIONS OF OBLIGATIONS OF THE UNDERWRITERS. The several obligations of the Underwriters to purchase the Firm Shares on the Closing Date and the Option Shares, if any, on the Option Closing Date are subject to the accuracy, as of the Closing Date or the Option Closing Date, as the case may be, of the representations and warranties of the Company contained herein, and to the performance by the Company of its covenants and obligations hereunder and to the following additional conditions:

(a) The Registration Statement and all post-effective amendments thereto shall have become effective and any and all filings required by Rule 415, Rule 424 and Rule 430A of the Rules and Regulations shall have been made, and any request of the commission for additional information (to be included in the Registration Statement or otherwise) shall have been disclosed to the Underwriters and complied with to their reasonable satisfaction. No stop order suspending the effectiveness of the Registration Statement, as amended from time to time, shall have been issued and no proceedings for that purpose shall have been taken or, to the knowledge of the Company, shall be contemplated by the Commission and no injunction, restraining order, or order of any nature by a Federal or state court of competent jurisdiction shall have been issued as of the Closing Date which would prevent the issuance of the Shares.

(b) The Underwriters shall have received on the Closing Date or the Option Closing Date, as the case may be, the opinion of Cravath, Swaine & Moore, counsel for the Company, and Conyers, Dill & Pearman, Bermuda counsel for the Company, each dated the Closing Date or the Option Closing Date, as the case may be, addressed to the Underwriters substantially in the form attached hereto as

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Exhibits A and B, respectively, and a 10b-5 statement from Cravath, Swaine & Moore, substantially in the form attached hereto as Exhibit C.

(c) The Underwriters shall have received on each of the date hereof, the Closing Date or the Option Closing Date, as the case may be, signed letters from [ ], [ ] and [ ], dated the Closing Date or the Option Closing Date, as the case may be, which shall confirm, on the basis of a review in accordance with the procedures set forth in the letters signed by such firms and dated and delivered to the Underwriters on the date hereof that nothing has come to their attention during the period from the date five days prior to the date hereof, to a date not more than five days prior to the Closing Date or the Option Closing Date, as the case may be, which would require any change in their letter dated the date hereof if it were required to be dated and delivered on the Closing Date or the Option Closing Date, as the case may be. All such letters shall be in form and substance satisfactory to the Underwriters.

(d) The Underwriters shall have received on the Closing Date or the Option Closing Date, as the case may be, a certificate or certificates of the President or Chief Executive Officer and the Senior Vice President and Chief Accounting Officer of the Company to the effect that, as of the Closing Date or the Option Closing Date, as the case may be, each of them severally represents as follows:

(i) The Registration Statement has become effective under the Act and no stop order suspending the effectiveness of the Registration Statement has been issued, and no proceedings for such purpose have been taken or are, to his knowledge, contemplated by the Commission.

(ii) There is no litigation instituted or threatened against the Company of a character required to be disclosed in the Registration Statement which is not so disclosed.

(iii) He has carefully examined the Registration Statement and the Prospectus and, as of the effective date of the Registration Statement, the statements

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contained in the Registration Statement were true and correct in all material respects, and such Registration Statement and Prospectus did not omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading and, in his opinion, since the effective date of the Registration Statement, no event has occurred which should have been set forth in a supplement to or an

amendment of the Prospectus which has not been so set forth in such supplement or amendment.

(e) The Company shall have furnished to the Underwriters such further certificates and documents confirming the representations and warranties contained herein and related matters as the Underwriters may reasonably have requested.

(f) The Firm Shares and Option Shares, if any, have been approved for listing upon official notice of issuance on the NYSE.

The opinions and certificates mentioned in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in all material respects reasonably satisfactory to the Underwriters and to [ ], counsel for the Underwriters.

If any of the conditions hereinabove provided for in this Section 6 shall not have been fulfilled when and as required by this Agreement to be fulfilled, the obligations of the Underwriters hereunder may be terminated by the Underwriters by notifying the Company of such termination in writing or by telegram at or prior to the Closing Date or the Option Closing Date, as the case may be. In such event, the Company and the Underwriters shall not be under any obligation to each other (except to the extent provided in Sections 5 and 8 hereof).

7. CONDITIONS OF THE OBLIGATIONS OF THE COMPANY. The obligations of the Company to sell and deliver the Shares required to be delivered as and when specified in

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this Agreement are subject to the conditions that at the Closing Date or the Option Closing Date, as the case may be, no stop order suspending the effectiveness of the Registration Statement shall have been issued and in effect or proceedings therefor initiated or threatened.

8. INDEMNIFICATION. (a) The Company agrees to indemnify and hold harmless each Underwriter and each person, if any, who controls any Underwriter within the meaning of the Act against any losses, claims, damages or liabilities to which such Underwriter or such controlling person may become subject under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement, any Preliminary Prospectus, the Prospectus or any amendment or supplement thereto, or (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse each Underwriter and each such controlling person for any legal or other expenses reasonably incurred by such Underwriter or such controlling person in connection with investigating or defending any such loss, claim, damage, liability, action or proceeding; provided, however, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement, or omission or alleged omission made in the Registration Statement, any Preliminary Prospectus, the Prospectus, or such amendment or supplement, in reliance upon and in conformity with written information furnished to the Company by or through the Underwriters specifically for use in the preparation thereof, and provided further that the Company shall not be liable with respect to any untrue statement contained in or any omission from a Preliminary Prospectus if the untrue statement contained in or such omission from such Preliminary Prospectus was corrected in the applicable Prospectus and the person asserting any such loss, liability, claim or damage was not given or sent a copy of the applicable Prospectus (excluding the documents incorporated by reference therein) in the manner and at such time as required by the Act, provided the Company has furnished you copies of such applicable Prospectus. This

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indemnity agreement will be in addition to any liability which the Company may otherwise have.

(b) Each Underwriter will indemnify and hold harmless the Company, each of its directors or nominees for director, each of its officers who have signed the Registration Statement, and each person, if any, who controls the Company within the meaning of the Act, against any losses, claims, damages or liabilities to which the Company or any such director, nominee for director, officer, or controlling person may become subject under the Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement, any Preliminary Prospectus, the Prospectus or any amendment or supplement thereto, or arise out of or are based upon the omission or the alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances under which they were made; and will reimburse any legal or other expenses reasonably incurred by the Company, any such director, nominee for director, officer, or controlling person in connection with investigating or defending any such loss, claim, damage, liability, action or proceeding; provided, however, that each Underwriter will be liable in each case to the extent, but only to the extent, that such untrue statement or alleged untrue

statement or omission or alleged omission has been made in the Registration Statement, any Preliminary Prospectus, the Prospectus or such amendment or supplement, in reliance upon and in conformity with written information furnished to the Company by such Underwriter or through the Underwriters on behalf of such Underwriter specifically for use in the preparation thereof. This indemnity agreement will be in addition to any liability which such Underwriter may otherwise have.

(c) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to this Section 8, such person (the "indemnified party") shall promptly notify the person against whom such

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indemnity may be sought (the "indemnifying party") in writing. No indemnification provided for in Section 8(a) or (b) shall be available to any party who shall fail to give notice as provided in this Section 8(c) if the party to whom notice was not given was unaware of the proceeding to which such notice would have related and was prejudiced by the failure to give such notice, but the failure to give such notice shall not relieve the indemnifying party or parties from any liability which it or they may have to the indemnified party for contribution or otherwise than on account of the provisions of Section 8(a) or (b). In case any such proceeding shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party and shall pay as incurred the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel at its own expense. Notwithstanding the foregoing, the indemnifying party shall pay as incurred (or within 30 days of presentation) the fees and expenses of the counsel retained by the indemnified party (and, if any reasonably necessary, one additional local counsel) in the event (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the indemnifying party shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees and expenses of more than one separate firm for all such indemnified parties. Such firm shall be selected by you in the case of parties indemnified pursuant to Section 8(a) and by the Company in the event of parties indemnified pursuant to Section 8(b). The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and

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against any loss or liability by reason of such settlement or judgment.

(d) If the indemnification provided for in this Section 8 is unavailable to or insufficient to hold harmless an indemnified party under Section 8(a) or (b) above in respect of any losses, claims, damages or liabilities (or actions or proceedings in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other from the offering of the Shares. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and the Underwriters on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions or proceedings in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover page of the Prospectus. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or the Underwriters on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. No party shall be held liable for contribution with respect to any claim or action settled without its consent which shall not be

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unreasonably withheld. Such consent shall be given within three business days from the date on which the party requesting consent provides a written request

to the other party.

The Company and the Underwriters agree that it would not be just and equitable if contributions pursuant to this Section 8(d) were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 8(d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions or proceedings in respect thereof) referred to above in this Section 8(d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (d), (i) no Underwriter shall be required to contribute any amount in excess of the underwriting discounts and commissions applicable to the Shares purchased by such Underwriter and (ii) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriters' obligations in this Section 8(d) to contribute are several in proportion to their respective underwriting obligations and not joint.

(e) In any proceeding relating to the Registration Statement, any Preliminary Prospectus, the Prospectus or any supplement or amendment thereto, each party against whom contribution may be sought under this Section 8 hereby consents to the jurisdiction of any court having jurisdiction over any other contributing party, agrees that process issuing from such court may be served upon him or it by any other contributing party and consents to the service of such process and agrees that any other contributing party may join him or it as an additional defendant in any such proceeding in which such other contributing party is a party.

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(f) Any losses, claims, damages, liabilities or expenses for which an indemnified party is entitled to indemnification or contribution under this Section 8 shall be paid by the indemnifying party to the indemnified party as such losses, claims, damages, liabilities or expenses are incurred. The indemnity and contribution agreements contained in this Section 8 and the representations and warranties of the Company set forth in this Agreement shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of any Underwriter or any person controlling any Underwriter, the Company, or its directors, nominees for director or officers or any persons controlling the Company, (ii) acceptance of any Shares and payment therefor hereunder, and (iii) any termination of this Agreement. A successor to any Underwriter, or to the Company, or their respective directors or officers, or any person controlling the Company, shall be entitled to the benefits of the indemnity, contribution and reimbursement agreements contained in this Section 8.

9. DEFAULT BY UNDERWRITERS. If on the Closing Date or the Option Closing Date, as the case may be, any Underwriter shall fail to purchase and pay for the portion of the Shares which such Underwriter has agreed to purchase and pay for on such date (otherwise than by reason of any default on the part of the Company, the non-defaulting Underwriters shall use their best efforts to procure within 24 hours thereafter one or more of the other Underwriters, or any others, to purchase from the Company such amounts as may be agreed upon and upon the terms set forth herein, the Firm Shares or Option Shares, as the case may be, which the defaulting Underwriter or Underwriters failed to purchase. If during such 24 hours you, the non-defaulting Underwriters, shall not have procured such other Underwriters, or any others, to purchase the Firm Shares or Option Shares, as the case may be, agreed to be purchased by the defaulting Underwriter or Underwriters, then (a) if the aggregate number of shares with respect to which such default shall occur does not exceed 10% of the Firm Shares or Option Shares, as the case may be, covered hereby, the other Underwriters shall be obligated, severally, in proportion to the respective numbers of Firm Shares or Option Shares, as the case may be, which they are obligated

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to purchase hereunder, to purchase the Firm Shares or Option Shares, as the case may be, which such defaulting Underwriter or Underwriters failed to purchase, or (b) if the aggregate number of shares of Firm Shares or Option Shares, as the case may be, with respect to which such default shall occur exceeds 10% of the Firm Shares or Option Shares, as the case may be, covered hereby, the Company or you as the Underwriters will have the right, by written notice given within the next 24-hour period to the parties to this Agreement, to terminate this Agreement without liability on the part of the non-defaulting Underwriters or of the Company except to the extent provided in Section 9 hereof. In the event of a default by any Underwriter or Underwriters, as set forth in this Section 9, the Closing Date or Option Closing Date, as the case may be, may be postponed for such period, not exceeding seven days, as you, the non-defaulting Underwriters, may determine in order that the required changes in the Registration Statement or in the Prospectus or in any other documents or arrangements may be effected. The term "Underwriter" includes any person substituted for a defaulting Underwriter. Any action taken under this Section 9 shall not relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

10. NOTICES. All communications hereunder shall be in writing and, except as otherwise provided herein, will be mailed, delivered or telegraphed

and confirmed as follows: if to the Underwriters, to [ ], [ ], [ ], Attention: [ ], Managing Director; if to the Company, to White Mountains Insurance Group, Ltd., 80 South Main Street, Hanover, New Hampshire 03755-2053, attention: [ ].

11. TERMINATION. This Agreement may be terminated by you by notice to the Company as follows:

(a) at any time prior to the earlier of (i) the time the Shares are released by you for sale by notice to the Underwriters, or (ii) 11:30 A.M. on the date of this Agreement;

(b) at any time prior to the Closing Date if any

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of the following has occurred: (i) since the effective date of the Registration Statement, any material adverse change or any development involving a prospective material adverse change in or affecting the condition, financial or otherwise, of the Company and its Subsidiaries taken as a whole or the earnings, business affairs, management or business prospects of the Company and its Subsidiaries taken as a whole, whether or not arising in the ordinary course of business, (ii) any outbreak of hostilities or other national or international calamity or crisis or change in economic or political conditions if the effect of such outbreak, calamity, crisis or change on the financial markets of the United States would, in your reasonable judgment, make the offering or delivery of the Shares impracticable, (iii) suspension of trading in securities on the NYSE or limitation on prices for securities on the NYSE, (iv) the enactment, publication, decree or other promulgation of any federal or state statute, regulation, rule or order of any court or other governmental authority which in your reasonable opinion materially and adversely affects or will materially or adversely affect the business or operations of the Company and the Subsidiaries taken as a whole, (v) declaration of a banking moratorium by either Federal or New York State authorities or (vi) the taking of any action by any Federal, state or local government or agency in respect of its monetary or fiscal affairs which in your reasonable opinion has a material adverse effect on the securities markets in the United States; or

(c) as provided in Sections 6 and 9 of this Agreement.

This Agreement also may be terminated by you, by notice to the Company, as to any obligation of the Underwriters to purchase the Option Shares, upon the occurrence at any time prior to the Option Closing Date of any of the events described in subparagraph (b) above or as provided in Sections 6 and 9 of this Agreement.

12. SUCCESSORS. This Agreement has been and is made solely for the benefit of the Underwriters, the Company and their respective successors, executors, administrators, heirs and assigns, and the officers, directors and controlling persons referred to herein, and no other person will have any right or obligation hereunder. The term

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"successors" shall not include any purchaser of the Shares merely because of such purchase.

13. INFORMATION PROVIDED BY UNDERWRITERS. The Company and the Underwriters acknowledge and agree that the only information furnished or to be furnished by any Underwriter to the Company for inclusion in any Prospectus or the Registration Statement consists of the information set forth in the last paragraph on the front cover page (insofar as such information relates to the Underwriters), legends required by Item 502(d) of Regulation S-K and Regulation M under the Act and the information under the caption "Underwriting" in the Prospectus.

14. MISCELLANEOUS. The reimbursement, indemnification and contribution agreements contained in this Agreement and the representations, warranties and covenants in this Agreement shall remain in full force and effect regardless of (a) any termination of this Agreement, (b) any investigation made by or on behalf of any Underwriter or controlling person thereof, or by or on behalf of the Company or its directors or officers and (c) delivery of and payment for the Shares under this Agreement.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

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If the foregoing letter is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicates hereof, whereupon it will become a binding agreement among the Company and the several Underwriters in accordance with its terms.



Very truly yours,

WHITE MOUNTAINS INSURANCE  
GROUP, LTD.,

By

Name:  
Title:

The foregoing Underwriting Agreement is hereby confirmed and  
accepted as of the date first above written.

By

By  
Authorized Officer

SCHEDULE I

SCHEDULE OF UNDERWRITERS

NUMBER OF FIRM
SHARES
UNDERWRITER TO
BE PURCHASED --
-----
-----
Total
-----

SCHEDULE II

DISCLOSURE ITEMS

1. Material Subsidiaries
2. Liens, capitalization except for Subsidiary Stock
3. Pending Renewal applications
4. White Mountains Common Shares exceptions
5. [other]

EXHIBIT A

[Form of Opinion of Cravath, Swaine & Moore]

EXHIBIT B

[Form Of Opinion of Conyers, Dill & Pearman]

EXHIBIT C

[Form of 10b-5 Statement of Cravath, Swaine & Moore]

WHITE MOUNTAINS INSURANCE GROUP, LTD.

FUND AMERICAN COMPANIES, INC.

FORM OF UNDERWRITING AGREEMENT

[Debt Securities]

[Note: Appropriate modifications will be made for other types of securities and for issuances of securities by Fund American Companies, Inc. which will be guaranteed by White Mountains Group Insurance, Ltd.]

[ ], 20[ ]

To the Representatives named in Schedule I hereto of the Underwriters named in Schedule II hereto

Ladies and Gentlemen:

White Mountains Insurance Group, Ltd., a company existing under the laws of Bermuda (the "Company"), proposes to sell to the underwriters named in Schedule II hereto (the "Underwriters"), for whom you (the "Representatives") are acting as representatives, the principal amount of its securities identified in Schedule I hereto (the "Securities"), to be issued under an indenture (the "Indenture") dated as of [ ], 20[ ], between the Company and [ ], as trustee (the "Trustee"). If the firm or firms listed in Schedule II hereto include only the firm or firms listed in Schedule I hereto, then the terms "Underwriters" and "Representatives", as used herein, shall each be deemed to refer to such firm or firms. To the extent there are no additional Underwriters listed on Schedule I other than you, the term Representatives as used herein shall mean you, as Underwriters, and the terms Representatives and Underwriters shall mean either the singular or plural as the context requires. Any reference herein to the Registration Statement, the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 which were filed under the Exchange Act on or before the Effective Date of the Registration Statement or the issue date of the Basic Prospectus, any Preliminary

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Final Prospectus or the Final Prospectus, as the case may be; and any reference herein to the terms "amend", "amendment" or "supplement" with respect to the Registration Statement, the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus shall be deemed to refer to and include the filing of any document under the Exchange Act after the Effective Date of the Registration Statement or the issue date of the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus, as the case may be, deemed to be incorporated therein by reference.

1. REPRESENTATIONS AND WARRANTIES. The Company represents and warrants to, and agrees with, each Underwriter as set forth below in this Section 1. Certain terms used in this Section 1 are defined in Section 17 hereof.

(a) The Company meets the requirements for the use of Form S-3 under the Act and has filed with the Commission a registration statement (the file number of which is set forth in Schedule I hereto) on such Form, including a basic prospectus, for registration under the Act of the offering and sale of the Securities. The Company may have filed one or more amendments thereto, including a Preliminary Final Prospectus, each of which has previously been furnished to you. The Company will next file with the Commission either (x) a final prospectus supplement relating to the Securities in accordance with Rules 430A and 424(b)(1) or (4), or (y) prior to the Effective Date of such registration statement, an amendment to such registration statement, including the form of final prospectus supplement. In the case of clause (x), the Company has included in such registration statement, as amended at the Effective Date, all information (other than Rule 430A Information) required by the Act and the rules thereunder to be included in such registration statement and the Final Prospectus. As filed, such final prospectus supplement or such amendment and form of final prospectus supplement shall contain all Rule 430A Information, together with all other such required information, and, except to the extent the Representatives shall agree in writing to a modification, shall be in all substantive respects in the form furnished to you prior to the Execution Time or, to the extent not completed at the Execution Time, shall contain only such specific additional information and other changes (beyond

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that contained in the Basic Prospectus and any Preliminary Final Prospectus) as the Company has advised you, prior to the Execution Time, will be included or made therein.

(b) On the Effective Date, the Registration Statement did or will, and when the Final Prospectus is first filed (if required) in accordance with

Rule 424(b) and on the Closing Date, the Final Prospectus (and any supplement thereto) will, comply in all material respects with the applicable requirements of the Act, the Exchange Act and the Trust Indenture Act and the respective rules thereunder; on the Effective Date and at the Execution Time, the Registration Statement did not or will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading; on the Effective Date and on the Closing Date the Indenture did or will comply in all material respects with the requirements of the Trust Indenture Act and the rules thereunder; and, on the Effective Date, the Final Prospectus, if not filed pursuant to Rule 424(b), will not, and on the date of any filing pursuant to Rule 424(b) and on the Closing Date, the Final Prospectus (together with any supplement thereto) will not, include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; PROVIDED, HOWEVER, that the Company makes no representations or warranties as to (i) that part of the Registration Statement which shall constitute the Statement of Eligibility and Qualification (Form T-1) under the Trust Indenture Act of the Trustee or (ii) the information contained in or omitted from the Registration Statement or the Final Prospectus (or any supplement thereto) in reliance upon and in conformity with information furnished herein or in writing to the Company by or on behalf of any Underwriter through the Representatives specifically for inclusion in the Registration Statement or the Final Prospectus (or any supplement thereto).

Any certificate signed by any officer of the Company and delivered to the Representatives or counsel for the Underwriters in connection with the offering of the

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Securities shall be deemed solely to be a representation and warranty by the Company, as to matters covered thereby, to each Underwriter.

2. PURCHASE AND SALE. Subject to the terms and conditions and in reliance upon the representations and warranties herein set forth, the Company agrees to sell to each Underwriter, and each Underwriter agrees, severally and not jointly, to purchase from the Company, at the purchase price set forth in Schedule I hereto the principal amount of the Securities set forth opposite such Underwriter's name in Schedule II hereto.

3. DELIVERY AND PAYMENT. Delivery of and payment for the Securities shall be made on the date and at the time specified in Schedule I hereto (or at such time on such later date not more than three Business Days after the foregoing date as the Representatives shall designate), which date and time may be postponed by agreement between the Representatives and the Company or as provided in Section 8 hereof (such date and time of delivery and payment for the Securities being herein called the "Closing Date"). Delivery of the Securities shall be made to the Representatives for the respective accounts of the several Underwriters against payment by the several Underwriters through the Representatives of the purchase price thereof to or upon the order of the Company by wire transfer payable in same-day funds to an account specified by the Company. Delivery of the Securities shall be made through the facilities of The Depository Trust Company unless the Representatives shall otherwise instruct.

4. AGREEMENTS. The Company agrees with the several Underwriters that:

(a) The Company will use its best efforts to cause the Registration Statement, if not effective at the Execution Time, and any amendment thereto, to become effective. Prior to the termination of the offering of the Securities, the Company will not file any amendment of the Registration Statement or supplement (including the Final Prospectus or any Preliminary Final Prospectus) to the Basic Prospectus or any Rule 462(b) Registration Statement unless the Company has furnished you a copy for your review prior

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to filing and will not file any such proposed amendment or supplement to which you reasonably object in writing. Subject to the foregoing sentence, the Company will cause the Final Prospectus, properly completed, and any supplement thereto to be filed with the Commission pursuant to the applicable paragraph of Rule 424(b) within the time period prescribed and will provide evidence satisfactory to the Representatives of such timely filing. The Company will promptly advise the Representatives (i) when the Registration Statement, if not effective at the Execution Time, shall have become effective, (ii) when the Final Prospectus, and any supplement thereto, shall have been filed with the Commission pursuant to Rule 424(b) or when any Rule 462(b) Registration Statement shall have been filed with the Commission, (iii) when, prior to termination of the offering of the Securities, any amendment to the Registration Statement shall have been filed or become effective, (iv) of any request by the Commission or its staff for any amendment of the Registration Statement, or any Rule 462(b) Registration Statement, or for any supplement to the Final Prospectus or of any additional information, (v) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement

or the institution or threatening of any proceeding for that purpose and (vi) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose. The Company will use its reasonable efforts to prevent the issuance of any such stop order or the suspension of any such qualification and, if issued, to obtain as soon as possible the withdrawal thereof.

(b) If, at any time when a prospectus relating to the Securities is required to be delivered under the Act, any event occurs as a result of which the Final Prospectus as then supplemented would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements

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therein in the light of the circumstances under which they were made not misleading, or if it shall be necessary to amend the Registration Statement or supplement the Final Prospectus to comply with the Act or the Exchange Act or the respective rules thereunder, the Company promptly will (i) prepare and file with the Commission, subject to the second sentence of paragraph (a) of this Section 4, an amendment or supplement, or, if appropriate, a filing under the Exchange Act, which will correct such statement or omission or effect such compliance and (ii) supply any supplemented Final Prospectus to you in such quantities as you may reasonably request.

(c) As soon as practicable, the Company will make generally available to its security holders and to the Representatives an earnings statement or statements of the Company and its subsidiaries which will satisfy the provisions of Section 11(a) of the Act and Rule 158 under the Act.

(d) The Company will furnish to the Representatives and counsel for the Underwriters, without charge, copies of the Registration Statement (including exhibits thereto) and, so long as delivery of a prospectus by an Underwriter or dealer may be required by the Act, as many copies of any Preliminary Final Prospectus and the Final Prospectus and any supplement thereto as the Representatives may reasonably request. The Company will pay the expenses of printing or other production of all documents relating to the offering.

(e) The Company will arrange, if necessary, for the qualification of the Securities for sale under the laws of such jurisdictions as the Representatives may designate, will maintain such qualifications in effect so long as required for the distribution of the Securities, will arrange for the determination of the legality of the Securities for purchase by institutional investors and will pay any fee of the National Association of Securities Dealers, Inc., in connection with its review of the offering, PROVIDED that the Company will not be required to file a consent to service of process in any state in which it is not

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qualified or for which consent has not been given.

(f) Until the business date set forth on Schedule I hereto, the Company will not, without the consent of [ ], offer, sell or contract to sell, or otherwise dispose of (or enter into any transaction which is designed to, or could be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by the Company or any affiliate of the Company or any person in privity with the Company or any affiliate of the Company) directly or indirectly, or announce the offering of, any debt securities issued or guaranteed by the Company (other than the Securities).

5. CONDITIONS TO THE OBLIGATIONS OF THE UNDERWRITERS. The obligations of the Underwriters to purchase the Underwriters' Securities shall be subject to the accuracy of the representations and warranties on the part of the Company contained herein as of the Execution Time and the Closing Date, to the accuracy of the statements of the Company made in any certificates pursuant to the provisions hereof, to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) If the Registration Statement has not become effective prior to the Execution Time, unless the Representatives agree in writing to a later time, the Registration Statement will become effective not later than (i) 6:00 p.m. New York City time, on the date of determination of the public offering price, if such determination occurred at or prior to 3:00 p.m. New York City time on such date or (ii) 9:30 a.m. on the Business Day following the day on which the public offering price was determined, if such determination occurred after 3:00 p.m. New York City time on such date; if filing of the Final Prospectus, or any supplement thereto, is required pursuant to Rule 424(b), the Final Prospectus, and any such supplement, shall have been filed in the manner and

within the time period required by Rule 424(b); and no stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall have been instituted or threatened.

(b) The Company shall have furnished to the Representatives the opinion of Cravath, Swaine & Moore, counsel for the Company, and Conyers, Dill & Pearman, Bermuda counsel for the Company, each dated the Closing Date, substantially in the form attached hereto as Exhibits A and B, respectively, and a 10b-5 statement from Cravath, Swaine & Moore, substantially in the form of Exhibit C.

(c) The Representatives shall have received from [ ], counsel for the Underwriters, such opinion or opinions, dated the Closing Date, with respect to the issuance and sale of the Securities, the Indenture, the Registration Statement, the Final Prospectus (together with any supplement thereto) and other related matters as the Representatives may reasonably require, and the Company shall have furnished to such counsel such documents as they request for the purpose of enabling them to pass upon such matters.

(d) The Company shall have furnished to the Representatives a certificate of the Company, signed by the Chairman of the Board or the President and the principal financial or accounting officer of the Company, dated the Closing Date, to the effect that the signers of such certificate have carefully examined the Registration Statement, the Final Prospectus, any supplements to the Final Prospectus and this Agreement and that:

(i) the representations and warranties of the Company in this Agreement are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date and the Company has complied with all the agreements and satisfied all the conditions on

its part to be performed or satisfied at or prior to the Closing Date;

(ii) no stop order suspending the effectiveness of the Registration Statement has been issued and no proceedings for that purpose have been instituted or, to the Company's knowledge, threatened; and

(iii) since the date of the most recent financial statements included in the Final Prospectus (exclusive of any supplement thereto), there has been no material adverse change in the condition (financial or otherwise), prospects, earnings, business or properties of the Company and its subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Final Prospectus (exclusive of any supplement thereto).

(e) At the Closing Date, [ ] and [ ] shall have furnished to the Representatives letters (which may refer to letters previously delivered to one or more of the Representatives), dated as of the Closing Date, in form and substance satisfactory to the Representatives.

In addition, except as provided in Schedule I hereto, at the Execution Time, [ ] shall have furnished to the Representatives a letter or letters, dated as of the Execution Time, in form and substance satisfactory to the Representatives, to the effect set forth above.

(f) Subsequent to the Execution Time or, if earlier, the dates as of which information is given in the Registration Statement (exclusive of any amendment thereof) and the Final Prospectus (exclusive of any supplement thereto), there shall not have been (i) any change or decrease specified in the letter or letters referred to in paragraph (e) of this Section 5 or (ii) any change, or any development involving a prospective change, in or affecting the condition (financial or otherwise), earnings, business or properties of the Company and its subsidiaries, taken

as a whole, whether or not arising from transactions in the ordinary course of business, except as set forth in or contemplated in the Prospectus (exclusive of any supplement thereto) the effect of which, in any case referred to in clause (i) or (ii) above, is, in the sole judgment of the Representatives, so material and adverse as to make it impractical or inadvisable to proceed with the offering or delivery of the Securities as contemplated by the Registration Statement (exclusive of any amendment thereof) and the Final Prospectus (exclusive of any supplement thereto).

(g) Subsequent to the Execution Time, there shall not have been any decrease in the rating of any of the Company's debt securities by any "nationally recognized statistical rating organization" (as defined for purpose of Rule 436(g) under the Act) or any notice given of any intended or potential decrease in any such rating or of a possible change in any such rating that does not indicate the direction of the possible change.

(h) The Company shall have caused the Securities to be eligible for trading on [ ] upon issuance.

(i) Prior to the Closing Date, the Company shall have furnished to the Representatives such further information, certificates and documents as the Representatives may reasonably request.

If any of the conditions specified in this Section 5 shall not have been fulfilled in all material respects when and as provided in this Agreement, or if any of the opinions and certificates mentioned above or elsewhere in this Agreement shall not be in all material respects reasonably satisfactory in form and substance to the Representatives and counsel for the Underwriters, this Agreement and all obligations of the Underwriters hereunder may be canceled at, or at any time prior to, the Closing Date by the Representatives. Notice of such cancellation shall be given to the Company in writing or by telephone or facsimile confirmed in writing.

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The documents required to be delivered by this Section 5 shall be delivered at the office of [ ], counsel for the Underwriters, at [ ], on the Closing Date.

6. REIMBURSEMENT OF UNDERWRITERS' EXPENSES. If the sale of the Securities provided for herein is not consummated because any condition to the obligations of the Underwriters set forth in Section 5 hereof is not satisfied, because of any termination pursuant to Section 9 hereof or because of any refusal, inability or failure on the part of the Company to perform any agreement herein or comply with any provision hereof other than by reason of a default by any of the Underwriters, the Company will reimburse the Underwriters severally through [ ] on demand for all reasonable out-of-pocket expenses (including reasonable fees and disbursements of counsel) that shall have been incurred by them in connection with the proposed purchase and sale of the Securities, but the Company shall not be liable in any event to any of the Underwriters for damages on account of loss of anticipated profits from the sale of the Securities.

7. INDEMNIFICATION AND CONTRIBUTION. (a) The Company agrees to indemnify and hold harmless each Underwriter, the directors, officers, employees and agents of each Underwriter and each person who controls any Underwriter within the meaning of either the Act or the Exchange Act against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Act, the Exchange Act or other Federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement for the registration of the Securities as originally filed or in any amendment thereof, or in the Basic Prospectus, any Preliminary Final Prospectus or the Final Prospectus, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and agrees to reimburse each such indemnified party, as reasonably incurred, for any legal or other expenses reasonably incurred by them in connection

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with investigating or defending any such loss, claim, damage, liability or action; PROVIDED, HOWEVER, that with respect to any untrue statement or omission of material fact made in any Preliminary Prospectus, the indemnity agreement contained in this Section 8(a) shall not inure to the benefit of any Underwriter from whom the person asserting any such loss, claim, damage or liability purchased the securities concerned, to the extent that any such loss, claim, damage or liability of such Underwriter occurs under the circumstance where it shall have been determined by a court of competent jurisdiction by final and nonappealable judgment that (w) the Company had previously furnished copies of the Final Prospectus to the Representatives, (x) delivery of the Final Prospectus was required by the Act to be made to such person, (y) the untrue statement or omission of a material fact contained in the Preliminary Prospectus was corrected in the Final Prospectus and (z) there was not sent or given to such person, at or prior to the written confirmation of the sale of such securities to such person, a copy of the Final Prospectus. This indemnity agreement will be in addition to any liability which the Company may otherwise have.

(b) Each Underwriter severally agrees to indemnify and hold harmless the Company, each of its directors, each of its officers who signs the Registration Statement, and each person who controls the Company within the meaning of either the Act or the Exchange Act, to the same extent as the foregoing indemnity from the Company to each Underwriter, but only with reference to written information relating to such Underwriter furnished to the Company by or on behalf of such Underwriter through the Representatives specifically for inclusion in the documents referred to in the foregoing

indemnity. This indemnity agreement will be in addition to any liability which any Underwriter may otherwise have. The Company acknowledges that the statements set forth in [the [last]] paragraph of the cover page regarding delivery of the Securities, the stabilization legend in block capital letters on page [2] and, under the heading "Underwriting" or "Plan of Distribution", (i) the sentences related to concessions and reallowances and (ii) the paragraph related to stabilization

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in any Preliminary Final Prospectus or the Final Prospectus constitute the only information furnished in writing by or on behalf of the several Underwriters for inclusion in the documents referred to in the foregoing indemnity.

(c) Promptly after receipt by an indemnified party under this Section 7 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 7, notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b) above unless and to the extent it did not otherwise learn of such action and such failure results in the prejudice by the indemnifying party of substantial rights and defenses and (ii) will not, in any event, relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided in paragraph (a) or (b) above. The indemnifying party shall be entitled to appoint counsel of the indemnifying party's choice at the indemnifying party's expense to represent the indemnified party in any action for which indemnification is sought (in which case the indemnifying party shall not thereafter be responsible for the fees and expenses of any separate counsel retained by the indemnified party or parties except as set forth below); PROVIDED, HOWEVER, that such counsel shall be reasonably satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel to represent the indemnified party in an action, the indemnified party shall have the right to a total of one separate counsel (and, if reasonably necessary, one additional local counsel) and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest, (ii) the indemnifying party shall not have employed counsel satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the institution of such action or (iii) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party. An indemnifying party will not, without the prior written consent of the indemnified parties, settle or compromise or

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consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding, in which case such consent shall not be unreasonably withheld.

(d) In the event that the indemnity provided in paragraph (a) or (b) of this Section 7 is unavailable to or insufficient to hold harmless an indemnified party for any reason, the Company and the Underwriters agree to contribute to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating or defending same) (collectively "Losses") to which the Company and one or more of the Underwriters may be subject in such proportion as is appropriate to reflect the relative benefits received by the Company and by the Underwriters from the offering of the Securities; PROVIDED, HOWEVER, that in no case shall any Underwriter (except as may be provided in any agreement among underwriters relating to the offering of the Securities) be responsible for any amount in excess of the underwriting discount or commission applicable to the Securities purchased by such Underwriter hereunder. If the allocation provided by the immediately preceding sentence is unavailable for any reason, the Company and the Underwriters shall contribute in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company and of the Underwriters in connection with the statements or omissions which resulted in such Losses as well as any other relevant equitable considerations. Benefits received by the Company shall be deemed to be equal to the total net proceeds from the offering (before deducting expenses) received by it, and benefits received by the Underwriters shall be deemed to be equal to the total underwriting discounts and commissions, in each case as set forth on the cover page of the Final Prospectus. Relative fault shall be determined by reference

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to, among other things, whether any untrue or any alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information provided by the Company on the one hand or the

Underwriters on the other, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The Company and the Underwriters agree that it would not be just and equitable if contribution were determined by pro rata allocation or any other method of allocation which does not take account of the equitable considerations referred to above. Notwithstanding the provisions of this paragraph (d), no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 7, each person who controls an Underwriter within the meaning of either the Act or the Exchange Act and each director, officer, employee and agent of an Underwriter shall have the same rights to contribution as such Underwriter, and each person who controls the Company within the meaning of either the Act or the Exchange Act, each officer of the Company who shall have signed the Registration Statement and each director of the Company shall have the same rights to contribution as the Company, subject in each case to the applicable terms and conditions of this paragraph (d).

8. DEFAULT BY AN UNDERWRITER. If any one or more Underwriters shall fail to purchase and pay for any of the Securities agreed to be purchased by such Underwriter or Underwriters hereunder and such failure to purchase shall constitute a default in the performance of its or their obligations under this Agreement, the remaining Underwriters shall be obligated severally to take up and pay for within 24 hours (in the respective proportions which the amount of Securities set forth opposite their names in Schedule II hereto bears to the aggregate amount of Securities set forth opposite the names of all the remaining Underwriters) the Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase; PROVIDED, HOWEVER, that in the event that the aggregate amount of Securities which the defaulting Underwriter or Underwriters agreed but failed to purchase shall exceed 10% of the aggregate amount of Securities set forth in Schedule II hereto, the remaining

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Underwriters shall have the right to purchase within 24 hours all, but shall not be under any obligation to purchase any, of the Securities, and if such nondefaulting Underwriters do not purchase all the Securities, this Agreement will terminate without liability to any nondefaulting Underwriter or the Company. In the event of a default by any Underwriter as set forth in this Section 8, the Closing Date shall be postponed for such period, not exceeding five Business Days, as the Representatives shall determine in order that the required changes in the Registration Statement and the Final Prospectus or in any other documents or arrangements may be effected. Nothing contained in this Agreement shall relieve any defaulting Underwriter of its liability, if any, to the Company and any nondefaulting Underwriter for damages occasioned by its default hereunder.

9. TERMINATION. This Agreement shall be subject to termination in the absolute discretion of the Representatives, by notice given to the Company prior to delivery of and payment for the Securities, if at any time prior to such time (i) trading in the Company's Common Stock shall have been suspended by the Commission or the New York Stock Exchange or trading in securities generally on the New York Stock Exchange shall have been suspended or limited or minimum prices shall have been established on such Exchange, (ii) a banking moratorium shall have been declared either by Federal or New York State authorities or (iii) there shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war or other calamity or crisis the effect of which on financial markets is such as to make it, in the sole judgment of the Representatives, impractical or inadvisable to proceed with the offering or delivery of the Securities as contemplated by the Final Prospectus (exclusive of any supplement thereto).

10. REPRESENTATIONS AND INDEMNITIES TO SURVIVE. The respective agreements, representations, warranties, indemnities and other statements of the Company or its officers and of the Underwriters set forth in or made pursuant to this Agreement will remain in full force and

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effect, regardless of any investigation made by or on behalf of any Underwriter or the Company or any of the officers, directors or controlling persons referred to in Section 7 hereof, and will survive delivery of and payment for the Securities. The provisions of Sections 6 and 7 hereof shall survive the termination or cancellation of this Agreement.

11. NOTICES. All communications hereunder will be in writing and effective only on receipt, and, if sent to the Representatives, will be mailed or delivered to [ ]; or, if sent to the Company, will be mailed or delivered to 80 South Main Street, Hanover, New Hampshire 03755-2053, attention of [ ] or faxed to [( ) ] and confirmed to it at [( ) ], attention of [ ].

12. SUCCESSORS. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and the officers and directors and controlling persons referred to in Section 7 hereof, and no other person will have any right or obligation hereunder. The term "successors" shall not include any purchaser of the Securities merely because of such purchase.



13. APPLICABLE LAW. This Agreement will be governed by and construed in accordance with the laws of the State of New York.

14. COUNTERPARTS. This Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

15. HEADINGS. The section headings used herein are for convenience only and shall not affect the construction hereof.

16. DEFINITIONS. The terms which follow, when used in this Agreement, shall have the meanings indicated.

"Act" shall mean the Securities Act of 1933, as amended.

"Basic Prospectus" shall mean the prospectus referred to in paragraph 1(a) above contained in the Registration Statement at the Effective Date including,

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any Preliminary Final Prospectus.

"Business Day" shall mean any day other than a Saturday, a Sunday or a legal holiday or a day on which banking institutions or trust companies are authorized or obligated by law to close in New York City or [        ].

"Effective Date" shall mean each date and time that the Registration Statement, any post-effective amendment or amendments thereto and any Rule 462(b) Registration Statement became or become effective.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Execution Time" shall mean the date and time that this Agreement is executed and delivered by the parties hereto.

"Final Prospectus" shall mean the form of final prospectus relating to the Securities, including the Basic Prospectus, included in the Registration Statement at the Effective Date.

"Preliminary Final Prospectus" shall mean any preliminary prospectus supplement to the Basic Prospectus which describes the Securities and the offering thereof and is used prior to filing of the Final Prospectus.

"Preliminary Prospectus" shall mean any preliminary prospectus referred to in paragraph 1(a) above and any preliminary prospectus included in the Registration Statement at the Effective Date that omits Rule 430A Information.

"Registration Statement" shall mean the registration statement referred to in paragraph 1(a) above, including exhibits and financial statements, as amended at the Execution Time (or, if not effective at the Execution Time, in the form in which it shall

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become effective) and, in the event any post-effective amendment thereto or any Rule 462(b) Registration Statement becomes effective prior to the Closing Date (as hereinafter defined), shall also mean such registration statement as so amended or such Rule 462(b) Registration Statement, as the case may be. Such term shall include any Rule 430A Information deemed to be included therein at the Effective Date as provided by Rule 430A.

"Rule 424", "Rule 430A" and "Rule 462" refer to such rules under the Act.

"Rule 430A Information" shall mean information with respect to the Securities and the offering thereof permitted to be omitted from the Registration Statement when it becomes effective pursuant to Rule 430A.

"Rule 462(b) Registration Statement" shall mean a registration statement and any amendments thereto filed pursuant to Rule 462(b) relating to the offering covered by the initial registration statement.

"Trust Indenture Act" shall mean the Trust Indenture Act of 1934, as amended.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicate hereof, whereupon this letter and your acceptance shall represent a binding agreement among the Company and the several Underwriters.

Very truly yours,

White Mountains Insurance

Group, Ltd.

By:

[Title]

The foregoing Agreement is hereby confirmed and accepted

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as of the date specified in  
Schedule I hereto.

[names of Representatives]

By:

By:

Vice President

For themselves and the other  
several Underwriters, if any,  
named in Schedule II to the  
foregoing Agreement.

[or

[name of underwriters]

By:

Vice President

For itself and the other  
several Underwriters, if any,  
named in Schedule II to the  
foregoing Agreement.]

SCHEDULE I

Underwriting Agreement dated

Registration Statement No.

Representative(s):

Title, Purchase Price and Description of Securities:

Title:

Principal amount:

Purchase price  
(include accrued interest  
or amortization, if any):

Sinking fund provisions:

Redemption provisions:

Other provisions:

Closing Date, Time and Location:

Type of Offering:

Date referred to in Section 4(f) after which the Company may offer or sell debt  
securities issued or guaranteed by the Company without the consent of the  
Representative(s):

Modification of items to be covered by the letter from [ ] delivered  
pursuant to Section 5(e) at the Execution Time:

SCHEDULE II

PRINCIPAL  
AMOUNT OF  
SECURITIES  
TO  
UNDERWRITERS  
BE PURCHASED  
-----  
-----  
-----  
[names of

Underwriters]  
\$ Total \$

EXHIBIT A

[Form of Opinion of Cravath, Swaine & Moore]

EXHIBIT B

[Form of Opinion of Conyers, Dill & Pearman]

EXHIBIT C

[Form of 10b-5 Statement of Cravath, Swaine & Moore]

CERTIFICATE OF INCORPORATION  
OF  
TACK ACQUISITION CORP.  
UNDER SECTION 102 OF THE  
GENERAL CORPORATION LAW OF THE STATE OF DELAWARE

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I, Nora E. Davis, being a natural person over the age of 18 years with a mailing address of 825 Eighth Avenue, 47th Floor, New York, New York 10019, for the purpose of forming a corporation pursuant to Section 102 of the General Corporation Law of the State of Delaware, do hereby certify as follows:

ARTICLE FIRST

The name of the corporation (hereinafter called the "Corporation") is TACK Acquisition Corp.

ARTICLE SECOND

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The name of the registered agent of the Corporation at such address is The Corporation Trust Company.

ARTICLE 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 (the "DGCL").

## ARTICLE FOURTH

The aggregate number of shares of all classes of stock that the Corporation shall have authority to issue is 1,000 shares of Common Stock having the par value of \$1.00 per share.

## ARTICLE FIFTH

The name and mailing address of the incorporator is Nora E. Davis, 825 Eighth Avenue, 47th Floor, New York, New York 10019.

## ARTICLE SIXTH

In furtherance and not in limitation of the powers conferred upon it by law, the Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the By-laws of the Corporation.

## ARTICLE SEVENTH

Unless and except to the extent that the By-laws of the Corporation so require, the election of directors of the Corporation need not be by written ballot.

## ARTICLE EIGHTH

To the fullest extent permitted by the DGCL as it now exists and as it may hereafter be amended, no director shall be personally liable to the Corporation or any of 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) pursuant to Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit. Any repeal or modification of this ARTICLE EIGHTH shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

IN WITNESS WHEREOF, I, Nora E. Davis, the sole incorporator of TACK Acquisition Corp., have executed this Certificate of Incorporation this 21st day of September, 2000, and DO HEREBY ACKNOWLEDGE under the penalties of perjury that this instrument is my act and deed and that the facts stated herein are true.

-----  
Nora E. Davis  
Sole Incorporator

Mailing Address:

825 Eighth Avenue  
47th Floor  
New York, New York 10019

CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION

TACK ACQUISITION CORP., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of said corporation, by the unanimous written consent of its members, filed with the minutes of the Board, adopted a resolution proposing and declaring advisable the following amendment to the Certificate of Incorporation of said corporation:

RESOLVED, that the Certificate of Incorporation of TACK ACQUISITION CORP. be amended by changing ARTICLE FOURTH thereof so that, as amended, said Article shall be and read as follows:

"The aggregate number of shares of all classes of stock that the Corporation shall have authority to issue is 301,000, of which 1,000 shares shall be Common Stock having the par value of \$1.00 per share, and 300,000 shares shall be Preferred Stock having the par value of \$1.00 per share."

SECOND: That in lieu of a meeting and vote of stockholders, the stockholders have given unanimous written consent to said amendment in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.

THIRD: That the aforesaid amendment was duly adopted in accordance with the applicable provisions of Sections 242 and 228 of the General Corporation law of the State of Delaware.

IN WITNESS WHEREOF, said TACK ACQUISITION CORP. has caused this certificate to be signed by John J. Byrne, its President, this \_\_\_ day of May, 2001.

by

-----  
Name: John J. Byrne  
Title: President



CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION

Tack Acquisition Corp., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of said corporation, by the unanimous written consent of its members filed with the minutes of the Board, adopted a resolution proposing and declaring advisable the following amendment to the Certificate of Incorporation of said corporation:

RESOLVED, that the Certificate of Incorporation of Tack Acquisition Corp. be amended by changing the First Article thereof so that, as amended, said Article shall be and read as follows:

"The name of the corporation (hereafter called the "Corporation") is Fund American Companies, Inc."

SECOND: That in lieu of a meeting and vote of stockholders, the stockholders have given unanimous written consent to said amendment in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.

THIRD: That the aforesaid amendment was duly adopted in accordance with the applicable provisions of Sections 242 and 228 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said corporation has caused this certificate to be signed by \_\_\_\_\_, its \_\_\_\_\_, this 23rd day of May, 2001.

by \_\_\_\_\_

\_\_\_\_\_  
Title

BY-LAWS OF TACK ACQUISITION CORP.

ARTICLE I

MEETINGS OF STOCKHOLDERS; STOCKHOLDERS'  
CONSENT IN LIEU OF MEETING

SECTION 1.01. ANNUAL MEETING. The annual meeting of the stockholders for the election of directors, and for the transaction of such other business as may properly come before the meeting, shall be held at such place, date and hour as shall be fixed by the Board of Directors (hereinafter called the Board) and designated in the notice or waiver of notice thereof; except that no annual meeting need be held if all actions, including the election of directors, required by the Delaware General Corporation Law to be taken at a stockholders annual meeting are taken by written consent in lieu of meeting pursuant to Section 1.03 of this Article.

SECTION 1.02. SPECIAL MEETINGS. A special meeting of the stockholders for any purpose or purposes may be called by the Board, the Chairman of the Board, the President or the Secretary of the Corporation or a stockholder or stockholders holding of record at least a majority Of the shares of Common Stock of the Corporation issued and Outstanding, such meeting to be held at such place, date and hour as shall be designated in the notice or waiver of notice thereof.

SECTION 1.03. STOCKHOLDERS' CONSENT IN LIEU OF MEETING. Any action required by the laws of the State of Delaware to be taken at any annual or special meeting of the stockholders of the Corporation, or any 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 all the stockholders.

ARTICLE II  
BOARD OF DIRECTORS

SECTION 2.01. GENERAL POWERS. The business and affairs of the Corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate of Incorporation directed or required to be exercised or done by the stockholders.

SECTION 2.02. NUMBER AND TERM OF OFFICE. The number of directors which shall constitute the Whole Board shall be fixed from time to time by a vote of a majority of the Whole Board. The term "Whole Board" is used herein to refer to the number of directors from time to time authorized to be on the Board regardless of the number of directors then in office. Directors need not be stockholders. Each director shall hold office until his successor is elected and qualified, or until his earlier death or resignation or removal in the manner hereinafter provided.

SECTION 2.03. RESIGNATION, REMOVAL AND VACANCIES. Any director may resign at any time by giving written notice of his resignation to the Board, the Chairman of the Board, the President or the Secretary of the Corporation. Such resignation shall take effect at the time specified therein or, if the time be not specified, upon receipt thereof; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Any director or the entire Board may be removed, with or without cause, at any time by the holders of a majority of the shares then entitled to vote at an election of directors or by written consent of the stockholders pursuant to Section 1.03 of Article I hereof.

Vacancies in the Board 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, although less than a quorum, or by a sole remaining director.

SECTION 2.04. MEETING. (a) ANNUAL MEETING. As soon as practicable after each annual election of directors, the Board shall meet for the purpose of organization and the transaction of other business, unless it shall have transacted all such business by written consent pursuant to Section 2.05 of this Article.

(b) OTHER MEETINGS. Other meetings of the Board shall be held at such times and places as the Board, the Chairman of the Board or the President shall from time to time determine.

(c) NOTICE OF MEETINGS. The Secretary shall give notice to each director of each meeting, including the time, place and purpose of such meeting. Notice of each such meeting 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 such meeting is to be held, or shall be sent to him at such place by telegraph, cable, wireless or other form of recorded communication, or be delivered personally or by telephone not later than the day before the day on which such meeting is to be held, but notice need not be given to any director who shall attend such meeting. A written waiver of notice, signed by the person entitled thereto, whether before or after the time of the meeting stated therein, shall be deemed equivalent to notice.

(d) PLACE OF MEETINGS. The Board may hold its meetings at such place or places within or without the State of Delaware as the Board may from time to time determine, or

as shall be designated in the respective notices or waivers of notice thereof.

(e) QUORUM AND MANNER OF ACTING. One-third of the total number of directors then in office (but not less than two) shall be present in person at any meeting of the Board in order to constitute a quorum for the transaction of business at such meeting, and the vote of a majority of those directors present at any such meeting at which a quorum is present shall be necessary for the passage of any resolution or act of the Board, except as otherwise expressly required by law or these By-laws. In the absence of a quorum for any such meeting, a majority of the directors present thereat may adjourn such meeting from time to time until a quorum shall be present.

(f) ORGANIZATION. At each meeting of the Board, one of the following shall act as chairman of the meeting and preside, in the following order of precedence:

(i) the Chairman of the Board;

(ii) the President;

(iii) any director chosen by a majority of the directors present. The Secretary or, in the case of his absence, any person (who shall be an Assistant Secretary, if an Assistant Secretary is present) whom the Chairman shall appoint shall act as secretary of such meeting and keep the minutes thereof.

SECTION 2.05. DIRECTORS' CONSENT IN LIEU OF MEETING. Action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing and the writing or writings are filed with the minutes or the proceedings of the Board or committee.

SECTION 2.06. ACTION BY MEANS OF CONFERENCE TELEPHONE OR SIMILAR COMMUNICATIONS EQUIPMENT. Any one or more members of the Board, or any committee designated by the Board, may participate in a meeting of the Board or any such 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 by such means shall constitute presence in person at such meeting.

ARTICLE III  
COMMITTEES OF THE BOARD

SECTION 3.01. APPOINTMENT OF EXECUTIVE COMMITTEE. The Board may from time to time by resolution passed by a majority of the whole Board designate from its members an Executive Committee to serve at the pleasure of the Board. The Chairman of the Executive Committee shall be designated by the Board. The Board may designate one or more directors as alternate members of the Executive Committee, who may replace any absent or disqualified member or members at any meeting of the Executive Committee. The Board shall have power at any time to change the membership of the Executive Committee, to fill all vacancies in it and to discharge it, either with or without cause.

SECTION 3.02. PROCEDURES OF EXECUTIVE COMMITTEE. The Executive Committee, by a vote of a majority of its members, shall fix by whom its meetings may be called and the manner of calling and holding its meetings, shall determine the number of its members requisite to constitute a quorum for the transaction of business and shall prescribe its own rules of procedure, no change in which shall be made except by a majority vote of its members or by the Board.

SECTION 3.03. POWERS OF EXECUTIVE COMMITTEE. During the intervals between the meetings of the Board,

unless otherwise determined from time to time b), resolution passed by the whole Board, the Executive Committee shall possess and may exercise all the powers and authority of the Board in the management and direction of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it, except that the Executive Committee shall not have power or authority in reference to:

- (a) amending the Certificate of Incorporation;
- (b) adopting an agreement of merger or consolidation;
- (c) recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets;
- (d) recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution;
- (e) submitting to stockholders any action which pursuant to the Delaware General Corporation Law requires stockholders, approval;
- (f) filling vacancies in the Board or in any committee or fixing compensation of members of the Board for serving on the Board or on any committee;
- (g) amending or repealing the By-laws;
- (h) declaring a dividend or authorizing the issuance of stock; or
- (i) amending or repealing any resolution of the Board which by its terms is not so amendable or repealable.

SECTION 3.04. REPORTS OF EXECUTIVE COMMITTEE. The Executive Committee shall keep regular minutes of its proceedings, and all action by the Executive Committee shall be reported promptly to the Board. Such action shall be subject to review by the Board, provided that no rights of third parties shall be affected by such review.



SECTION 3.05. OTHER COMMITTEES. The Board, by resolution adopted by a majority of the whole Board, may designate from among its members one or more other committees, each of which shall have such authority of the Board as may be specified in the resolution of the Board designating such committee; PROVIDED, however, that any such committee so designated shall not have any powers not allowed to the Executive Committee under Section 3.03 of this Article III. The Board shall have power at any time to change the members of any such committee, designate alternate members of any such committee and fill vacancies therein; and any such committee shall serve at the pleasure of the Board.

ARTICLE IV  
OFFICERS

SECTION 4.01. EXECUTIVE OFFICERS. The executive officers of the Corporation shall be a President, a Secretary and a Treasurer and may include a Chairman of the Board, one or more Vice Presidents and one or more Assistant Secretaries or Assistant Treasurers. Any two or more Offices may be held by the same person.

SECTION 4.02. AUTHORITY AND DUTIES. All officers, as between themselves and the Corporation, shall have such authority and perform such duties in the management of the Corporation as may be provided in these By-laws or, to the extent not so provided, by the Board.

SECTION 4.03. TERM OF OFFICE, RESIGNATION AND REMOVAL. All officers shall be elected or appointed by the Board and shall hold office for such term as may be prescribed by the Board. The Chairman of the Board, if any, and the President shall be elected or appointed from among the members of the Board. Each officer shall hold office until his successor has been elected or appointed and

qualified or his earlier death or resignation or removal in the manner hereinafter provided. The Board may require any officer to give security for the faithful performance of his duties.

Any officer may resign at any time by giving written notice to the President or the Secretary of the Corporation, and such resignation shall take effect at the time specified therein or, if the time when it shall become effective is not specified therein, at the time it is accepted by action of the Board. Except as aforesaid, the acceptance of such resignation shall not be necessary to make it effective.

All officers and agents elected or appointed by the Board shall be subject to removal at any time by the Board or by the stockholders of the Corporation with or without cause.

SECTION 4.04. VACANCIES. If an office becomes vacant for any reason, the Board shall fill such vacancy. Any officer so appointed or elected by the Board shall serve only until such time as the unexpired term of his predecessor shall have expired unless reelected or reappointed by the Board.

SECTION 4.05. CHAIRMAN OF THE BOARD. If there shall be a Chairman of the Board, he shall preside at meetings of the Board and of the stockholders at which he is present, and shall give counsel and advice to the Board and the officers of the Corporation on all subjects touching the welfare of the Corporation and the conduct of its business. He shall perform such other duties as the Board may from time to time determine. Except as otherwise provided by resolution of the Board he shall be ex officio a member of all committees of the Board.

SECTION 4.06. THE PRESIDENT. The President shall be the Chief Executive Officer of the Corporation and,

unless the Chairman of the Board be present or the Board has provided otherwise by resolution, he shall preside at all meetings of the Board and the stockholders at which he is present. He shall have general and active management and control of the business and affairs of the Corporation subject to the control of the Board and the Executive Committee, if any, and shall see that all orders and resolutions of the Board and the Executive Committee, if any, are carried into effect.

SECTION 4.07. VICE PRESIDENTS. The Vice President or, if there be more than one, the Vice Presidents in the order of their seniority or in any other order determined by the Board, shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall generally assist the President and perform such other duties as the Board or the President shall prescribe.

SECTION 4.08. The SECRETARY. The Secretary shall, to the extent practicable, attend all meetings of the Board and all meetings of the stockholders and shall record all votes and the minutes of all proceedings in a book to be kept for that purpose, and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the stockholders and Of the Board, and shall perform such other duties as may be prescribed by the Board or the President, under whose supervision he shall perform such duties. He shall keep in safe custody the seal of the Corporation and affix the same to any duly authorized instrument requiring it and, when so affixed, it shall be attested by his signature or by the signature of the Treasurer or an Assistant Secretary or Assistant Treasurer. He shall keep in safe custody the certificate books and stockholder records and such other books and records as the Board may direct and shall perform

all other duties as from time to time may be assigned to him by the Chairman of the Board, the President or the Board.

SECTION 4.09. ASSISTANT SECRETARIES. The Assistant Secretaries, if any, in order of their seniority or in any other order determined by the Board shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall perform such other duties as the Board or the Secretary shall prescribe.

SECTION 4.10. THE TREASURER. The Treasurer shall have the care and custody of the corporate funds and other valuable effects, including securities, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation, and shall deposit all moneys and other valuable effects to the name and to the credit of the Corporation in such depositories as may be designated by the Board. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and directors, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Corporation; and, in general, perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the President or the Board.

SECTION 4.11. ASSISTANT TREASURERS. The Assistant Treasurers, if any, in the order of their seniority or in any other order determined by the Board, shall in the absence or disability of the Treasurer perform the duties and exercise the powers of the Treasurer and shall perform such other duties as the Board or the Treasurer shall prescribe.

ARTICLE V  
CONTRACTS, CHECKS, DRAFTS, BANK ACCOUNTS, ETC.

SECTION 5.01. EXECUTION OF DOCUMENTS. The Board shall designate the officers, employees and agents of the Corporation who shall have power to execute and deliver deeds, contracts, mortgages, bonds, debentures, checks, drafts and other orders for the payment of money and other documents for and in the name of the Corporation, and may authorize such officers, employees and agents to delegate such power (including authority to redelegate) by written instrument to other officers, employees or agents of the Corporation; and, unless so designated or expressly authorized by these By-laws, no officer or agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable pecuniarily for any purpose or to any amount.

SECTION 5.02. DEPOSITS. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation or otherwise as the Board or Treasurer or any other officer of the Corporation to whom power in this respect shall have been given by the Board shall select.

SECTION 5.03. PROXIES IN RESPECT OF STOCK OR OTHER SECURITIES OF OTHER CORPORATIONS. The Board shall designate the officers of the Corporation who shall have authority from time to time to appoint an agent or agents of the Corporation to exercise in the name and on behalf of the Corporation the powers and rights which the Corporation may have as the holder of stock or other securities in any other corporation, and to vote or consent in respect of such stock or securities; such designated officers may instruct the person or persons so appointed as to the manner of exercising such powers and rights; and such designated officers may execute or cause to be executed in the name and on behalf of

the Corporation and under its corporate seal, or otherwise, such written proxies, powers of attorney or other instruments as they may deem necessary or proper in order that the Corporation may exercise its said powers and rights.

ARTICLE VI  
SHARES AND THEIR TRANSFER; FIXING RECORD DATE

SECTION 6.01. CERTIFICATES FOR SHARES. Every owner of stock of the Corporation shall be entitled to have a certificate certifying the number and class of shares owned by him in the Corporation, which shall otherwise be in such form as shall be prescribed by the Board. Certificates of each class shall be issued in consecutive order and shall be numbered in the order of their issue, and shall be signed by, or in the name of, the Corporation by the Chairman of the Board, the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary.

SECTION 6.02. RECORD. A record (herein called the stock record) in one or more counterparts shall be kept Of the name of the person, firm or corporation owning the shares represented by each certificate for stock of the Corporation issued, the number of shares represented by each such certificate, the date thereof and, in the case of cancelation, the date of cancelation. Except as otherwise expressly required by law, the person in whose name shares of stock stand on the stock record of the Corporation shall be deemed the owner thereof for all purposes as regards the Corporation.

SECTION 6.03. REGISTRATION OF STOCK. Registration of transfers of shares of the Corporation shall be made only on the books of the Corporation upon request of the registered holder thereof, or of his attorney thereunto authorized by power of attorney duly executed and filed with

the Secretary of the Corporation, and upon the surrender of the certificate or certificates for such shares properly endorsed or accompanied by a stock power duly executed.

SECTION 6.04. ADDRESSES OF STOCKHOLDERS. Each stockholder shall designate to the Secretary of the Corporation an address at which notices of meetings and all other corporate notices may be served or mailed to him, and, if any stockholder shall fail to designate such address, corporate notices may be served upon him by mail directed to him at his post office address, if any, as the same appears on the share record books of the Corporation or at his last known post office address.

SECTION 6.05. LOST, DESTROYED AND MUTILATED CERTIFICATES. The Board or a committee designated thereby with power so to act may, in its discretion, cause to be issued a new certificate or certificates for stock of the Corporation in place of any certificate issued by it and reported to have been lost, destroyed or mutilated, upon the surrender of the mutilated certificates or, in the case of loss or destruction of the certificate, upon satisfactory proof of such loss or destruction, and the Board or such committee may, in its discretion, require the owner of the lost or destroyed certificate or his legal representative to give the Corporation a bond in such sum and with such surety or sureties as it may direct to indemnify the Corporation against any claim that may be made against it on account of the alleged loss or destruction of any such certificate.

SECTION 6.06. REGULATIONS. The Board may make such rules and regulations as it may deem expedient, not inconsistent with these By-laws, concerning the issue, transfer and registration of certificates for stock of the Corporation.

SECTION 6.07. FIXING DATE FOR DETERMINATION OF STOCKHOLDERS OF RECORD. 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 may fix, in advance, a record date, which shall not be more than 50 nor less than 10 days before the date of such meeting, nor more than 50 days prior to any other action. A determination of stockholders entitled to notice of or to vote at a meeting of the stockholders shall apply to any adjournment of the meeting; PROVIDED, HOWEVER, that the Board may fix a new record date for the adjourned meeting.

ARTICLE VII  
SEAL

The Board shall provide a corporate seal, which shall be in the form of a circle and shall bear the full name of the Corporation and the words and figures "Corporate Seal Delaware 2000".

ARTICLE VIII  
FISCAL YEAR

The fiscal year of the Corporation shall end on the 31st day of December in each year unless changed by resolution of the Board.

ARTICLE IX  
INDEMNIFICATION AND INSURANCE

SECTION 9.01. INDEMNIFICATION. (a) (i) Any person made, or threatened to be made, a party to any threatened, pending or completed action, suit or proceeding, whether



civil, criminal, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director, officer, employee or agent of the Corporation or any corporation which may be absorbed in a consolidation or merger with the Corporation and which if its separate existence had continued would have had power and authority to indemnify such person (a "Predecessor"), shall be indemnified by the Corporation and (ii) any person made, or threatened to be made, a party to such an action, suit or proceeding, by reason of the fact that he, his testator or intestate is or was serving as a director, officer, employee or agent at the request of the Corporation, of any other corporation or any partnership, joint venture, trust or other enterprise (an "Affiliate"), may, at the discretion of the Board, be indemnified by the Corporation, in each case, 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, or in connection with any appeal therein; provided that such person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, Predecessor or Affiliate, as the case may be, or with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct unlawful; except, in the case of an action, suit or proceeding by or in the right of the Corporation in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such director, officer, employee or agent is liable for negligence or misconduct in the performance of his duties, unless a court having jurisdiction shall determine that, despite such adjudication, such person is fairly and reasonably entitled to indemnification.

(b) Without limitation of any right conferred by paragraph (a) of this Section 9.01, (i) any person made, or threatened to be made, a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director officer, employee or agent of the Corporation or a Predecessor and is or was serving as a fiduciary of, or otherwise rendering services to, any employee benefit plan of, or relating to the Corporation or a Predecessor, shall be indemnified by the Corporation, and (ii) any person made, or threatened to be made, a party to such an action, suit or proceeding, by reason of the fact that he, his testator or intestate is or was serving as a director, officer, employee or agent at the request of the Corporation or an Affiliate, and is or was serving as a fiduciary of, or otherwise rendering services to, any employee benefit plan of, or relating to such Affiliate, may, at the discretion of the Board, be indemnified by the Corporation, in each case, against expenses (including attorneys' fees), judgments, fines, excise taxes and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, or in connection with any appeal therein; provided that such person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, Predecessor or Affiliate, as the case may be, or with respect to a criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful; except in the case of an action, suit or proceeding by or in the right of the Corporation in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such director, officer, employee or agent is liable for negligence or misconduct in the performance of his duties, unless a court having jurisdiction

shall determine that, despite such adjudication, such person is fairly and reasonably entitled to indemnification.

(c) The foregoing rights of indemnification shall not be deemed exclusive of any other rights to which any director, officer, employee or agent may be entitled or of any power of the Corporation apart from the provisions of this Section 9.01.

SECTION 9.02. INSURANCE FOR INDEMNIFICATION. The Corporation may purchase and maintain insurance for the indemnification of the Corporation and the directors, officers, employees and agents of the Corporation to the full extent and in the manner permitted by the applicable laws of the United States and the State of Delaware from time to time in effect.

ARTICLE X  
WAIVER OF NOTICE

Whenever any notice whatever is required to be given by these By-laws or the Certificate of Incorporation of the Corporation or the laws of the State of Delaware, the Person entitled thereto may, in person or by attorney thereunto authorized, in writing or by telegraph, cable or other form of recorded communication, waive such notice, whether before or after the meeting or other matter in respect of which such notice is given, and in such event such notice need not be given to such person and such waiver shall be deemed equivalent to such notice.

ARTICLE XI  
AMENDMENTS

Any By-law (including these By-laws) may be adopted, amended or repealed by the Board in any manner not inconsistent with the laws of the State of Delaware or the Certificate of Incorporation.

[Form of Senior Indenture]

WHITE MOUNTAINS INSURANCE GROUP, LTD.  
[and FUND AMERICAN COMPANIES, INC.]

and

BANK ONE, NATIONAL ASSOCIATION  
Trustee

SENIOR INDENTURE

Dated as of \_\_\_\_\_, 200\_

Providing for Issuance of Securities in Series

CROSS-REFERENCE TABLE

TIA SECTION	Indenture SECTION
310(a)(1)	609
(a)(2)	609
(a)(3)	N.A.
(a)(4)	N.A.
(b)	608; 610
(c)	N.A.
311(a)	613
(b)	613
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312(a)	701
(b)	702
(c)	702
313(a)	703
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(c)	703
(d)	703
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315(a)	601
(b)	602
(c)	602
(d)	602
(e)	602
316(a)(last sentence)	502
(a)(1)(A)	512
(a)(1)(B)	502
(a)(2)	N.A.
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317(a)(1)	503
(a)(2)	504
(b)	1003
318(a)	107

N.A. means Not Applicable.

Note: This Cross-Reference Table shall not, for any purpose, be deemed to be part of the Indenture.

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[To be modified as appropriate for issuances of securities by White Mountains Insurance Group, Ltd. or issuances of securities by Fund American Companies, Inc. which will be guaranteed by White Mountains Insurance Group, Ltd.]

## [Form of]

SENIOR INDENTURE (this "Indenture") between WHITE MOUNTAINS INSURANCE GROUP, LTD. a company existing under the laws of Bermuda (the ["Company"] ["Guarantor"]) having its principal office at 80 South Main Street, Hanover, New Hampshire 03755-2053, [FUND AMERICAN COMPANIES, INC., a Delaware corporation (the "Company") having its principal office at One Beacon Street, Boston, Massachusetts 02108-3100], and BANK ONE, NATIONAL ASSOCIATION, trustee (hereinafter called the "Trustee"), is made and entered into as of this \_\_ day of \_\_\_\_\_, 200\_.

## Recitals of the Company [and the Guarantor]

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

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

## Agreements of the Parties

To set forth or to provide for the establishment

of the terms and conditions upon which the Securities are and are to be authenticated, issued and delivered, and in consideration of the premises and the purchase of Securities by the Holders thereof, it is mutually covenanted and agreed as follows, for the equal and proportionate benefit of all Holders of the Securities or of a series thereof, as the case may be:

#### ARTICLE ONE

##### DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 101. DEFINITIONS. For all purposes of this Indenture and of any indenture supplemental hereto, except as otherwise expressly provided or unless the context otherwise requires:

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

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

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

(4) all references in this instrument to designated "Articles", "Sections" and other subdivisions are to the designated Articles, Sections

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and other subdivisions of this instrument as originally executed. The words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision; and

(5) "including" and words of similar import shall be deemed to be followed by "without limitation".

Certain terms, used principally in Article Six, are defined in that Article.

"Act", when used with respect to any Security- holder, has the meaning specified in Section 104.

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

"Authenticating Agent" means any Person authorized by the Trustee to authenticate Securities under Section 614.

"Board of Directors" means either the board of directors of the Company or any duly authorized committee of that board.

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

"Business Day" means each day which is neither a Saturday, Sunday or other day on which banking institutions in the pertinent Place or Places of Payment are authorized

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or required by law or executive order to be closed.

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

"Company" means the Person named as the "Company" in the first paragraph of this instrument until a successor replaces it and, thereafter, "Company" shall mean the successor and, for purposes of any provision contained



herein and required by the TIA, each other obligor on the Securities.

"Company Request", "Company Order" and "Company Consent" mean, respectively, a written request, order or consent signed in the name of the Company by its Chairman of the Board, President or a Vice President, and by its Treasurer, an Assistant Treasurer, Controller, an Assistant Controller, Secretary or an Assistant Secretary, and delivered to the Trustee.

"Corporate Trust Office" means the principal office of the Trustee in [ ] at which at any particular time its corporate trust business shall be principally administered, which office at the date hereof is located at [ ], except that with respect to the presentation of Securities for payment or for registration of transfer and exchange, such term shall mean the office or the agency of the Trustee in said city at which at any particular time its corporate agency business shall be conducted, which office at the date hereof is located at [ ].

"Debt" means indebtedness for money borrowed.

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

"Depository" means, unless otherwise specified by the Company pursuant to either Section 204 or 301, with respect to Securities of any series issuable or issued as a

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Global Security, The Depository Trust Company, New York, New York, or any successor thereto registered as a clearing agency under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation.

"Event of Default" has the meaning specified in Article Five.

"Global Security" means with respect to any series of Securities issued hereunder, a Security which is executed by the Company and authenticated and delivered by the Trustee to the Depository or pursuant to the Depository's instruction, all in accordance with this Indenture and an indenture supplemental hereto, if any, or Board Resolution and pursuant to a Company Request, which shall be registered in the name of the Depository or its nominee and which shall represent, and shall be denominated in an amount equal to the aggregate principal amount of, all of the Outstanding 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.

["Guarantee" means the irrevocable and unconditional guarantee by the Guarantor of any Security of any series of the Company authenticated and delivered pursuant to Article Twelve.]

["Guarantor" means the Person named as the "Guarantor" in the first paragraph of this instrument until a successor replaces it and, thereafter, "Guarantor" shall mean the successor.]

["Guarantor Board of Directors" means either the board of directors of the Guarantor or any duly authorized committee of that board.]

["Guarantor's Board Resolution" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Guarantor to have been duly adopted by the Guarantor Board of Directors.]

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["Guarantor Request", "Guarantor Order", "Guarantor Consent" means, respectively, a written request, order or consent signed in the name of the Guarantor by its Chairman of the Board, President or a Vice President, and by its Treasurer, an Assistant Treasurer, Controller, an Assistant Controller, Secretary or an Assistant Secretary, and delivered to the Trustee.]

"Holder", when used with respect to any Security, means a Securityholder.

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

"Interest", when used with respect to an Original Issue Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity.

"Interest Payment Date", when used with respect to any series of Securities, means the Stated Maturity of any installment of interest on those Securities.

"Lien" means any mortgage, pledge, security interest, encumbrance, charge or security interest of any kind.

"Maturity", when used with respect to any Securities, means the date on which the principal of any such Security becomes due and payable as therein

or herein provided, whether on a Repayment Date, at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

"Officers' Certificate" means[, with respect to the Company or the Guarantor,] a certificate signed by the Chairman of the Board, the President or a Vice President, and by the Treasurer, an Assistant Treasurer, the Controller, an Assistant Controller, the Secretary or an Assistant Secretary of the Company [or the Guarantor, as the case may be], and delivered to the Trustee. Wherever this

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Indenture requires that an Officers' Certificate be signed also by an engineer or an accountant or other expert, such engineer, accountant or other expert (except as otherwise expressly provided in this Indenture) may be in the employ of the Company [or the Guarantor, as the case may be], and shall be acceptable to the Trustee.

"Opinion of Counsel" means a written opinion of counsel, who may (except as otherwise expressly provided in this Indenture) be an employee of or of counsel to the Company [or the Guarantor]. Such counsel shall be acceptable to the Trustee, whose acceptance shall not be unreasonably withheld.

"Original Issue Discount Security" means (i) any Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof, and (ii) any other Security deemed an Original Issue Discount Security for United States Federal income tax purposes.

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

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

(ii) such Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent in trust for the Holders of such Securities; provided that, if such 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) such Securities in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, or which shall have been paid pursuant to the terms of Section 306

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(except with respect to any such Security as to which proof satisfactory to the Trustee is presented that such Security is held by a person in whose hands such Security is a legal, valid and binding obligation of the Company).

In determining whether the Holders of the requisite principal amount of such Securities Outstanding have given any request, demand, authorization, direction, notice, consent or waiver hereunder, (i) the principal amount of any Original Issue Discount Security that shall be deemed to be Outstanding shall be the amount of the principal thereof that would be due and payable as of the date of the taking of such action upon a declaration of acceleration of the Maturity thereof and (ii) Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding. In determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which a Responsible Officer assigned to the corporate trust department of the Trustee knows to be owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to act as owner with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor.

"Paying Agent" means any Person authorized by the Company to pay the principal of (and premium, if any) or interest on any Securities on behalf of the Company.

"Permitted Liens" means (i) any Lien upon Property to secure any part of the cost of development, construction, alteration, repair or improvement of such Property, or Debt incurred to finance such cost; (ii) any extension, renewal or replacement, in whole or in part, of any Lien referred to in the foregoing clause (i); (iii) any Lien relating to a sale and leaseback transaction permitted by Section 1007 (other than by operation of this clause (iii) of this definition); (iv) any Lien in favor of the Company[, the

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Guarantor] or any Subsidiary granted by the Company[, the Guarantor] or any Subsidiary in order to secure any intercompany obligations; (v) mechanic's, materialmen's, carriers' or other like Liens arising in the ordinary course of business (including construction of facilities) in respect of obligations which are not due or which are being contested in good faith; (vi) any Lien arising in connection with any legal proceeding which is being contested; (vii) Liens for taxes not yet subject to penalties for non-payment or which are being contested in good faith by appropriate proceedings; (viii) minor survey exceptions, minor encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, 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 Debt 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; (ix) pledges or deposits under workers' compensation laws, unemployment insurance laws or similar social security legislation; (x) any deposit to secure performance of letters of credit, bids, leases, statutory obligations, surety and appeal bonds, performance bonds or other obligations of a like nature in the ordinary course of business; (xi) any interest or title of a lessor under any lease entered into in the ordinary course of business; and (xii) Liens on assets of any Subsidiary which is required to be licensed as an insurer or reinsurer (or any Subsidiary of such Subsidiary) securing Debt incurred to provide short-term liquidity to facilitate claims payments in the event of catastrophe.

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

"Place of Payment" means with respect to any

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series of Securities issued hereunder the city or political subdivision so designated with respect to the series of Securities in question in accordance with the provisions of Section 301.

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

"Property" means any property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

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

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

"Regular Record Date" for the interest payable on any Security on any Interest Payment Date means the date specified in such Security as the Regular Record Date.

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

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

"Responsible Officer", when used with respect to the Trustee, means the chairman or vice-chairman of the board of directors, the chairman or vice-chairman of the executive committee of the board of directors, the president, any vice president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, the cashier, any assistant cashier, any senior trust officer or

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trust officer, the controller and any assistant controller or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

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

"Security Register" shall have the meaning specified in Section 305.

"Security Registrar" means the Person who keeps the Security Register specified in Section 305.

"Securityholder" means a Person in whose name a Security is registered in the Security Register.

"Special Record Date" for the payment of any Defaulted Interest (as defined in Section 307) means a date fixed by the Trustee pursuant to Section 307.

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

"Subsidiary" of any specified Person means any corporation, limited liability company, limited or general partnership, business trust or other business entity at least a majority of whose outstanding Voting Stock shall at the time be owned, directly or indirectly, by the specified Person or by one or more of its Subsidiaries, or both.

"Trust Indenture Act" or "TIA" means the Trust Indenture Act of 1939, as amended by the Trust Indenture

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Reform Act of 1990, as in force at the date as of which this instrument was executed except as provided in Section 905.

"Trustee" means the Person named as the Trustee in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean and include each Person who is then a Trustee hereunder.

If at any time there is more than one such Person, "Trustee" as used with respect to the Securities of any series shall mean the Trustee with respect to Securities of that series.

"U.S. Government Obligations" means securities that are (x) direct obligations of the United States of America 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 of America, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof.

"Vice President" when used with respect to [the Guarantor,] the Company or the Trustee means any vice president, whether or not designated by a number or a word or words added before or after the title "vice president", including, without limitation, an assistant vice president.

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

Section 102. COMPLIANCE CERTIFICATES AND OPINIONS. Upon any application or request by the Company

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

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (except for the written statement required by Section 1004) shall include

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

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

(3) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

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

Section 103. FORM OF DOCUMENTS DELIVERED TO TRUSTEE. In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion

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with respect to some matters and one or more other such Persons as to the other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

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

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

Section 104. ACTS OF SECURITYHOLDERS. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Securityholders or Securityholders of any series may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Securityholders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee, and, where it is hereby expressly required, to the Company [or the Guarantor or both of them]. If any Securities are denominated in coin or currency other than that of the United States, then for

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the purposes of determining whether the Holders of the requisite principal amount of Securities have taken any action as herein described, the principal amount of such Securities shall be deemed to be that amount of United States dollars that could be obtained for such principal amount on the basis of the spot rate of exchange into United States dollars for the currency in which such Securities are denominated (as evidenced to the Trustee by an Officers' Certificate) as of the date the taking of such action by the Holders of such requisite principal amount is evidenced to the Trustee as provided in the immediately preceding sentence. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Securityholders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 601) conclusive in favor of the Trustee[, the Guarantor] and the Company, if made in the manner provided in this Section.

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

(c) The ownership of Securities shall be proved by the Security Register.

(d) If the Company [or the Guarantor] shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other action, the Company [or the Guarantor, as the case may be,] may, at its option, by Board Resolution [or Guarantor's Board Resolution, as applicable], fix in advance a record date for

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the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other action, but the Company [or the Guarantor, as the case may be,] shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other action may be given before or after the record date, but only the Holders of record at the close of business on the record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of Securities Outstanding have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other action, and for that purpose the Securities Outstanding shall be computed as of the record date; provided that no such authorization, agreement or consent by the Holders on the record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

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

Section 105. NOTICES, ETC., TO TRUSTEE[, GUARANTOR] AND COMPANY. Any request, demand, authorization, direction, notice, consent, waiver or Act of Securityholders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Trustee by any Securityholder or by the Company [or the Guarantor] shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the Trustee at its Corporate Trust Office, or

(2) the Company [or the Guarantor] by the Trustee

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or by any Securityholder shall be sufficient for every purpose hereunder (except as provided in Section 501(4) or, in the case of a request for repayment, as specified in the Security carrying the right to repayment) if in writing and mailed, first-class postage prepaid, to the Company [or the Guarantor, as the case may be,] addressed to it at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee by the Company [or the Guarantor, as the case may be,].

Section 106. NOTICES TO SECURITYHOLDERS; WAIVER. Where this Indenture or any Security provides for notice to Securityholders of any event, such notice shall be sufficiently given (unless otherwise herein or in such Security expressly provided) if in writing and mailed, first-class postage prepaid, to each Securityholder affected by such event, at his address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Securityholders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Securityholder shall affect the sufficiency of such notice with respect to other Securityholders. Where this Indenture or any Security provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Securityholders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

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

Section 107. CONFLICT WITH TRUST INDENTURE ACT.

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If any provision hereof limits, qualifies or conflicts with the duties imposed by any of Sections 310 to 317, inclusive, of the Trust Indenture Act through the operation of Section 318(c) thereof, such imposed duties shall control.

Section 108. EFFECT OF HEADINGS AND TABLE OF CONTENTS. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 109. SUCCESSORS AND ASSIGNS. All covenants and agreements in this Indenture by [each of] the Company [and the Guarantor] shall bind its successors and assigns, whether so expressed or not.

Section 110. SEPARABILITY CLAUSE. In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 111. BENEFITS OF INDENTURE. Nothing in this Indenture or in any Securities, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any Authenticating Agent or Paying Agent, the Security Registrar and the Holders of Securities (or such of them as may be affected thereby), any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 112. GOVERNING LAW. This Indenture shall be construed in accordance with and governed by the laws of the State of New York.

Section 113. COUNTERPARTS. This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 114. JUDGMENT CURRENCY. The Company [and the Guarantor each] agrees, to the fullest extent that it

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may effectively do so under applicable law, that (a) if for the purpose of obtaining judgment in any court it is necessary to convert the sum due in respect of the principal of, or premium or interest, if any, on the Securities of any series (the "Required Currency") into a currency in which a judgment will be rendered (the "Judgment Currency"), the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in New York City the Required Currency with the Judgment Currency on the Banking Day (as defined below) immediately preceding the date on which final unappealable judgment is given and (b) its obligations under this Indenture to make payments in the Required Currency (i) shall not be discharged or satisfied by any tender, or any recovery pursuant to any judgment (whether or not entered in accordance with subsection (a)), in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the actual receipt, by the payee, of the full amount of the Required Currency expressed to be payable in respect of such payments, (ii) shall be enforceable as an alternative or additional cause of action for the purpose of recovering in the Required Currency the amount, if any, by which such actual receipt shall fall short of the full amount of the Required Currency so expressed to be payable and (iii) shall not be affected by judgment being obtained for any other sum due under this Indenture. For purposes of the foregoing, "Banking Day" means any day except a Saturday, Sunday or a legal holiday in New York City or a day on which banking institutions in New York City are authorized or required by law or executive order to close.

## ARTICLE TWO

### SECURITY FORMS

Section 201. FORMS GENERALLY. The Securities shall have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon, as may be required to comply with applicable laws or regulations or with the rules of any securities exchange, or as may, consistently herewith, be

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determined by the officers executing such Securities, as evidenced by their execution of the Securities. Any portion of the text of any Security may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Security.

The definitive Securities shall be printed, lithographed or engraved or produced by any combination of these methods on steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities, subject, with respect to the Securities of any series, to the rules of any securities exchange on which such Securities are listed.

Section 202. FORMS OF SECURITIES. Each Security shall be in one of the forms approved from time to time by or pursuant to a Board Resolution, or established in one or more indentures supplemental hereto. Prior to the delivery of a Security to the Trustee for authentication in any form approved by or pursuant to a Board Resolution, the Company shall deliver to the Trustee the Board Resolution by or pursuant to which such form of Security has been approved, which Board Resolution shall have attached thereto a true and correct copy of the form of Security which has been approved thereby or, if a Board Resolution authorizes a specific officer or officers to approve a form of Security, a certificate of such officer or officers approving the form of Security attached thereto. Any form of Security approved by or pursuant to a Board Resolution must be acceptable as to form to the Trustee, such acceptance to be evidenced by the Trustee's authentication of Securities in that form or a certificate signed by a Responsible Officer of the Trustee and delivered to the Company.

[Each Security shall bear a notation of Guarantee in substantially the form set forth in Section 205. Notwithstanding the foregoing, the notation of Guarantee to be endorsed on the Securities of any series may have such appropriate insertions, omissions, substitutions and other corrections from the form thereof referred to above as are required or permitted by this Indenture

letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may, consistently herewith, be determined by the officers delivering the same, in each case as evidenced by such delivery.]

Section 203. FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION. The form of Trustee's Certificate of Authentication for any Security issued pursuant to this Indenture shall be substantially as follows:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

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

[ \_\_\_\_\_ ],  
as Trustee,

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

Section 204. SECURITIES ISSUABLE IN THE FORM OF A GLOBAL SECURITY.

(a) If the Company shall establish pursuant to Sections 202 and 301 that the 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 Company shall execute and the Trustee or its agent shall, in accordance with Section 303 and the Company Request delivered to the Trustee or its agent thereunder, 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 Securities of such series to be represented by such Global Security or Securities, or such portion thereof as the Company shall specify in a Company Request, (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 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 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."

(b) Notwithstanding any other provisions of this Section 204 or of Section 305, 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 individual Securities, a Global Security may be transferred, in whole but not in part and in the manner provided in Section 305, only to a nominee of the Depository for such Global Security, or to the Depository, or a successor Depository for such Global Security selected or approved by the Company, or to a nominee of such successor Depository.

(c) (i) If at any time the Depository for a Global Security notifies the Company that it is unwilling or unable to continue as Depository for such Global Security or if at any time the Depository for the Securities for such series ceases to be a clearing agency registered under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation, the Company shall appoint a successor Depository with respect to such Global Security. If a successor Depository for such Global Security is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such ineligibility, the Company will execute, and the Trustee or its agent, upon receipt of a Company Request for the authentication and delivery of individual Securities of such series in exchange for such Global Security, will authenticate and deliver, individual Securities of such series of like tenor and terms in an aggregate principal amount equal to the principal amount of the Global Security in exchange for such Global Security.

(ii) The Company may at any time and in its sole

discretion determine that the 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 Company will execute, and the Trustee, upon receipt of a Company Request for the authentication and delivery of individual Securities of such series in exchange in whole or in part for such Global Security, will authenticate and deliver individual Securities of such series of like tenor and terms in definitive form in an aggregate principal amount equal to the principal amount of such Global Security or Securities representing such series or portion thereof in exchange for such Global Security or Securities.



(iii) If specified by the Company pursuant to Sections 202 and 301 with respect to Securities issued or issuable in the form of a Global Security, the Depositary for such Global Security may surrender such Global Security in exchange in whole or in part for individual Securities of such series of like tenor and terms in definitive form on such terms as are acceptable to the Company and such Depositary. Thereupon the Company shall execute, and the Trustee or its agent shall authenticate and deliver, without service charge, (1) to each Person specified by such Depositary a new 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 Person's beneficial interest in the Global Security; and (2) to such Depositary 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 Securities delivered to the Holders thereof.

(iv) In any exchange provided for in any of the preceding three paragraphs, the Company will execute and the Trustee or its agent will authenticate and deliver individual Securities in definitive registered form in authorized denominations. Upon the exchange of the entire principal amount of a Global Security for individual Securities, such Global Security shall be canceled by the Trustee or its agent. Except as provided in the preceding paragraph, Securities issued in exchange for a Global Security pursuant to this Section shall be registered in

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such names and in such authorized denominations as the Depositary for such Global Security, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee or the Security Registrar. The Trustee or the Security Registrar shall deliver such Securities to the Persons in whose names such Securities are so registered.

[SECTION 205. FORM OF NOTATION OF GUARANTEE. The form of notation of Guarantee to be endorsed on any Security issued pursuant to this Indenture shall be substantially as follows:

#### NOTATION OF GUARANTEE

White Mountains Insurance Group, Ltd., a company existing under the law of Bermuda (the "Guarantor", which term includes any successor thereto under the Indenture (the "Indenture") referred to in the Security on which this notation is endorsed) has unconditionally guaranteed, pursuant to the terms of the Guarantee contained in Article Twelve of the Indenture, the due and punctual payment of the principal of and any premium and interest on this Security, when and as the same shall become due and payable, whether at the Stated Maturity, by declaration of acceleration, call for redemption, early repayment or otherwise, in accordance with the terms of this Security and the Indenture.

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

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

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WHITE MOUNTAINS INSURANCE GROUP, LTD.

by

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

ARTICLE THREE

THE SECURITIES

Section 301. GENERAL TITLE; GENERAL LIMITATIONS; ISSUABLE IN SERIES; TERMS OF PARTICULAR SERIES. The aggregate principal amount of Securities which may be authenticated and delivered and Outstanding under this Indenture is not limited.

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

Each series of Securities shall be created either by or pursuant to a Board Resolution or by or pursuant to an indenture supplemental hereto. The Securities of each such series may bear such date or dates, be payable at such place or places, have such Stated Maturity or Maturities, be issuable at such premium over or discount from their face value, bear interest at such rate or

rates (which may be fixed or floating), from such date or dates, payable in such installments and on such dates and at such place or places to the Holders of Securities registered as such on such Regular Record Dates, or may bear no interest, and may be redeemable or repayable at such Redemption Price or Prices or Repayment Price or Prices, as the case may be, whether at the option of the Holder or otherwise, and upon such terms, all as shall be provided for in or pursuant to the Board

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Resolution or in or pursuant to the supplemental indenture creating that series. There may also be established in or pursuant to a Board Resolution or in or pursuant to a supplemental indenture prior to the issuance of Securities of each such series, provision for:

(1) the exchange or conversion of the Securities of that series, at the option of the Holders thereof, for or into new Securities of a different series or other securities or other property of the Company[, the Guarantor] or another Person, including shares of common stock, preferred stock, indebtedness or securities of any kind of the Company[, the Guarantor], any Subsidiary of the Company [or of the Guarantor] or of any other Person or securities directly or indirectly convertible into or exchangeable for any such securities;

(2) a sinking or purchase fund or other analogous obligation;

(3) if other than U.S. dollars, the currency or currencies or units based on or related to currencies (including European Currency Units) in which the Securities of such series shall be denominated and in which payments of principal of, and any premium and interest on, such Securities shall or may be payable;

(4) if the principal of (and premium, if any) or interest, if any, on the Securities of such series are to be payable, at the election of the Company or a holder thereof, in a currency or currencies or units based on or related to currencies (including European Currency Units) other than that in which the Securities are stated to be payable, the period or periods within which, and the terms and conditions upon which, such election may be made;

(5) if the amount of payments of principal of (and premium, if any) or interest, if any, on the Securities of such series may be determined with reference to an index based on (i) a currency or currencies or units

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based on or related to currencies (including European Currency Units) other than that in which the Securities are stated to be payable, (ii) changes in the price of one or more other securities or groups or indexes of securities or (iii) changes in the prices of one or more commodities or groups or indexes of commodities, or any combination of the foregoing, the manner in which such amounts shall be determined;

(6) if the aggregate principal amount of the Securities of that series is to be limited, such limitations, and the maturity date of the principal amount of the Securities of that series (which may be fixed or extendible), and the rate or rates (which may be fixed or floating) per annum at which the Securities of the series will bear interest, if any, or the method of determining such rate or rates, and the payment dates and record dates relating to such interest payments;

(7) the exchange of Securities of that series, at the option of the Holders thereof, for other Securities of the same series of the same aggregate principal amount of a different authorized kind or different authorized denomination or denominations, or both;

(8) the appointment by the Trustee of an Authenticating Agent in one or more places other than the location of the office of the Trustee with power to act on behalf of the Trustee and subject to its direction in the authentication and delivery of the Securities of any one or more series in connection with such transactions as shall be specified in the provisions of this Indenture or in or pursuant to the Board Resolution or the supplemental indenture creating such series;

(9) the percentage of their principal amount at which such securities will be issued, and the portion of the principal amount of securities of the series, if other than the total principal amount thereof, which shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 502 or provable in bankruptcy pursuant to Section 504;

(10) any Event of Default with respect to the

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Securities of such series, if not set forth herein and any additions, deletions or other changes to the Events of Default set forth herein that shall be applicable to the Securities of such series (including a

provision making any Event of Default set forth herein inapplicable to the Securities of that series);

(11) any covenant solely for the benefit of the Securities of such series and any additions, deletions or other changes to the provisions of Article Ten or any definitions relating to such Article that shall be applicable to the Securities of such series (including a provision making any Section of such Article inapplicable to the Securities of such series);

(12) the applicability of Section 402(b) of this Indenture to the Securities of such series;

(13) if the Securities of the series shall be issued in whole or in part in the form of a Global Security or Global Securities, the terms and conditions, if any, upon which such Global Security or Global Securities may be exchanged in whole or in part for other individual Securities; and the Depositary for such Global Security or Global Securities (if other than the Depositary specified in Section 101 hereof);

(14) the subordination of the Securities of such series to any other indebtedness of the Company [and the Guarantor], including without limitation, the Securities of any other series; and

(15) any other terms of the series, which shall not be inconsistent with the provisions of this Indenture, all upon such terms as may be determined in or pursuant to a Board Resolution or in or pursuant to a supplemental indenture with respect to such series. All Securities of the same series shall be substantially identical in tenor and effect, except as to denomination.

The form of the Securities of each series shall be established pursuant to the provisions of this Indenture in or pursuant to the Board Resolution or in or pursuant to the supplemental indenture creating such series. The Securities of each series shall be distinguished from the Securities of each other series in such manner, reasonably satisfactory to

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the Trustee, as the Board of Directors may determine.

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

Any terms or provisions in respect of the Securities of any series issued under this Indenture may be determined pursuant to this Section by providing in a Board Resolution or supplemental indenture for the method by which such terms or provisions shall be determined.

Section 302. DENOMINATIONS. The Securities of each series shall be issuable in such denominations and currency as shall be provided in the provisions of this Indenture or in or pursuant to the Board Resolution or the supplemental indenture creating such series. In the absence of any such provisions with respect to the Securities of any series, the Securities of that series shall be issuable only in fully registered form in denominations of \$1,000 and any integral multiple thereof.

Section 303. EXECUTION, AUTHENTICATION AND DELIVERY AND DATING. The Securities shall be executed on behalf of the Company by its Chairman of the Board, its President, one of its Vice Presidents or its Treasurer. The signature of any of these officers on the Securities may be manual or facsimile.

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

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities executed by the Company to the Trustee for authentication; and make available for the Trustee

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shall, upon Company Order, authenticate and delivery such Securities as in this Indenture provided and not otherwise.

Prior to any such authentication and delivery, the Trustee shall be entitled to receive, in addition to any Officers' Certificate and Opinion of Counsel required to be furnished to the Trustee pursuant to Section 102, and the Board Resolution and any certificate relating to the issuance of the series of Securities required to be furnished pursuant to Section 202, an Opinion of Counsel stating that:

(1) all instruments furnished to the Trustee conform to the requirements of the Indenture and constitute sufficient authority hereunder for the Trustee to authenticate and deliver such Securities;

(2) the form and terms (or in connection with the issuance of

medium-term Securities under Section 311, the manner of determining the terms) of such Securities have been established in conformity with the provisions of this Indenture;

(3) all laws and requirements with respect to the execution and delivery by the Company of such Securities have been complied with, the Company has the corporate power to issue such Securities and such Securities have been duly authorized and delivered by the Company and, assuming due authentication and delivery by the Trustee, constitute legal, valid and binding obligations of the Company enforceable in accordance with their terms (subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium or other laws and legal principles affecting creditors' rights generally from time to time in effect and to general equitable principles, whether applied in an action at law or in equity) and entitled to the benefits of this Indenture, equally and ratably with all other Securities, if any, of such series Outstanding; and

(4) such other matters as the Trustee may reasonably request;

and, if the authentication and delivery relates to a new series of Securities created by an indenture supplemental

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hereto, also stating that all laws and requirements with respect to the form and execution by the Company of the supplemental indenture with respect to that series of Securities have been complied with, the Company has corporate power to execute and deliver any such supplemental indenture and has taken all necessary corporate action for those purposes and any such supplemental indenture has been executed and delivered and constitutes the legal, valid and binding obligation of the Company enforceable in accordance with its terms (subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium or other laws and legal principles affecting creditors' rights generally from time to time in effect and to general equitable principles, whether applied in an action at law or in equity).

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

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

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

Section 304. TEMPORARY SECURITIES. Pending the preparation of definitive Securities of any series, the Company may execute, and, upon receipt of the documents required by Section 303, together with a Company Order, the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination,

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substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

If temporary Securities of any series are issued, the Company will cause definitive Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company in a Place of Payment, without charge to the Holder; and upon surrender for cancellation of any one or more temporary Securities the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of such series of authorized denominations and of like tenor and terms. Until so exchanged the temporary Securities of such series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

Section 305. REGISTRATION, TRANSFER AND EXCHANGE. The Company shall keep or cause to be kept a register (herein sometimes referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities, or of Securities of a particular series, and for transfers of Securities or of Securities of such series. Any such register shall be in written form or in any other form capable of being converted into written form within a reasonable time. At all reasonable times the information contained in such register or registers shall be available for inspection by the Trustee at the office or agency to be maintained by the Company as provided in Section 1002.

Subject to Section 204, upon surrender for transfer of any Security of any series at the office or agency of the Company in a Place of Payment, the Company shall execute, and the Trustee shall authenticate and make available for delivery, in the name of the designated transferee or transferees, one or more new Securities of such series of any authorized denominations, of a like aggregate principal amount and Stated Maturity and of like

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tenor and terms.

Subject to Section 204, at the option of the Holder, Securities of any series may be exchanged for other Securities of such series of any authorized denominations, of a like aggregate principal amount and Stated Maturity and of like tenor and terms, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and make available for delivery, the Securities which the Securityholder making the exchange is entitled to receive.

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

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

Unless otherwise provided in the Security to be transferred or exchanged, no service charge shall be made on any Securityholder for any transfer or exchange of Securities, but the Company may (unless otherwise provided in such Security) require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Securities, other than exchanges pursuant to Section 304 or 906 not involving any transfer.

The Company shall not be required (i) to issue, transfer or exchange any Security of any series during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Securities of such series selected for redemption under Section 1103 and ending at the close of business on the date

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of such mailing, or (ii) to transfer or exchange any Security so selected for redemption in whole or in part, except for the portion of such Security not so selected for redemption.

None of the Company, [the Guarantor,] the Trustee, any agent of the Trustee, any Paying Agent or the Security Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

The Company initially appoints the Trustee to act as Security Registrar for the Securities on its behalf. The Company may at any time and from time to time authorize any Person to act as Security Registrar in place of the Trustee with respect to any series of Securities issued under this Indenture.

Section 306. MUTILATED, DESTROYED, LOST AND STOLEN SECURITIES. If (i) any mutilated Security is surrendered to the Trustee, or the Company[, the Guarantor] and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Security, and (ii) there is delivered to the Company[, the Guarantor] and the Trustee such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Company[, the Guarantor] or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and upon its request the Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Security, a new Security of like tenor, series, Stated Maturity and principal amount, bearing a number not contemporaneously Outstanding.

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

Upon the issuance of any new Security under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other

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expenses (including the fees and expenses of the Trustee) connected therewith.

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

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

Section 307. PAYMENT OF INTEREST; INTEREST RIGHTS PRESERVED. Unless otherwise provided with respect to such Security pursuant to Section 301, interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

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

(1) The Company [or the Guarantor] may elect to make payment of any Defaulted Interest to the Persons in whose names any such Securities (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of

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such Defaulted Interest, which shall be fixed in the following manner. The Company [or the Guarantor, as the case may be,] shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each such Security and the date of the proposed payment, and at the same time the Company [or the Guarantor, as the case may be,] shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company [or the Guarantor, as the case may be,] of such Special Record Date and, in the name and at the expense of the Company [or the Guarantor], shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to the Holder of each such Security at his address as it appears in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names such Securities (or their respective Predecessor Securities) are registered on such Special Record Date and shall no longer be payable pursuant to the following Clause (2).

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

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If any installment of interest the Stated Maturity of which is on or prior to the Redemption Date for any Security called for redemption pursuant to Article Eleven is not paid or duly provided for on or prior to the Redemption Date in accordance with the foregoing provisions of this Section, such interest shall be payable as part of the Redemption Price of such Securities.

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

Section 308. PERSONS DEEMED OWNERS. The Company, [the Guarantor,] the Trustee and any agent of the Company[, the Guarantor] or the Trustee may treat the Person in whose name any Security is registered in the Security Register as the owner of such Security for the purpose of receiving payment of principal of (and premium, if any), and (subject to Section 307) interest on, such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, [the Guarantor,] the Trustee nor any agent of the Company [, the Guarantor] or the Trustee shall be affected by

notice to the contrary.

Section 309. CANCELLATION. All Securities surrendered for payment, redemption, transfer, conversion or exchange or credit against a sinking fund shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and, if not already canceled, shall be promptly canceled by it. The Company [or the Guarantor] may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company [or the Guarantor] may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly canceled by the Trustee. No Security shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section, except as expressly permitted by this Indenture. The Trustee shall return all

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canceled Securities to the Company.

Section 310. COMPUTATION OF INTEREST. Unless otherwise provided as contemplated in Section 301, interest on the Securities shall be calculated on the basis of a 360-day year of twelve 30-day months.

Section 311. MEDIUM-TERM SECURITIES. Notwithstanding any contrary provision herein, if all Securities of a series are not to be originally issued at one time, it shall not be necessary for the Company to deliver to the Trustee an Officers' Certificate, Board Resolution, supplemental indenture, Opinion of Counsel or Company Request otherwise required pursuant to Sections 202, 301 and 303 at or prior to the time of authentication of each 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 Security of such series to be issued; provided that any subsequent request by the Company to the Trustee to authenticate Securities of such series upon original issuance shall constitute a representation and warranty by the Company that as of the date of such request, the statements made in the Officers' Certificate delivered pursuant to Section 102 shall be true and correct as if made on such date.

An Officers' Certificate, supplemental indenture or Board Resolution delivered by the Company to the Trustee in the circumstances set forth in the preceding paragraph may provide that 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 Officers' Certificate, Board Resolution or supplemental indenture (any such telephonic instructions to be confirmed promptly in writing by such persons) and that such persons are authorized to determine, consistent with such Officers' Certificate, supplemental indenture or Board Resolution, such terms and conditions of said Securities as are specified in such Officers' Certificate, supplemental indenture or Board Resolution.

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Section 312. CUSIP NUMBERS. The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; PROVIDED that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the "CUSIP" numbers.

SECTION 313. GLOBAL SECURITIES. (a) Each Global Security authenticated under this Indenture shall be registered in the name of the Depository designated by the Company for such Global Security or a nominee thereof and delivered to such Depository or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.

(b) Notwithstanding any other provision of this Indenture, no Global Security may be exchanged in whole or in part for Securities registered, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depository for such Global Security or a nominee thereof unless (i) such Depository (A) has notified the Company that it is unwilling or unable to continue as Depository for such Global Security or (B) has ceased to be a clearing agency registered as such under the Exchange Act or announces an intention permanently to cease business or does in fact do so or (ii) there shall have occurred and be continuing an Event of Default with respect to such Global Security.

(c) If any Global Security is to be exchanged for other Securities or canceled in whole, it shall be surrendered by or on behalf of the Depository or its nominee to the Trustee, as Security Registrar, for exchange or cancellation, as provided in this Article Three. If any Global Security is to be exchanged for other Securities or canceled in part, or if another Security is to be exchanged in whole or in part for a beneficial interest in any Global Security, in each case, as provided in Section 305, then

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either (i) such Global Security shall be so surrendered for exchange or cancellation, as provided in this Article Three or (ii) the principal amount thereof shall be reduced or increased by an amount equal to the portion thereof to be so exchanged or canceled, or equal to the principal amount of such other Security to be so exchanged for a beneficial interest therein, as the case may be, by means of an appropriate adjustment made on the records of the Trustee, as Security Registrar, whereupon the Trustee, in accordance with the Applicable Procedures, shall instruct the Depository or its authorized representative to make a corresponding adjustment to its records. Upon any such surrender or adjustment of a Global Security, the Trustee shall, subject to Section 305 and as otherwise provided in this Article Three authenticate and deliver any Securities issuable in exchange for such Global Security (or any portion thereof) to or upon the order of, and registered in such names as may be directed by, the Depository or its authorized representative. Upon the request of the Trustee in connection with the occurrence of any of the events specified in the preceding paragraph, the Company shall promptly make available to the Trustee a reasonable supply of Securities that are not in the form of Global Securities. The Trustee shall be entitled to rely upon any order, direction or request of the Depository or its authorized representative which is given or made pursuant to this Article Three if such order, direction or request is given or made in accordance with the Applicable Procedures.

(d) Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security or any portion thereof, whether pursuant to this Article Three or otherwise, shall be authenticated and delivered in the form of, and shall be, a registered Global Security, unless such Security is registered in the name of a Person other than the Depository for such Global Security or a nominee thereof, in which case such Registered Security shall be authenticated and delivered in definitive, fully registered form, without interest coupons.

(e) The Depository or its nominee, as registered

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owner of a Global Security, shall be the Holder of such Global Security for all purposes under the Indenture and the Registered Securities, and owners of beneficial interests in a Global Security shall hold such interests pursuant to the Applicable Procedures. Accordingly, any such owner's beneficial interest in a Global Security will be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depository or its nominee or its Agent Members and such owners of beneficial interests in a Global Security will not be considered the owners or holders thereof.

#### ARTICLE FOUR

##### SATISFACTION AND DISCHARGE OF INDENTURE; DEFEASANCE; UNCLAIMED MONEYS

SECTION 401. APPLICABILITY OF ARTICLE. If, pursuant to Section 301, provision is made for the defeasance of Securities of a series and if the Securities of such series are denominated and payable only in U.S. dollars (except as provided pursuant to Section 301), then the provisions of this Article Four relating to defeasance of Securities shall be applicable except as otherwise specified pursuant to Section 301 for Securities of such series. Defeasance provisions, if any, for Securities denominated in a currency other than U.S. dollars may be specified pursuant to Section 301.

##### SECTION 402. SATISFACTION AND DISCHARGE OF INDENTURE; DEFEASANCE.

(a) If at any time (i) the Company [or the Guarantor] shall have delivered to the Trustee for cancellation all Securities of any series theretofore authenticated and delivered (other than (1) any Securities of such series which shall have been destroyed, lost or stolen and which shall have been replaced or paid as provided in Section 306 and (2) Securities for whose payment money has theretofore been deposited in trust and thereafter repaid to the Company [or the Guarantor] as provided in Section 405) or (ii) all 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

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the Company shall deposit with the Trustee as trust funds the entire amount in the currency in which such Securities are denominated (except as otherwise provided pursuant to Section 301) sufficient (in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee) without consideration of any reinvestment and after payment of all taxes or other charges and assessments in respect thereof payable by the Trustee, to pay at maturity or upon redemption all 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, no default with respect to the Securities has occurred and is continuing on the date of such deposit, such deposit does not result in a breach or violation of, or constitute a default under, the Indenture or any other agreement or instrument to which the Company [or the Guarantor] is a party and the Company delivers an Officers' Certificate and an Opinion of Counsel each stating that such conditions have been complied with and if in either case the Company [or the Guarantor] shall also pay or cause to be paid all other sums payable



hereunder by the Company [or the Guarantor], then this Indenture shall cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of such Securities herein expressly provided for and rights to receive payments of principal of, and premium, if any, and interest on, such Securities) with respect to the Securities of such series, and the Trustee, on demand of the Company [or the Guarantor], shall execute proper instruments acknowledging satisfaction of and discharging this Indenture.

(b) Subject to Sections 402(c), 403 and 407, the Company at any time may terminate, with respect to Securities of a particular series, (i) all the Company's [and the Guarantor's] obligations under the Securities of such series and this Indenture with respect to the Securities of such series ("legal defeasance option") or (ii) the Company's [and the Guarantor's] obligations with respect to the Securities of such series under Section 1006 and 1007 and, to the extent specified pursuant to Section

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301, any other covenant applicable to the Securities of such series ("covenant defeasance option"). The Company [or the Guarantor] may exercise its legal defeasance option notwithstanding the prior exercise of the covenant defeasance option.

If the Company exercises the legal defeasance option, payment of the Securities of the defeased series may not be accelerated because of an Event of Default. If the Company exercises the covenant defeasance option, payment of the Securities may not be accelerated because of an Event of Default specified in Section 501(4) to the extent it relates to Section 1006 or 1007.

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

(c) Notwithstanding clause (a) above and the exercise of the legal defeasance option in clause (b) above, the Company's [and the Guarantor's] obligations in Sections 305, 306, 405, 406, 407, 607, 701 and 1002 shall survive until the Securities of the defeased series have been paid in full. Thereafter, the Company's [and the Guarantor's] obligations in Sections 607, 405 and 406 shall survive.

SECTION 403. CONDITIONS OF DEFEASANCE. The Company may exercise the legal defeasance option or the covenant defeasance option with respect to Securities of a particular series only if:

(1) the Company [or the Guarantor] 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 Securities of such series to maturity or redemption, as the case may be;

(2) the Company [or the Guarantor] delivers to the Trustee a certificate from a nationally recognized firm of independent public 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

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amounts as will be sufficient to pay the principal, premium, if any, and interest when due on all the 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 501(5) or (6) with respect to the Company 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 the Guarantor];

(6) the Company [or the Guarantor] 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 Company [or the Guarantor] shall have delivered to the Trustee an Opinion of Counsel stating that (i) the Company 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 to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of 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 Company [or

the Guarantor] shall have delivered to the Trustee an Opinion of Counsel to the

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effect that the Holders of 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 Company [or the Guarantor] delivers to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Securities of such series as contemplated by this Article Four have been complied with.

Before or after a deposit, the Company [or the Guarantor] may make arrangements satisfactory to the Trustee for the redemption of Securities of such series at a future date in accordance with Article Eleven.

SECTION 404. APPLICATION OF TRUST MONEY. The Trustee shall hold in trust money or U.S. Government Obligations deposited with it pursuant to this Article Four. 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 Securities of the defeased series.

SECTION 405. REPAYMENT TO COMPANY [OR GUARANTOR]. The Trustee and any paying agent shall promptly turn over to the Company [or the Guarantor] 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 Company [or the Guarantor] 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 Company [or the Guarantor] for payment as general creditors and all liability of the Trustee or such paying agent with respect to such money shall thereupon cease.

SECTION 406. INDEMNITY FOR U.S. GOVERNMENT OBLIGATIONS. The Company [and the Guarantor (without

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duplication)] shall pay and shall indemnify the Trustee 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 407. REINSTATEMENT. If the Trustee or any paying agent is unable to apply any money or U.S. Government Obligations in accordance with this Article Four 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 Company's [and the Guarantor's] obligations under this Indenture and the Securities of the defeased series shall be revived and reinstated as though no deposit had occurred pursuant to this Article Four 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 Four.

## ARTICLE FIVE

### REMEDIES

Section 501. EVENTS OF DEFAULT. "Event of Default", wherever used herein, means with respect to any series of Securities any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), unless such event is either inapplicable to a particular series or it is specifically deleted or modified in the supplemental indenture creating such series of Securities or in the form of Security for such series:

(1) default in the payment of any interest upon any Security of that series when it becomes due and payable, and continuance of such default for a period of 30 days; or

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

(3) default in the payment of any sinking or purchase fund or analogous obligation when the same becomes due by the terms of the Securities of such series; or

(4) default in the performance, or breach, of any covenant or

warranty of the Company [or the Guarantor] in this Indenture in respect of the Securities of such series (other than a covenant or warranty in respect of the Securities of such series a default in the performance of which or the breach of which is else where in this Section specifically dealt with), all of such covenants and warranties in the Indenture which are not expressly stated to be for the benefit of a particular series of Securities being deemed in respect of the Securities of all series for this purpose, and continuance of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to the Company [and the Guarantor] by the Trustee or to the Company[, the Guarantor] and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of such series, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(5) the entry of an order for relief against the Company [or the Guarantor] under the Federal Bankruptcy Code by a court having jurisdiction in the premises or a decree or order by a court having jurisdiction in the premises adjudging the Company [or the Guarantor] a bankrupt or insolvent under any other applicable Federal, State or foreign law, or the entry of a decree or order approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company [or the Guarantor] under the Federal Bankruptcy Code or any other

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applicable Federal, State or foreign law (other than a reorganization under a foreign law that does not relate to insolvency), or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company [or the Guarantor] or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or

(6) the consent by the Company [or the Guarantor] to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the Federal Bankruptcy Code or any other applicable Federal, State or foreign law (other than a reorganization under a foreign law that does not relate to insolvency), or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company [or the Guarantor] or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company [or the Guarantor] in furtherance of any such action; or

(7) any other Event of Default provided in the supplemental indenture under which such series of Securities is issued or in the form of Security for such series.

Section 502. ACCELERATION OF MATURITY; RESCISSION AND ANNULMENT. If an Event of Default described in paragraph (1), (2), (3), (4) or (7) (if the Event of Default under paragraph (4) or (7) is with respect to less than all series of Securities then Outstanding) of Section 501 occurs and is continuing with respect to any series, then and in each and every such case, unless the principal of all the Securities of such series shall have already become due and payable, either the Trustee or the Holders of not less than 25% in aggregate principal amount of the Securities of such series then Outstanding hereunder (each such series acting as a separate class), by notice in writing to the Company [and the Guarantor] (and to the Trustee if given by

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Holders), may declare the principal amount (or, if the Securities of such series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of that series) of all the Securities of such series then Outstanding and all accrued interest thereon to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Securities of such series contained to the contrary notwithstanding. If an Event of Default described in paragraph (4) or (7) (if the Event of Default under paragraph (4) or (7) is with respect to all series of Securities then Outstanding), (5) or (6) of Section 501 occurs and is continuing, then and in each and every such case, unless the principal of all the Securities shall have already become due and payable, either the Trustee or the Holders of not less than 25% in aggregate principal amount of all the Securities then Outstanding hereunder (treated as one class), by notice in writing to the Company [and the Guarantor] (and to the Trustee if given by Holders), may declare the principal amount (or, if any Securities are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms thereof) of all the Securities then Outstanding and all accrued interest thereon, if any, 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 Securities contained to the contrary notwithstanding.

At any time after such a declaration of acceleration has been made with respect to the Securities of any series and before a judgment or decree for

payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in principal amount of the Outstanding Securities of such series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if

(1) the Company [or the Guarantor] has paid or deposited with the Trustee a sum sufficient to pay

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(A) all overdue installments of interest on the Securities of such series,

(B) the principal of (and premium, if any, on) any Securities of such series which have become due otherwise than by such declaration of acceleration, and interest thereon at the rate or rates prescribed therefor by the terms of the Securities of such series, to the extent that payment of such interest is lawful,

(C) interest upon overdue installments of interest at the rate or rates prescribed therefor by the terms of the Securities of such series to the extent that payment of such interest is lawful, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts due the Trustee under Section 607;

and

(2) all Events of Default with respect to such series of Securities, other than the nonpayment of the principal of the Securities of such series which have become due solely by such acceleration, have been cured or waived as provided in Section 513.

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

Section 503. COLLECTION OF INDEBTEDNESS AND SUITS FOR ENFORCEMENT BY TRUSTEE. The Company [and the Guarantor each] covenants that if

(1) default is made in the payment of any installment of interest on any Security of any series when such interest becomes due and payable, or

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

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(3) default is made in the payment of any sinking or purchase fund or analogous obligation when the same becomes due by the terms of the Securities of any series,

and any such default continues for any period of grace provided with respect to the Securities of such series, the Company [or the Guarantor, as the case may be,] will, upon demand of the Trustee, pay to it, for the benefit of the Holder of any such Security (or the Holders of any such series in the case of Clause (3) above), the whole amount then due and payable on any such Security (or on the Securities of any such series in the case of Clause (3) above) for principal (and premium, if any) and interest, with interest, to the extent that payment of such interest shall be legally enforceable, upon the overdue principal (and premium, if any) and upon overdue installments of interest, at such rate or rates as may be prescribed therefor by the terms of any such Security (or of Securities of any such series in the case of Clause (3) above); and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts due the Trustee under Section 607.

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

If an Event of Default with respect to any series of Securities occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such series by

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such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of

any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

Section 504. TRUSTEE MAY FILE PROOFS OF CLAIM. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company[, Guarantor] or any other obligor upon the Securities or the property of the Company [, Guarantor] or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company [or the Guarantor] for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceedings or otherwise,

(i) to file and prove a claim for the whole amount of principal (and premium, if any) and interest owing and unpaid in respect of the Securities and to file such other papers or documents as may be necessary and advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts due the Trustee under Section 607) and of the Securityholders allowed in such judicial proceeding, and

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

and any receiver, assignee, trustee, liquidator, sequestrator (or other similar official) in any such judicial proceeding is hereby authorized by each Securityholder to make such payment to the Trustee and in the event that the Trustee shall consent to the making of such payments directly to the Securityholders, to pay to the

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Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 607.

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

Section 505. TRUSTEE MAY ENFORCE CLAIMS WITHOUT POSSESSION OF SECURITIES. All rights of action and claims under this Indenture or the Securities of any series may be prosecuted and enforced by the Trustee without the possession of any of the Securities of such series or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agent and counsel, be for the ratable benefit of the Holders of the Securities of the series in respect of which such judgment has been recovered.

Section 506. APPLICATION OF MONEY COLLECTED. Any money collected by the Trustee with respect to a series of Securities pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest, upon presentation of the Securities of such series and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 607.

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

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according to the amounts due and payable on such Securities for principal (and premium, if any) and interest, respectively.

THIRD: To the Company [or the Guarantor or both, as they are entitled].

Section 507. LIMITATION ON SUITS. No Holder of any Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

(1) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to Securities of such series;

(2) the Holders of not less than 25% in principal amount of the

Outstanding Securities of such series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(3) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

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

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

it being understood and intended that no one or more Holders of Securities of such series shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice

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the rights of any other Holders of Securities of such series, or to obtain or to seek to obtain priority or preference over any other such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and proportionate benefit of all the Holders of all Securities of such series.

Section 508. UNCONDITIONAL RIGHT OF SECURITY HOLDERS TO RECEIVE PRINCIPAL, PREMIUM AND INTEREST. Notwithstanding any other provisions in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of (and premium, if any) and (subject to Section 307) interest on such Security on the respective Stated Maturities expressed in such Security (or, in the case of redemption or repayment, on the Redemption Date or Repayment Date, as the case may be) and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder.

Section 509. RESTORATION OF RIGHTS AND REMEDIES. If the Trustee or any Securityholder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, then and in every such case the Company, [the Guarantor,] the Trustee and the Securityholders shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and the Securityholders shall continue as though no such proceeding had been instituted.

Section 510. RIGHTS AND REMEDIES CUMULATIVE. No right or remedy herein conferred upon or reserved to the Trustee or to the Securityholders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 511. DELAY OR OMISSION NOT WAIVER. No delay or omission of the Trustee or of any Holder of any

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Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Securityholders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Securityholders, as the case may be.

Section 512. CONTROL BY SECURITYHOLDERS. The Holders of a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Securities of such series, provided that

(1) the Trustee shall have the right to decline to follow any such direction if the Trustee, being advised by counsel, determines that the action so directed may not lawfully be taken or would conflict with this Indenture or if the Trustee in good faith shall, by a Responsible Officer, determine that the proceedings so directed would involve it in personal liability or be unjustly prejudicial to the Holders not taking part in such direction, and

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

Section 513. WAIVER OF PAST DEFAULTS. The Holders of not less than a majority in principal amount of the Outstanding Securities of any series may on behalf of the Holders of all the Securities of such series waive any past default hereunder with respect to such series and its consequences, except a

default not theretofore cured

(1) in the payment of the principal of (or premium, if any) or interest on any Security of such series, or in the payment of any sinking or purchase fund or analogous obligation with respect to the Securities of such series, or

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(2) in respect of a covenant or provision hereof which under Article Nine cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series.

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

Section 514. UNDERTAKING FOR COSTS. All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any Securityholder, or group of Securityholders, holding in the aggregate more than 10% in principal amount of the Outstanding Securities of any series to which the suit relates, or to any suit instituted by any Securityholder for the enforcement of the payment of the principal of (or premium, if any) or interest on any Security on or after the respective Stated Maturities expressed in such Security (or, in the case of redemption or repayment, on or after the Redemption Date or Repayment Date).

Section 515. WAIVER OF STAY OR EXTENSION LAWS. The Company [and the Guarantor each] covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company [and the Guarantor each] (to the extent that it may lawfully do so) hereby expressly

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waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

#### ARTICLE SIX

#### THE TRUSTEE

Section 601. CERTAIN DUTIES AND RESPONSIBILITIES. (a) Except during the continuance of an Event of Default with respect to any series of Securities,

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

(2) in the absence of bad faith on its part, the Trustee may, with respect to Securities of such series, conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

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

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

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

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

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

(4) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

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

Section 602. NOTICE OF DEFAULTS. Within 90 days after the occurrence of any default hereunder with respect to Securities of any series, the Trustee shall transmit by mail to all Securityholders of such series, as their names and addresses appear in the Security Register, notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; PROVIDED, HOWEVER,

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that, except in the case of a default in the payment of the principal of (or premium, if any) or interest on any Security of such series or in the payment of any sinking or purchase fund installment or analogous obligation with respect to Securities of such series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Securityholders of such series; and PROVIDED, FURTHER, that in the case of any default of the character specified in Section 501(4) with respect to Securities of such series no such notice to Securityholders of such series shall be given until at least 90 days after the occurrence thereof. For the purpose of this Section, the term "default", with respect to Securities of any series, means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

Section 603. CERTAIN RIGHTS OF TRUSTEE. Except as otherwise provided in Section 601:

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

(b) any request or direction of the Company [or the Guarantor] mentioned herein shall be sufficiently evidenced by a Company Request or Company Order[, or a Guarantor Request or Guarantor Order, as applicable,] and any resolution of the Board of Directors [or the Guarantor Board of Directors] may be sufficiently evidenced by a Board Resolution [or a Guarantor's Board Resolution, as applicable];

(c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or

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omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;

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

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

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond,



debenture or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company [and the Guarantor], personally or by agent or attorney; and

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

Section 604. NOT RESPONSIBLE FOR RECITALS OR ISSUANCE OF SECURITIES. The recitals contained herein and in the Securities, except the certificates of authentication, shall be taken as the statements of the Company [or the Guarantor, as applicable], and the Trustee assumes no responsibility for their correctness. The

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Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. The Trustee shall not be accountable for the use or application by the Company [or the Guarantor] of Securities or the proceeds thereof.

Section 605. MAY HOLD SECURITIES. The Trustee, any Paying Agent, the Security Registrar or any other agent of the Company [or the Guarantor], in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 608 and 613, may otherwise deal with the Company [or the Guarantor] with the same rights it would have if it were not Trustee, Paying Agent, Security Registrar or such other agent.

Section 606. MONEY HELD IN TRUST. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company [or the Guarantor].

Section 607. COMPENSATION AND REIMBURSEMENT. The Company [and the Guarantor (without duplication)] agrees

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

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

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

As security for the performance of the obligations of the Company [and the Guarantor] under this Section the Trustee shall have a lien prior to the 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 Securities.

Section 608. DISQUALIFICATION; CONFLICTING INTERESTS. The Trustee for the Securities of any series issued hereunder shall be subject to the provisions of Section 310(b) of the Trust Indenture Act during the period of time provided for therein. In determining whether the Trustee has a conflicting interest as defined in Section 310(b) of the Trust Indenture Act with respect to the Securities of any series, there shall be excluded for purposes of the conflicting interest provisions of such Section 310(b) the Securities of every other series issued under this Indenture and every series of securities issued under any other indentures if the requirements for such exclusion set forth in section 310(b) of the Trust Indenture Act are met. Nothing herein shall prevent the Trustee from filing with the Commission the application referred to in the second to last paragraph of Section 310(b) of the Trust Indenture Act.

Section 609. CORPORATE TRUSTEE REQUIRED; ELIGIBILITY. There shall at all times be a Trustee hereunder with respect to each series of Securities, which shall be a corporation organized and doing business under the laws of the United States of America or of any State, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by Federal or State authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining

the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee with respect to any series of Securities shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 610. RESIGNATION AND REMOVAL; APPOINTMENT OF SUCCESSOR. (a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee under Section 611.

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

(c) The Trustee may be removed with respect to any series of Securities at any time by Act of the Holders of a majority in principal amount of the Outstanding Securities of that series, delivered to the Trustee and to the Company [and the Guarantor]. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of removal, the removed Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(d) If at any time:

(1) the Trustee shall fail to comply with Section 310(b) of the Trust Indenture Act pursuant to Section 608(a) with respect to any series of Securities after written request therefor by the Company[, by the Guarantor] or by any Securityholder who has been a bona

fide Holder of a Security of that series for at least 6 months, or

(2) the Trustee shall cease to be eligible under Section 609 with respect to any series of Securities and shall fail to resign after written request therefor by the Company[, by the Guarantor] or by any such Securityholder, or

(3) the Trustee shall become incapable of acting with respect to any series of Securities, or

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

then, in any such case, (i) the Company by a Board Resolution[, or the Guarantor by a Guarantor's Board Resolution,] may remove the Trustee, with respect to the series, or in the case of Clause (4), with respect to all series, or (ii) subject to Section 514, any Securityholder who has been a bona fide Holder of a Security of such series for at least 6 months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee with respect to the series, or, in the case of Clause (4), with respect to all series.

(e) If the Trustee shall resign, be removed or become incapable of acting with respect to any series of Securities, or if a vacancy shall occur in the office of the Trustee with respect to any series of Securities for any cause, the Company, by a Board Resolution, shall promptly appoint a successor Trustee for that series of Securities. If, within one year after such resignation, removal or incapacity, or the occurrence of such vacancy, a successor Trustee with respect to such series of Securities shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company[, the Guarantor] and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the

successor Trustee with respect to such series and supersede the successor Trustee appointed by the Company with respect to such series. If no successor Trustee with respect to such series shall have been so appointed by the Company or the Securityholders of such series and accepted appointment in the manner hereinafter provided, any Securityholder who has been a bona fide Holder of a Security of that series for at least 6 months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to such series.

(f) The Company shall give notice of each resignation and each removal of the Trustee with respect to any series and each appointment of a successor Trustee with respect to any series by mailing written notice of such event by first-class mail, postage prepaid, to the Holders of Securities of that series as their names and addresses appear in the Security Register. Each notice shall include the name of the successor Trustee and the address of its principal Corporate Trust Office.

Section 611. ACCEPTANCE OF APPOINTMENT BY SUCCESSOR. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company[, the Guarantor] and to the predecessor Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the predecessor Trustee shall become effective with respect to any series as to which it is resigning or being removed as Trustee, and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the predecessor Trustee with respect to any such series; but, on request of the Company[, the Guarantor] or the successor Trustee, such predecessor Trustee shall, upon payment of its reasonable charges, if any, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the predecessor Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such predecessor Trustee hereunder with respect to all or any such series, subject nevertheless to its lien, if any, provided for in

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Section 607. Upon request of any such successor Trustee, the Company [and the Guarantor] shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, [the Guarantor,] the predecessor Trustee and each successor Trustee with respect to the Securities of any applicable series shall execute and deliver an indenture supplemental hereto which shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the predecessor Trustee with respect to the Securities of any series as to which the predecessor Trustee is not being succeeded shall continue to be vested in the predecessor Trustee, and shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be Trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee.

No successor Trustee with respect to any series of Securities shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible with respect to that series under this Article.

Section 612. MERGER, CONVERSION, CONSOLIDATION OR SUCCESSION TO BUSINESS. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper

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or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

Section 613. PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY. (a) Subject to Subsection (b) of this Section, if the Trustee shall be or shall become a creditor, directly or indirectly, secured or unsecured, of the Company within 3 months prior to a default, as defined in Subsection (c) of this Section, or subsequent to such a default, then, unless and until such default shall be cured, the Trustee shall set apart and hold in a special account for the benefit of the Trustee individually, the Holders of the Securities and the holders of other indenture securities (as defined in Subsection (c) of this Section):

(1) an amount equal to any and all reductions in the amount due and owing upon any claim as such creditor in respect of principal or interest, effected after the beginning of such 3-month period and valid as against the Company and its other creditors, except any such reduction resulting from the receipt or disposition of any property described in paragraph (2) of this Subsection, or from the exercise of any right of set-off which the Trustee could have exercised if a petition in bankruptcy had been filed by or against the Company upon the date of such default; and

(2) all property received by the Trustee in respect of any claim as such creditor, either as security therefor, or in satisfaction or composition thereof, or otherwise, after the beginning of such 3-month period, or an amount equal to the proceeds of any such property, if disposed of, subject, however, to the rights, if any, of the Company and its other creditors in such property or such proceeds.

Nothing herein contained, however, shall affect the right of the Trustee

(A) to retain for its own account

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(i) payments made on account of any such claim by any Person (other than the Company) who is liable thereon, and (ii) the proceeds of the bona fide sale of any such claim by the Trustee to a third person, and (iii) distributions made in cash, securities or other property in respect of claims filed against the Company in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law;

(B) to realize, for its own account, upon any property held by it as security for any such claim, if such property was so held prior to the beginning of such 3-month period;

(C) to realize, for its own account, but only to the extent of the claim hereinafter mentioned, upon any property held by it as security for any such claim, if such claim was created after the beginning of such 3-month period and such property was received as security therefor simultaneously with the creation thereof, and if the Trustee shall sustain the burden of proving that at the time such property was so received the Trustee had no reasonable cause to believe that a default as defined in Subsection (c) of this Section would occur within 3 months; or

(D) to receive payment on any claim referred to in paragraph (B) or (C), against the release of any property held as security for such claim as provided in paragraph (B) or (C), as the case may be, to the extent of the fair value of such property.

For the purposes of paragraphs (B), (C) and (D), property substituted after the beginning of such 3-month period for property held as security at the time of such substitution shall, to the extent of the fair value of the property released, have the same status as the property released, and, to the extent that any claim referred to in

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any of such paragraphs is created in renewal of or in substitution for or for the purpose of repaying or refunding any pre-existing claim of the Trustee as such creditor, such claim shall have the same status as such pre-existing claim.

If the Trustee shall be required to account, the funds and property held in such special account and the proceeds thereof shall be apportioned between the Trustee, the Securityholders and the holders of other indenture securities in such manner that the Trustee, the Securityholders and the holders of other indenture securities realize, as a result of payments from such special account and payments of dividends on claims filed against the Company in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law, the same percentage of their respective claims, figured before crediting to the claim of the Trustee anything on account of the receipt by it from the Company of the funds and property in such special account and before crediting to the respective claims of the Trustee and the Securityholders and the holders of other indenture securities dividends on claims filed against the Company in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law, but after crediting thereon receipts on account of the indebtedness represented by their respective claims from all sources other than from such dividends and from the funds and property so held in such special account. As used in this paragraph, with respect to any claim, the term "dividends" shall include any distribution with respect to such claim, in bankruptcy or receivership or proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law, whether such distribution is made in cash, securities, or other property, but shall not include any such distribution with respect to the secured portion, if any, of such claim. The court in which such bankruptcy, receivership or proceedings for reorganization is pending shall have jurisdiction (i) to apportion between the Trustee and the Securityholders and the holders of other indenture securities in accordance with the provisions of this paragraph, the funds and property held in such special account and proceeds thereof, or (ii) in lieu of such apportionment, in whole or in part, to give to the provisions of this paragraph due consideration in determining the fairness of the distributions to be made to the Trustee and the Securityholders and the holders of

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other indenture securities with respect to their respective claims, in which event it shall not be necessary to liquidate or to appraise the value of any

securities or other property held in such special account or as security for any such claim, or to make a specific allocation of such distributions as between the secured and unsecured portions of such claims, or otherwise to apply the provisions of this paragraph as a mathematical formula.

Any Trustee which has resigned or been removed after the beginning of such 3-month period shall be subject to the provisions of this Subsection as though such resignation or removal had not occurred. If any Trustee has resigned or been removed prior to the beginning of such 3-month period, it shall be subject to the provisions of this Subsection if and only if the following conditions exist:

(i) the receipt of property or reduction of claim, which would have given rise to the obligation to account, if such Trustee had continued as Trustee, occurred after the beginning of such 3-month period; and

(ii) such receipt of property or reduction of claim occurred within 3 months after such resignation or removal.

(b) There shall be excluded from the operation of Subsection (a) of this Section a creditor relationship arising from

(1) the ownership or acquisition of securities issued under any indenture, or any security or securities having a maturity of one year or more at the time of acquisition by the Trustee;

(2) advances authorized by a receivership or bankruptcy court of competent jurisdiction, or by this Indenture, for the purpose of preserving any property which shall at any time be subject to the lien of this Indenture or of discharging tax liens or other prior liens or encumbrances thereon, if notice of such

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advances and of the circumstances surrounding the making thereof is given to the Securityholders at the time and in the manner provided in this Indenture;

(3) disbursements made in the ordinary course of business in the capacity of trustee under an indenture, transfer agent, registrar, custodian, paying agent, fiscal agent or depositary, or other similar capacity;

(4) an indebtedness created as a result of services rendered or premises rented; or an indebtedness created as a result of goods or securities sold in a cash transaction as defined in Subsection (c) of this Section;

(5) the ownership of stock or of other securities of a corporation organized under the provisions of Section 25(a) of the Federal Reserve Act, as amended, which is directly or indirectly a creditor of the Company; or

(6) the acquisition, ownership, acceptance or negotiation of any drafts, bills of exchange, acceptances or obligations which fall within the classification of self liquidating paper as defined in Subsection (c) of this Section.

(c) For the purposes of this Section only:

(1) The term "default" means any failure to make payment in full of the principal of or interest on any of the Securities or upon the other indenture securities when and as such principal or interest becomes due and payable.

(2) The term "other indenture securities" means securities upon which the Company is an obligor outstanding under any other indenture (i) under which the Trustee is also trustee, (ii) which contains provisions substantially similar to the provisions of this Section, and (iii) under which a default exists at the time of the apportionment of the funds and property held in such special account.

(3) The term "cash transaction" means any transaction in which full payment for goods or

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securities sold is made within 7 days after delivery of the goods or securities in currency or in checks or other orders drawn upon banks or bankers and payable upon demand.

(4) The term "self-liquidating paper" means any draft, bill of exchange, acceptance or obligation which is made, drawn, negotiated or incurred by the Company for the purpose of financing the purchase, processing, manufacturing, shipment, storage or sale of goods, wares or merchandise and which is secured by documents evidencing title to, possession of, or a lien upon, the goods, wares or merchandise or the receivables or proceeds arising from the sale of the goods, wares or merchandise previously constituting the security, provided the security is

received by the Trustee simultaneously with the creation of the creditor relationship with the Company arising from the making, drawing, negotiating or incurring of the draft, bill of exchange, acceptance or obligation.

(5) The term "Company" means any obligor upon the Securities.

Section 614. APPOINTMENT OF AUTHENTICATING AGENT. At any time when any of the Securities remain Outstanding the Trustee, with the approval of the Company, may appoint an Authenticating Agent or Agents with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 306, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating

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Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to act as an Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 and, if other than the Company itself, subject to supervision or examination by Federal or State authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and, if other than the Company, to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and, if other than the Company, to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee, with the approval of the Company, may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall mail written notice of such appointment by first-class mail, postage prepaid, to all Holders of Securities of the series

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with respect to which such Authenticating Agent will serve, as their names and addresses appear in the Security Register. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Trustee agrees to pay to each Authenticating Agent (other than an Authenticating Agent appointed at the request of the Company from time to time) reasonable compensation for its services under this Section, and the Trustee shall be entitled to be reimbursed for such payments, subject to the provisions of Section 607.

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

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

[                    ],  
as Trustee

By: \_\_\_\_\_  
As Authenticating Agent

ARTICLE SEVEN

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SECURITYHOLDERS' LISTS AND REPORTS BY  
TRUSTEE[, GUARANTOR] AND COMPANY

Section 701. COMPANY TO FURNISH TRUSTEE NAMES AND ADDRESSES OF SECURITYHOLDERS. The Company will furnish or cause to be furnished to the Trustee

(a) semi-annually, not more than 30 days after each Regular Record Date, in each year in such form as the Trustee may reasonably require, a list of the names and addresses of the Holders of Securities of such series as of such date, and

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

excluding from any such list names and addresses received by the Trustee in its capacity as Security Registrar.

Section 702. PRESERVATION OF INFORMATION; COMMUNICATIONS TO SECURITYHOLDERS. (a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders of Securities contained in the most recent list furnished to the Trustee as provided in Section 701 and the names and addresses of Holders of Securities received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 701 upon receipt of a new list so furnished.

(b) If 3 or more Holders of Securities of any series (hereinafter referred to as "applicants") apply in writing to the Trustee, and furnish to the Trustee reasonable proof that each such applicant has owned a Security of such series for a period of at least 6 months preceding the date of such application, and such application states that the applicants desire to communicate with other Holders of Securities of such series or with the Holders of all Securities with respect to their rights under this Indenture or under such Securities and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Trustee shall, within 5 Business Days after the receipt of such application, at its election, either

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(i) afford such applicants access to the information preserved at the time by the Trustee in accordance with Section 702(a), or

(ii) inform such applicants as to the approximate number of Holders of Securities of such series or all Securities, as the case may be, whose names and addresses appear in the information preserved at the time by the Trustee in accordance with Section 702(a), and as to the approximate cost of mailing to such Securityholders the form of proxy or other communication, if any, specified in such application.

If the Trustee shall elect not to afford such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail to each Holder of a Security of such series or to all Security holders, as the case may be, whose names and addresses appear in the information preserved at the time by the Trustee in accordance with Section 702(a), a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless, within 5 days after such tender, the Trustee shall mail to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interests of the Holders of Securities of such series or all Securityholders, as the case may be, or would be in violation of applicable law. Such written statement shall specify the basis of such opinion. If the Commission, after opportunity for a hearing upon the objections specified in the written statement so filed, shall enter an order refusing to sustain any of such objections or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all the objections so sustained have been met and shall enter an order so declaring, the Trustee shall mail copies of such material to

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all Securityholders of such series or all Securityholders, as the case may be, with reasonable promptness after the entry of such order and the renewal of such tender; otherwise the Trustee shall be relieved of any obligation or duty to such applicants respecting their application.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Securities in accordance with Section 702(b), regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 702(b).

Section 703. REPORTS BY TRUSTEE. (a) The term "reporting date" as used in this Section means [ ] of each year. Within 60 days after the reporting date in each year, beginning in 200\_, the Trustee shall transmit by mail to all Securityholders, as their names and addresses appear in the Security Register, a brief report dated as of such reporting date with respect to any of the following events which may have occurred during the 12 months preceding the date of such report (but if no such event has occurred within such period no report need be transmitted):

(1) any change to its eligibility under Section 609 and its qualifications under Section 608;

(2) the creation of or any material change to a relationship specified in Section 310(b)(1) through Section 310(b)(10) of the Trust Indenture Act;

(3) the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) which remain unpaid on the date of such report, and for the reimbursement of which it claims or may claim a lien or charge, prior to that of Securities of any series, on any property or funds held or collected

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by it as Trustee, except that the Trustee shall not be required (but may elect) to report such advances if such advances so remaining unpaid aggregate not more than [1/2 of 1%] of the principal amount of the Securities of such series outstanding on the date of such report;

(4) any change to the amount, interest rate and maturity date of all other indebtedness owing by the Company (or by any other obligor on the Securities) to the Trustee in its individual capacity, on the date of such report, with a brief description of any property held as collateral security therefor, except an indebtedness based upon a creditor relationship arising in a manner described in Section 613(b)(2), (3), (4) or (6);

(5) any change to the property and funds, if any, physically in the possession of the Trustee as such on the date of such report;

(6) any additional issue of Securities which the Trustee has not previously reported; and

(7) any action taken by the Trustee in the performance of its duties hereunder which it has not previously reported and which in its opinion materially affects the Securities, except action in respect of a default, notice of which has been or is to be withheld by the Trustee in accordance with Section 602.

(b) The Trustee shall transmit by mail to all Securityholders, as their names and addresses appear in the Security Register, a brief report with respect to the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) since the date of the last report transmitted pursuant to Subsection (a) of this Section (or if no such report has yet been so transmitted, since the date of execution of this instrument) for the reimbursement of which it claims or may claim a lien or charge, prior to that of the Securities of any series, on property or funds held or collected by it as Trustee, and which it has not previously reported pursuant to this Subsection, except that the Trustee shall not be required (but may elect) to report such advances if such advances

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remaining unpaid at any time aggregate [ ]% or less of the principal amount of the Securities Outstanding of such series at such time, such report to be transmitted within 90 days after such time.

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

Section 704. REPORTS BY COMPANY [AND GUARANTOR]. The Company [and the Guarantor each] will:

(1) file with the Trustee, within 30 days after the Company [or the Guarantor] is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or



copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company [or the Guarantor] may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934; or, if [neither] the Company [nor the Guarantor] is [not] required to file information, documents or reports pursuant to either of said Sections, then [it] [the Guarantor] will file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Securities Exchange Act of 1934 in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(2) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to

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compliance by the Company [or the Guarantor] with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(3) transmit by mail to all Securityholders, as their names and addresses appear in the Security Register, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by the Company [or the Guarantor] pursuant to paragraphs (1) and (2) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

#### ARTICLE EIGHT

##### CONSOLIDATION, AMALGAMATION, MERGER, CONVEYANCE OR TRANSFER

###### Section 801. COMPANY MAY CONSOLIDATE, ETC., ONLY ON CERTAIN TERMS.

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

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

(2) immediately after giving effect to such transaction, no Event of Default, and no event which,

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after notice or lapse of time, or both, would become an Event of Default, shall have happened and be continuing; and

(3) either the Company or the successor Person has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that such consolidation, amalgamation, merger, conveyance or transfer and such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

Section 802. SUCCESSOR PERSON SUBSTITUTED FOR COMPANY. Upon any consolidation, amalgamation or merger, or any conveyance or transfer of the properties and assets of the Company substantially as an entirety in accordance with Section 801, the successor Person formed by such consolidation or amalgamation or into which the Company is merged or to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein. In the event of any such conveyance or transfer, the Company as the predecessor corporation may be dissolved, wound up or liquidated at any time thereafter.

[Section 803. GUARANTOR MAY CONSOLIDATE, ETC., ONLY ON CERTAIN TERMS. The Guarantor shall not consolidate or amalgamate with or merge into any other Person or convey or transfer its properties and assets substantially as an entirety to any Person, unless:

(1) the Person formed by such consolidation or amalgamation or into which the Guarantor is merged or the Person which acquires by conveyance or transfer the properties and assets of the Guarantor substantially as an entirety shall be a corporation or limited liability company organized and existing under the laws of the United States of America, any State thereof, the District of Columbia or Bermuda, and shall expressly assume,

by the successor Person and the Company and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of (and premium, if any) and interest on all the Securities and the performance of every covenant of this Indenture on the part of the Guarantor to be performed or observed;

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

(3) either the Guarantor or the successor Person has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that such consolidation, amalgamation, merger, conveyance or transfer and such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.]

[Section 804. SUCCESSOR PERSON SUBSTITUTED FOR GUARANTOR. Upon any consolidation, amalgamation or merger, or any conveyance or transfer of the properties and assets of the Guarantor substantially as an entirety in accordance with Section 803, the successor Person formed by such consolidation or amalgamation or into which the Guarantor is merged or to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Guarantor under this Indenture with the same effect as if such successor Person had been named as the Guarantor herein. In the event of any such conveyance or transfer, the Guarantor as the predecessor corporation may be dissolved, wound up or liquidated at any time thereafter.]

#### ARTICLE NINE

##### SUPPLEMENTAL INDENTURES

Section 901. SUPPLEMENTAL INDENTURES WITHOUT CONSENT OF SECURITYHOLDERS. Without the consent of the Holders of any Securities, the Company, when authorized by a

Board Resolution, [the Guarantor, when authorized by a Guarantor's Board Resolution,] and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another Person to the Company [or the Guarantor], and the assumption by any such successor of the covenants of the Company [or the Guarantor] herein and in the Securities contained; or

(2) to add to the covenants of the Company [or the Guarantor], or to surrender any right or power herein conferred upon the Company [or the Guarantor], for the benefit of the Holders of the Securities of any or all series (and if such covenants or the surrender of such right or power are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included or such surrenders are expressly being made solely for the benefit of one or more specified series); or

(3) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture; or

(4) to add to this Indenture such provisions as may be expressly permitted by the TIA, excluding, however, the provisions referred to in Section 316(a)(2) of the TIA as in effect at the date as of which this instrument was executed or any corresponding provision in any similar federal statute hereafter enacted; or

(5) to establish any form of Security, as provided in Article Two, and to provide for the issuance of any series of Securities as provided in Article Three and to set forth the terms thereof, and/or to add to the rights of the Holders of the Securities of any series; or

(6) to evidence and provide for the acceptance of appointment by another corporation as a successor Trustee hereunder with respect to one or more series of Securities and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to Section 611; or

(7) to add any additional Events of Default in respect of the

Securities of any or all series (and if such additional Events of Default are to be in respect of less than all series of Securities, stating that such Events of Default are expressly being included solely for the benefit of one or more specified series); or

(8) to provide for the issuance of Securities in coupon as well as fully registered form.

No supplemental indenture for the purposes identified in Clauses (2), (3), (5) or (7) above may be entered into if to do so would adversely affect the interest of the Holders of Securities of any series.

Section 902. SUPPLEMENTAL INDENTURES WITH CONSENT OF SECURITYHOLDERS. With the consent of the Holders of not less than a majority in principal amount of the Outstanding Securities of each series affected by such supplemental indenture or indentures, by Act of said Holders delivered to the Company[, the Guarantor] and the Trustee, the Company, when authorized by a Board Resolution, [the Guarantor, when authorized by a Guarantor's Board Resolution,] and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of the Securities of each such series under this Indenture; PROVIDED, HOWEVER, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby,

(1) change the Maturity of the principal of, or the Stated Maturity of any premium on, or any installment of interest on, any Security, or reduce the

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principal amount thereof or the interest or any premium thereon, or change the method of computing the amount of principal thereof or interest thereon on any date or change any Place of Payment where, or the coin or currency in which, any Security or any premium or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Maturity or the Stated Maturity, as the case may be, thereof (or, in the case of redemption or repayment, on or after the Redemption Date or the Repayment Date, as the case may be); or

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

(3) modify any of the provisions of this Section or Section 513, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby.

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

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

#### Section 903. EXECUTION OF SUPPLEMENTAL

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INDENTURES. In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 601) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not (except to the extent required in the case of a supplemental indenture entered into under Section 901(4) or 901(6)) be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 904. EFFECT OF SUPPLEMENTAL INDENTURES. Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby to the extent provided therein.

Section 905. CONFORMITY WITH TRUST INDENTURE ACT. Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the TIA as then in effect.

#### Section 906. REFERENCE IN SECURITIES TO SUPPLEMENTAL INDENTURES.

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

## ARTICLE TEN

### COVENANTS

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Section 1001. PAYMENT OF PRINCIPAL, PREMIUM AND INTEREST. With respect to each series of Securities, the Company will duly and punctually pay the principal of (and premium, if any) and interest on such Securities in accordance with their terms and this Indenture, and will duly comply with all the other terms, agreements and conditions contained in, or made in the Indenture for the benefit of, the Securities of such series.

Section 1002. MAINTENANCE OF OFFICE OR AGENCY. The Company will maintain an office or agency in each Place of Payment where Securities may be presented or surrendered for payment, where Securities may be surrendered for transfer or exchange and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and of any change in the location, of such office or agency. If at any time the Company shall fail to maintain such office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the principal Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee its agent to receive all such presentations, surrenders, notices and demands.

[The Guarantor will maintain an office or agency in each Place of Payment where Securities to which the Guarantee applies may be presented or surrendered for payment pursuant to the Guarantee and where notices and demands to or upon the Guarantor in respect of the Guarantee and this Indenture may be served. The Guarantor 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 Guarantor shall fail to maintain any such office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders and demands may be made or served at the Principal Corporate Trust Office of the Trustee, and the Guarantor hereby appoints the Trustee as its agent to receive all such presentations, surrenders and demands.]

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Section 1003. MONEY FOR SECURITY PAYMENTS TO BE HELD IN TRUST. If the Company shall at any time act as its own Paying Agent for any series of Securities, it will, on or before each due date of the principal of (and premium, if any) or interest on, any of the Securities of such series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal (and premium, if any) or interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided, and will promptly notify the Trustee of its action or failure to act.

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

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

(1) hold all sums held by it for the payment of principal of (and premium, if any) or interest on Securities of such series in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Trustee notice of any default by the Company (or any other obligor upon the Securities of such series) in the making of any such payment of principal (and premium, if any) or interest on the Securities of such series; and

(3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust

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by such Paying Agent.

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

Any money deposited with the Trustee or any Paying Agent, or then held by the Company [or the Guarantor], in trust for the payment of the principal of (and premium, if any) or interest on any Security of any series and remaining unclaimed for two years after such principal (and premium, if any) or interest has become due and payable shall be paid to the Company on Company Request[(or if deposited by the Guarantor, paid to the Guarantor upon Guarantor Request)], or (if then held by the Company [or the Guarantor]) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company [and the Guarantor] for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease. The Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company [and the Guarantor] mail to the Holders of the Securities as to which the money to be repaid was held in trust, as their names and addresses appear in the Security Register, a notice that such moneys remain unclaimed and that, after a date specified in the notice, which shall not be less than 30 days from the date on which the notice was first mailed

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to the Holders of the Securities as to which the money to be repaid was held in trust, any unclaimed balance of such moneys then remaining will be paid to the Company [or the Guarantor, as the case may be,] free of the trust formerly impressed upon it.

The Company initially authorizes the Trustee to act as Paying Agent for the Securities on its behalf. The Company may at any time and from time to time authorize one or more Persons to act as Paying Agent in addition to or in place of the Trustee with respect to any series of Securities issued under this Indenture.

Section 1004. STATEMENT AS TO COMPLIANCE. The Company [and the Guarantor each] will deliver to the Trustee, within 120 days after the end of each fiscal year, a written statement signed by the principal executive officer, principal financial officer or principal accounting officer of the Company [or the Guarantor, as the case may be], stating that

(1) a review of the activities of the Company [or the Guarantor, as the case may be,] during such year and of its performance under this Indenture and under the terms of the Securities has been made under his supervision; and

(2) to the best of his knowledge, based on such review, the Company [or the Guarantor, as the case may be,] has complied with all conditions and covenants under this Indenture through such year, or, if there has been a default in the fulfillment of any such obligation, specifying each such default known to him and the nature and status thereof.

For purposes of this Section 1004, compliance shall be determined without regard to any grace period or requirement of notice provided pursuant to the terms of this Indenture.

Section 1005. CORPORATE EXISTENCE. Subject to Article Eight [each of] the Company [and the Guarantor] will

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do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

Section 1006. LIMITATION ON LIENS. So long as any Securities are Outstanding, [the Company will not,] [neither the Company nor the Guarantor will,] nor will it permit any of its [respective] Subsidiaries to create, assume, incur or suffer to exist (i) any Lien upon any stock or indebtedness of any Subsidiary, whether owned on the date of this Indenture or hereafter acquired, to secure any Debt of the Company[, the Guarantor] or any other Person (other than the Securities), and (ii) any Lien upon any other Property, whether owned or leased on the date of this Indenture, or thereafter acquired, to secure any Debt of the Company[, the Guarantor] or any other person (other than the Securities) without in any such case making effective provision whereby all of the Securities Outstanding shall be directly secured equally and ratably with such Debt, excluding, however, from the operation of the foregoing provisions of this Section 1006 any Lien existing on the date of this Indenture or any Lien

upon stock or indebtedness or other Property of any Person existing at the time such Person becomes a Subsidiary, or existing upon stock or indebtedness of a Subsidiary or any other Property at the time of acquisition of such stock or indebtedness or other Property, and any extension, renewal or replacement (or successive extensions, renewals or replacements) in whole or in part of any such Lien; PROVIDED, however, that the principal amount of Debt secured thereby shall not exceed the principal amount of Debt so secured at the time of such extension, renewal or replacement; and PROVIDED further, that such Lien shall be limited to all or such part of the stock or indebtedness or other Property which secured the Lien so extended, renewed or replaced.

Notwithstanding the foregoing, [each of] the Company [and the Guarantor] may, and may permit any Subsidiary to, create, assume, incur or suffer to exist (i) any Permitted Liens and (ii) any Lien upon any Property without equally and ratably securing the Securities if the aggregate amount of all Debt then outstanding secured by such Lien and all similar Liens does not exceed 15% of the total consolidated stockholders' equity (including preferred stock) of the [Company] [Guarantor] as shown on the audited consolidated balance sheet contained in the latest annual report to stockholders of the [Company] [Guarantor];

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PROVIDED that Debt secured by Permitted Liens shall not be included in the amount of such secured Debt.

Section 1007. LIMITATION ON SALE AND LEASEBACK TRANSACTIONS. So long as any Securities are Outstanding [the Company will not,] [neither the Company nor the Guarantor will,] nor will it permit any of its [respective] Subsidiaries to, enter into any arrangement with any Person pursuant to which the Company[, the Guarantor] or any Subsidiary leases any Property that has been or is to be sold or transferred by the Company[, the Guarantor] or the Subsidiary to such Person (a "sale and leaseback transaction") unless (i) the Company[, the Guarantor] or such Subsidiary would be entitled to secure the Property to be leased (without equally and ratably securing the Securities Outstanding) in an amount equal to the present value of the lease payments with respect to the term of the lease remaining on the date as of which the amount is being determined under the provisions described in Section 1006; (ii) the lease is for a term, including renewals at the option of the lessee, of not more than five years; (iii) the lease is between the Company[, the Guarantor] [and] [or] a Subsidiary or between Subsidiaries; and (iv) the lease is of Property executed by the time of, or within 12 months after the latest of, the acquisition, the completion of construction or improvement, or the commencement of commercial operation of the Property.

Section 1008. WAIVER OF CERTAIN COVENANTS. The Company [or the Guarantor or both] may omit in respect of any series of Securities, in any particular instance, to comply with any covenant or condition set forth in Section 1006, if before or after the time for such compliance the Holders of at least a majority in principal amount of the Securities at the time Outstanding of such series shall, by Act of such Securityholders, either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company [and the Guarantor] and the duties of the Trustee in

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respect of any such covenant or condition shall remain in full force and effect.

## ARTICLE ELEVEN

### REDEMPTION OF SECURITIES

Section 1101. APPLICABILITY OF ARTICLE. The Company may reserve the right to redeem and pay before Stated Maturity all or any part of the Securities of any series, either by optional redemption, sinking or purchase fund or analogous obligation or otherwise, by provision therefor in the form of Security for such series established and approved pursuant to Section 202 and on such terms as are specified in such form or in the Board Resolution or indenture supplemental hereto with respect to Securities of such series as provided in Section 301. Redemption of Securities of any series shall be made in accordance with the terms of such Securities and, to the extent that this Article does not conflict with such terms, the succeeding Sections of this Article.

Section 1102. ELECTION TO REDEEM; NOTICE TO TRUSTEE. The election of the Company to redeem any Securities redeemable at the election of the Company shall be evidenced by, or made pursuant to authority granted by, a Board Resolution. In case of any redemption at the election of the Company of any Securities of any series, the Company shall, at least 60 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date and of the principal amount of Securities of such series to be redeemed.

In the case of any redemption of Securities (i) prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, or (ii) pursuant to an election of the Company which is subject to a condition specified in the terms of such Securities, the Company shall furnish the Trustee with an Officers' Certificate

evidencing compliance with such restriction or condition.

Section 1103. SELECTION BY TRUSTEE OF SECURITIES TO BE REDEEMED. If less than all the Securities of like tenor and terms of any series are to be redeemed, the

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particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may include provision for the selection for redemption of portions of the principal of Securities of such series of a denomination larger than the minimum authorized denomination for Securities of that series. Unless otherwise provided in the terms of a particular series of Securities, the portions of the principal of Securities so selected for partial redemption shall be equal to the minimum authorized denomination of the Securities of such series, or an integral multiple thereof, and the principal amount which remains outstanding shall not be less than the minimum authorized denomination for Securities of such series. If less than all the Securities of unlike tenor and terms of a series are to be redeemed, the particular Securities to be redeemed shall be selected by the Company.

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

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

Section 1104. NOTICE OF REDEMPTION. Notice of redemption shall be given by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date, to each holder of Securities to be redeemed, at his address appearing in the Security Register.

All notices of redemption shall state:

(1) the Redemption Date;

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(2) the Redemption Price;

(3) if less than all Outstanding Securities of any series are to be redeemed, the identification, including CUSIP Numbers (and, in the case of partial redemption, the respective principal amounts) of the Securities to be redeemed, from the Holder to whom the notice is given;

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

(5) the place where such Securities are to be surrendered for payment of the Redemption Price, which shall be the office or agency of the Company in the Place of Payment; and

(6) that the redemption is on account of a sinking or purchase fund, or other analogous obligation, if that be the case.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company. Such notice shall be deemed to have been given to each Holder if sent in accordance with Section 105 hereof.

Section 1105. DEPOSIT OF REDEMPTION PRICE. On or prior to 10:00 a.m. on any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 1003) an amount of money sufficient to pay the Redemption Price of all the Securities which are to be redeemed on that date.

Section 1106. SECURITIES PAYABLE ON REDEMPTION DATE. Notice of Redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified and from and after such date (unless the Company shall default in the payment of the Redemption Price) such Securities shall cease to bear interest. Upon surrender of such Securities for redemption in accordance with the

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notice, such Securities shall be paid by the Company at the Redemption Price. Installments of interest the Stated Maturity of which is on or prior to the Redemption Date shall be payable to the Holders of such Securities registered as such on the relevant Regular Record Dates according to their terms and the

provisions of Section 307.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid, bear interest from the Redemption Date at the rate borne by the Security, or as otherwise provided in such Security.

Section 1107. SECURITIES REDEEMED IN PART. Any Security which is to be redeemed only in part shall be surrendered at the office or agency of the Company in the Place of Payment with respect to that series (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Security or Securities of the same series and Stated Maturity and of like tenor and terms, 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 Security so surrendered.

Section 1108. PROVISIONS WITH RESPECT TO ANY SINKING FUNDS. Unless the form or terms of any series of Securities shall provide otherwise, in lieu of making all or any part of any mandatory sinking fund payment with respect to such series of Securities in cash, the Company may at its option (1) deliver to the Trustee for cancellation any Securities of such series theretofore acquired by the Company, or (2) receive credit for any Securities of such series (not previously so credited) acquired by the Company and theretofore delivered to the Trustee for cancellation or redeemed by the Company other than through the mandatory sinking fund, and if it does so then (i) Securities so delivered or credited shall be credited at the applicable

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sinking fund Redemption Price with respect to Securities of such series, and (ii) on or before the 60th day next preceding each sinking fund Redemption Date with respect to such series of Securities, the Company will deliver to the Trustee (A) an Officers' Certificate specifying the portions of such sinking fund payment to be satisfied by payment of cash and by delivery or credit of Securities of such series acquired by the Company or so redeemed, and (B) such Securities so acquired, to the extent not previously surrendered. Such Officers' Certificate shall also state the basis for such credit and that the Securities for which the Company elects to receive credit have not been previously so credited and were not redeemed by the Company through operation of the mandatory sinking fund, if any, provided with respect to such Securities and shall also state that no Event of Default with respect to Securities of such series has occurred and is continuing. All Securities so delivered to the Trustee shall be canceled by the Trustee and no Securities shall be authenticated in lieu thereof.

If the sinking fund payment or payments (mandatory or optional) with respect to any series of Securities made in cash plus any unused balance of any preceding sinking fund payments with respect to Securities of such series made in cash shall exceed \$50,000 (or a lesser sum if the Company shall so request), unless otherwise provided by the terms of such series of Securities, that cash shall be applied by the Trustee on the sinking fund Redemption Date with respect to Securities of such series next following the date of such payment to the redemption of Securities of such series at the applicable sinking fund Redemption Price with respect to Securities of such series, together with accrued interest, if any, to the date fixed for redemption, with the effect provided in Section 1106. The Trustee shall select, in the manner provided in Section 1103, for redemption on such sinking fund Redemption Date a sufficient principal amount of Securities of such series to utilize that cash and shall thereupon cause notice of redemption of the Securities of such series for the sinking fund to be given in the manner provided in Section 1104 (and with the effect provided in Section 1106) for the redemption of Securities in part at the option of the Company. Any sinking fund moneys not so applied or allocated by the Trustee to the redemption of Securities of such series shall be added to the next cash sinking fund payment with respect to Securities of such series received by the Trustee and, together with such

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payment, shall be applied in accordance with the provisions of this Section 1108. Any and all sinking fund moneys with respect to Securities of any series held by the Trustee at the Maturity of Securities of such series, and not held for the payment or redemption of particular Securities of such series, shall be applied by the Trustee, together with other moneys, if necessary, to be deposited sufficient for the purpose, to the payment of the principal of the Securities of such series at Maturity.

On or before each sinking fund Redemption Date provided with respect to Securities of any series, the Company shall pay to the Trustee in cash a sum equal to all accrued interest, if any, to the date fixed for redemption on Securities to be redeemed on such sinking fund Redemption Date pursuant to this Section 1108.

[ARTICLE TWELVE]

[GUARANTEE OF SECURITIES]



[SECTION 1201. GUARANTEE. The Guarantor hereby fully and unconditionally guarantees to each Holder of a Security of each series issued by the Company, authenticated and delivered by the Trustee, the due and punctual payment of the principal (including any amount due in respect of any Original Issue Discount Security) of and any premium and interest on such Security, and the due and punctual payment of any sinking fund payments provided for pursuant to the terms of such Security, when and as the same shall become due and payable, whether at the Stated Maturity, by declaration of acceleration, call for redemption, early repayment or otherwise, in accordance with the terms of such Security and 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 Security of any series or this Indenture, any failure to enforce the provisions of any Security of any series or this Indenture,

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any waiver, modification or indulgence granted to the Company with respect thereto by the Holder of any Security of any series 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 Security 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 the Company, any right to require a proceeding first against the Company, the benefit of discussion, protest or notice with respect to any Security or the indebtedness evidenced thereby or with respect to any sinking fund payment required pursuant to the terms of such Security issued under this Indenture and all demands whatsoever, and covenants that this Guarantee will not be discharged with respect to such Security except by payment in full of the principal thereof and any premium and interest thereon or as provided in Article Four or Section 802. If any Holder or the Trustee is required by any court or otherwise to return to the Company, the Guarantor, or any custodian, trustee, liquidator or other similar official acting in relation to the Company or the Guarantor any amount paid by the Company 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 Maturity of the obligations guaranteed hereby may be accelerated as provided in Article Five 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 also 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 waives any right of set off which the Guarantor may have against the Holder of any Security in respect of any amounts which are or may become payable by such Holder to the Company.

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The Guarantor shall be subrogated to all rights of the Holders of any series of Securities and the Trustee against the Company in respect of any amounts paid to such Holders and the Trustee by the Guarantor pursuant to the provisions of the Guarantee; 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, if any, on all of the 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 1201 by reason of his, her or its status as such stockholder, officer, director, employee or incorporator.

The Guarantee set forth in this Section 1201 shall not be valid or become obligatory for any purpose with respect to any Security until the certificate of authentication on such Security shall have been signed by or on behalf of the Trustee.]

[SECTION 1202. EXECUTION OF NOTATIONS OF GUARANTEE. To evidence its Guarantee to the Holders specified in Section 1201, the Guarantor hereby agrees to execute the notation of the Guarantee in substantially the form set forth in Section 205 to be endorsed on each Security authenticated and delivered by the Trustee. The Guarantor hereby agrees that its Guarantee set forth in Section 1201 shall remain in full force and effect notwithstanding any failure to endorse on any Security a notation of such Guarantee. Each such notation of Guarantee shall be signed on behalf of the Guarantor by any proper officer of the Guarantor prior to the authentication of the Security on which it is endorsed, and the delivery of such 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

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or facsimile signatures of any present, past or future proper officer of the Guarantor and may be imprinted or otherwise reproduced below the notation of the Guarantee, and in case any such proper officer of the Guarantor who shall have signed the notation of the Guarantee shall cease to be such officer before the Security on which such notation is endorsed shall have been authenticated and delivered by the Trustee or disposed of by the Company, such Security nevertheless may be authenticated and delivered or disposed of as though the person who signed the notation of the Guarantee had not ceased to be such officer of the Guarantor.]

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

WHITE MOUNTAINS INSURANCE GROUP,  
LTD.

by

Name:  
Title:

FUND AMERICAN COMPANIES, INC.,

by

Name:  
Title:

BANK ONE, NATIONAL ASSOCIATION,

by

Name:  
Title:

[Form of Subordinated Indenture]

WHITE MOUNTAINS INSURANCE GROUP, LTD.  
[and FUND AMERICAN COMPANIES, INC.]

and

BANK ONE, NATIONAL ASSOCIATION  
Trustee

SUBORDINATED INDENTURE

Dated as of \_\_\_\_\_, 200\_

Providing for Issuance of Securities in Series

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N.A. means Not Applicable.

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[To be modified as appropriate for issuances of securities by White Mountains Insurance Group, Ltd. or issuances of securities by Fund American Companies, Inc. which will be guaranteed by White Mountains Insurance Group, Ltd.]

[Form of]

SUBORDINATED INDENTURE (this "Indenture") between WHITE MOUNTAINS INSURANCE GROUP, LTD. a company existing under the laws of Bermuda (the ["Company"]) ["Guarantor"]) having its principal office at 80 South Main Street, Hanover, New Hampshire 03755-2053, [FUND AMERICAN COMPANIES, INC., a Delaware corporation (the "Company") having its principal office at One Beacon Street, Boston, Massachusetts 02108-3100], and BANK ONE, NATIONAL ASSOCIATION, trustee (hereinafter called the "Trustee"), is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

Recitals of the Company

The Company [and the Guarantor each] has duly authorized the execution and delivery of this Indenture to provide for [,in the case of the Company,] the issuance of [, and in the case of the Guarantor, the guarantee of,] the Company's debentures, notes, bonds or other evidences of indebtedness, to be issued in one or more fully registered series.

All things necessary to make this Indenture a valid agreement of [each of] the Company [and the Guarantor], in accordance with its terms, have

Agreements of the Parties

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

ARTICLE ONE

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DEFINITIONS AND OTHER PROVISIONS  
OF GENERAL APPLICATION

Section 101. DEFINITIONS. For all purposes of this Indenture and of any indenture supplemental hereto, except as otherwise expressly provided or unless the context otherwise requires:

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

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

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

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

(5) "including" and words of similar import shall be deemed to be followed by "without limitation". Certain terms, used principally in Article Six, are defined in that Article.

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"Act", when used with respect to any Security-holder, has the meaning specified in Section 104.

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

"Authenticating Agent" means any Person authorized by the Trustee to authenticate Securities under Section 614.

"Board of Directors" means either the board of directors of the Company or any duly authorized committee of that board.

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

"Business Day" means each day which is neither a Saturday, Sunday or other day on which banking institutions in the pertinent Place or Places of Payment are authorized or required by law or executive order to be closed.

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

"Company" means the Person named as the "Company" in the first paragraph of this instrument until a successor

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replaces it and, thereafter, "Company" shall mean the successor and, for purposes of any provision contained herein and required by the TIA, each other obligor on the Securities.

"Company Request", "Company Order" and "Company Consent" mean, respectively, a written request, order or consent signed in the name of the Company by its Chairman of the Board, President or a Vice President, and by its Treasurer, an Assistant Treasurer, Controller, an Assistant Controller, Secretary or an Assistant Secretary, and delivered to the Trustee.

"Corporate Trust Office" means the principal office of the Trustee in [ ] at which at any particular time its corporate trust business shall be principally administered, which office at the date hereof is located at [ ], except that with respect to the presentation of Securities for payment or for registration of transfer and exchange, such term shall mean the office or the agency of the Trustee in said city at which at any particular time its corporate agency business shall be conducted, which office at the date hereof is located at [ ].

"Debt" means indebtedness for money borrowed.

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

"Depository" means, unless otherwise specified by the Company pursuant to either Section 204 or 301, with respect to Securities of any series issuable or issued as a Global Security, The Depository Trust Company, New York, New York, or any successor thereto registered as a clearing agency under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation.

"Event of Default" has the meaning specified in Article Five.

"Global Security" means with respect to any series of Securities issued hereunder, a Security which is executed by the Company and authenticated and delivered by the

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Trustee to the Depository or pursuant to the Depository's instruction, all in accordance with this Indenture and an indenture supplemental hereto, if any, or Board Resolution and pursuant to a Company Request, which shall be registered in the name of the Depository or its nominee and which shall represent, and shall be denominated in an amount equal to the aggregate principal amount of, all of the Outstanding 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.

["Guarantee" means the irrevocable and unconditional guarantee by the Guarantor of any Security of any series of the Company authenticated and delivered pursuant to Article Twelve.]

["Guarantor" means the Person named as the "Guarantor" in the first paragraph of this instrument until a successor replaces it and, thereafter, "Guarantor" shall mean the successor.]

["Guarantor Board of Directors" means either the board of directors of the Guarantor or any duly authorized committee of that board.]

["Guarantor's Board Resolution" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Guarantor to have been duly adopted by the Guarantor Board of Directors.]

["Guarantor Request", "Guarantor Order", "Guarantor Consent" means, respectively, a written request, order or consent signed in the name of the Guarantor by its Chairman of the Board, President or a Vice President, and by its Treasurer, an Assistant Treasurer, Controller, an Assistant Controller, Secretary or an Assistant Secretary, and delivered to the Trustee.]

"Holder", when used with respect to any Security, means a Securityholder.

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

"Interest", when used with respect to an Original Issue Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity.

"Interest Payment Date", when used with respect to any series of Securities, means the Stated Maturity of any installment of interest on those Securities.

["Junior Subordinated Securities" means the securities issued under



the Junior Subordinated Indenture dated as of \_\_\_\_\_, 2001, between the Company and [ ]].

"Maturity", when used with respect to any Securities, means the date on which the principal of any such Security becomes due and payable as therein or herein provided, whether on a Repayment Date, at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

"Officers' Certificate" means [, with respect to the company or the Guarantor,] a certificate signed by the Chairman of the Board, the President or a Vice President, and by the Treasurer, an Assistant Treasurer, the Controller, an Assistant Controller, the Secretary or an Assistant Secretary of the Company [or the Guarantor, as the case may be], and delivered to the Trustee. Wherever this Indenture requires that an Officers' Certificate be signed also by an engineer or an accountant or other expert, such engineer, accountant or other expert (except as otherwise expressly provided in this Indenture) may be in the employ of the Company [or the Guarantor, as the case may be], and shall be acceptable to the Trustee.

"Opinion of Counsel" means a written opinion of counsel, who may (except as otherwise expressly provided in this Indenture) be an employee of or of counsel to the

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Company [or the Guarantor]. Such counsel shall be acceptable to the Trustee, whose acceptance shall not be unreasonably withheld.

"Original Issue Discount Security" means (i) any Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof, and (ii) any other Security deemed an Original Issue Discount Security for United States Federal income tax purposes.

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

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

(ii) such Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent in trust for the Holders of such Securities; provided that, if such 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) such Securities in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, or which shall have been paid pursuant to the terms of Section 306 (except with respect to any such Security as to which proof satisfactory to the Trustee is presented that such Security is held by a person in whose hands such Security is a legal, valid and binding obligation of the Company).

In determining whether the Holders of the requisite principal amount of such Securities Outstanding have given any request, demand, authorization, direction, notice, consent or waiver hereunder, (i) the principal amount of any Original Issue Discount Security that shall be deemed to be

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Outstanding shall be the amount of the principal thereof that would be due and payable as of the date of the taking of such action upon a declaration of acceleration of the Maturity thereof and (ii) Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding. In determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which a Responsible Officer assigned to the corporate trust department of the Trustee knows to be owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to act as owner with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor.

"Paying Agent" means any Person authorized by the Company to pay the principal of (and premium, if any) or interest on any Securities on behalf of the Company.

Notwithstanding the foregoing, the Company may, and may permit any Restricted Subsidiary to, create, assume, incur or suffer to exist any Mortgage upon any Principal Property without equally and ratably securing the Senior Debt Securities if the aggregate amount of all Debt then outstanding secured by such Mortgage and all similar Mortgages does not exceed [10]% of the total consolidated stockholders' equity (including preferred stock) of the Company as shown on the audited consolidated balance sheet contained in the latest annual

report to stockholders of the Company; PROVIDED that Debt secured by Permitted Mortgages shall not be included in the amount of such secured Debt.

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

"Place of Payment" means with respect to any

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series of Securities issued hereunder the city or political subdivision so designated with respect to the series of Securities in question in accordance with the provisions of Section 301.

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

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

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

"Regular Record Date" for the interest payable on any Security on any Interest Payment Date means the date specified in such Security as the Regular Record Date.

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

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

"Responsible Officer", when used with respect to the Trustee, means the chairman or vice-chairman of the board of directors, the chairman or vice-chairman of the executive committee of the board of directors, the president, any vice president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, the cashier, any assistant cashier, any senior trust officer or

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trust officer, the controller and any assistant controller or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

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

"Security Register" shall have the meaning specified in Section 305.

"Security Registrar" means the Person who keeps the Security Register specified in Section 305.

"Securityholder" means a Person in whose name a Security is registered in the Security Register.

"Senior Indebtedness" means the principal of and premium, if any, and interest on the following whether outstanding on the date of execution of this Indenture or thereafter incurred or created (i) indebtedness of the Company [or the Guarantor] for money borrowed by the Company [or the Guarantor] (including purchase money obligations with an original maturity in excess of one year) or evidenced by securities (other than the Junior Subordinated Securities and the Securities [and, in each case, any guarantees by the Guarantor thereof]), notes, bankers' acceptances or other corporate debt securities or similar instruments issued by the Company [or the Guarantor]; (ii) obligations with respect to letters of credit; (iii) indebtedness of the Company [or the Guarantor] constituting a guarantee of indebtedness of others of the type referred to in the preceding clauses (i) and (ii); or (iv) renewals, extensions or refundings of any of the indebtedness referred to in the preceding clauses (i), (ii) and (iii) unless, in the case of any particular

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indebtedness, renewal, extension or refunding, under the express provisions of

the instrument creating or evidencing the same, or pursuant to which the same is outstanding, such indebtedness or such renewal, extension or refunding thereof is not superior in right of payment to the Securities.

"Special Record Date" for the payment of any Defaulted Interest (as defined in Section 307) means a date fixed by the Trustee pursuant to Section 307.

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

"Subsidiary" of any specified Person means any corporation, limited liability company, limited or general partnership, business trust or other business entity at least a majority of whose outstanding Voting Stock shall at the time be owned, directly or indirectly, by the specified Person or by one or more of its Subsidiaries, or both.

"Trust Indenture Act" or "TIA" means the Trust Indenture Act of 1939, as amended by the Trust Indenture Reform Act of 1990, as in force at the date as of which this instrument was executed except as provided in Section 905.

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

"U.S. Government Obligations" means securities that are (x) direct obligations of the United States of America 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 of America, the payment of which is unconditionally guaranteed as a full faith and credit

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obligation by the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof.

"Vice President" when used with respect to [the Guarantor,] the Company or the Trustee means any vice president, whether or not designated by a number or a word or words added before or after the title "vice president", including, without limitation, an assistant vice president.

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

Section 102. COMPLIANCE CERTIFICATES AND OPINIONS. Upon any application or request by the Company [or the Guarantor] to the Trustee to take any action under any provision of this Indenture, the Company [or the Guarantor, as applicable,] shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such Counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (except for the written statement required by Section 1004) shall include

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

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

(3) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

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

Section 103. FORM OF DOCUMENTS DELIVERED TO TRUSTEE. In any case where several matters are required to be certified by, or covered by an opinion

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

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

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

Section 104. ACTS OF SECURITYHOLDERS. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Securityholders or Securityholders of any series may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Securityholders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee, and, where it is hereby expressly required, to the Company [or the Guarantor or both of them]. If any Securities are denominated in coin or currency other than that of the United States, then for the purposes of determining whether the Holders of the requisite principal amount of Securities have taken any action as herein described, the principal amount of such Securities shall be deemed to be that amount of United States dollars that could be obtained for such principal amount on the basis of the spot rate of exchange into United States dollars for the currency in which such Securities are denominated (as evidenced to the Trustee by an Officers' Certificate) as of the date the taking of such action by the Holders of such requisite principal amount is evidenced to the Trustee as provided in the immediately preceding sentence. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Securityholders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 601) conclusive in favor of the Trustee [, the Guarantor] and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by

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

(c) The ownership of Securities shall be proved by the Security Register.

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

date.

(e) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Security shall bind the Holder of every

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Security issued upon the transfer thereof or in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Company [or the Guarantor] in reliance thereon whether or not notation of such action is made upon such Security.

Section 105. NOTICES, ETC., TO TRUSTEE [, GUARANTOR] AND COMPANY.

Any request, demand, authorization, direction, notice, consent, waiver or Act of Securityholders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Trustee by any Securityholder or by the Company [or the Guarantor] shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the Trustee at its Corporate Trust Office, or

(2) the Company [or the Guarantor] by the Trustee or by any Securityholder shall be sufficient for every purpose hereunder (except as provided in Section 501(4) or, in the case of a request for repayment, as specified in the Security carrying the right to repayment) if in writing and mailed, first-class postage prepaid, to the Company [or the Guarantor, as the case may be,] addressed to it at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee by the Company [or the Guarantor, as the case may be,].

Section 106. NOTICES TO SECURITYHOLDERS; WAIVER. Where this

Indenture or any Security provides for notice to Securityholders of any event, such notice shall be sufficiently given (unless otherwise herein or in such Security expressly provided) if in writing and mailed, first-class postage prepaid, to each Securityholder affected by such event, at his address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Securityholders is given by mail, neither the failure to mail such notice, nor

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any defect in any notice so mailed, to any particular Securityholder shall affect the sufficiency of such notice with respect to other Securityholders. Where this Indenture or any Security provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Securityholders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

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

Section 107. CONFLICT WITH TRUST INDENTURE ACT. If any provision

hereof limits, qualifies or conflicts with the duties imposed by any of Sections 310 to 317, inclusive, of the Trust Indenture Act through the operation of Section 318(c) thereof, such imposed duties shall control.

Section 108. EFFECT OF HEADINGS AND TABLE OF CONTENTS. The Article

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

Section 109. SUCCESSORS AND ASSIGNS. All covenants and agreements in

this Indenture by [each of] the Company [and the Guarantor] shall bind its successors and assigns, whether so expressed or not.

Section 110. SEPARABILITY CLAUSE. In case any provision in this

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

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Section 111. BENEFITS OF INDENTURE. Nothing in this Indenture or in

any Securities, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any Authenticating Agent or Paying Agent, the Security Registrar and the Holders of Securities (or such of them as may be affected thereby), any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 112. GOVERNING LAW. This Indenture shall be construed in accordance with and governed by the laws of the State of New York.

Section 113. COUNTERPARTS. This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 114. JUDGMENT CURRENCY. The Company [and the Guarantor each] agrees, to the fullest extent that it may effectively do so under applicable law, that (a) if for the purpose of obtaining judgment in any court it is necessary to convert the sum due in respect of the principal of, or premium or interest, if any, on the Securities of any series (the "Required Currency") into a currency in which a judgment will be rendered (the "Judgment Currency"), the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in New York City the Required Currency with the Judgment Currency on the Banking Day (as defined below) immediately preceding the date on which final unappealable judgment is given and (b) its obligations under this Indenture to make payments in the Required Currency (i) shall not be discharged or satisfied by any tender, or any recovery pursuant to any judgment (whether or not entered in accordance with subsection (a)), in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the actual receipt, by the payee, of the full amount of the Required Currency expressed to be payable in respect of such payments, (ii) shall be enforceable as an alternative or additional cause of action for the purpose of recovering in the Required Currency the amount, if any, by which such actual

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receipt shall fall short of the full amount of the Required Currency so expressed to be payable and (iii) shall not be affected by judgment being obtained for any other sum due under this Indenture. For purposes of the foregoing, "Banking Day" means any day except a Saturday, Sunday or a legal holiday in New York City or a day on which banking institutions in New York City are authorized or required by law or executive order to close.

## ARTICLE TWO

### SECURITY FORMS

Section 201. FORMS GENERALLY. The Securities shall have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon, as may be required to comply with applicable laws or regulations or with the rules of any securities exchange, or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution of the Securities. Any portion of the text of any Security may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Security.

The definitive Securities shall be printed, lithographed or engraved or produced by any combination of these methods on steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities, subject, with respect to the Securities of any series, to the rules of any securities exchange on which such Securities are listed.

Section 202. FORMS OF SECURITIES. Each Security shall be in one of the forms approved from time to time by or pursuant to a Board Resolution, or established in one or more indentures supplemental hereto. Prior to the delivery of a Security to the Trustee for authentication in any form

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approved by or pursuant to a Board Resolution, the Company shall deliver to the Trustee the Board Resolution by or pursuant to which such form of Security has been approved, which Board Resolution shall have attached thereto a true and correct copy of the form of Security which has been approved thereby or, if a Board Resolution authorizes a specific officer or officers to approve a form of Security, a certificate of such officer or officers approving the form of Security attached thereto. Any form of Security approved by or pursuant to a Board Resolution must be acceptable as to form to the Trustee, such acceptance to be evidenced by the Trustee's authentication of Securities in that form or a certificate signed by a Responsible Officer of the Trustee and delivered to the Company.

[Each Security shall bear a notation of Guarantee in substantially the form set forth in Section 205. Notwithstanding the foregoing, the notation of Guarantee to be endorsed on the Securities of any series may have such appropriate insertions, omissions, substitutions and other corrections from the form thereof referred to above as are required or permitted by this Indenture and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may, consistently herewith, be determined by the officers delivering the same, in each case as evidenced by such delivery.]

Section 203. FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION. The form of Trustee's Certificate of Authentication for any Security issued pursuant

to this Indenture shall be substantially as follows:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

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

[                    ],  
as Trustee,

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

Section 204. SECURITIES ISSUABLE IN THE FORM OF A GLOBAL SECURITY.

(a) If the Company shall establish pursuant to Sections 202 and 301 that the 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 Company shall execute and the Trustee or its agent shall, in accordance with Section 303 and the Company Request delivered to the Trustee or its agent thereunder, 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 Securities of such series to be represented by such Global Security or Securities, or such portion thereof as the Company shall specify in a Company Request, (ii) shall be registered in the name of the Depositary for such Global Security or Securities or its nominee, (iii) shall be delivered by the Trustee or its agent to the Depositary or pursuant to the Depositary'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 Securities represented hereby, this Global Security may not be transferred except as a whole by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary."

(b) Notwithstanding any other provisions of this Section 204 or of Section 305, 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 individual Securities, a Global Security may be transferred, in whole but not in part and in the manner provided in Section 305, only to a nominee of the Depositary for such Global Security, or to the Depositary, or a successor Depositary for such Global Security selected or approved by the Company, or to a nominee of such successor Depositary.

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(c) (i) If at any time the Depositary for a Global Security notifies the Company that it is unwilling or unable to continue as Depositary for such Global Security or if at any time the Depositary for the Securities for such series ceases to be a clearing agency registered under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation, the Company shall appoint a successor Depositary with respect to such Global Security. If a successor Depositary for such Global Security is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such ineligibility, the Company will execute, and the Trustee or its agent, upon receipt of a Company Request for the authentication and delivery of individual Securities of such series in exchange for such Global Security, will authenticate and deliver, individual Securities of such series of like tenor and terms in an aggregate principal amount equal to the principal amount of the Global Security in exchange for such Global Security.

(ii) The Company may at any time and in its sole discretion determine that the 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 Company will execute, and the Trustee, upon receipt of a Company Request for the authentication and delivery of individual Securities of such series in exchange in whole or in part for such Global Security, will authenticate and deliver individual Securities of such series of like tenor and terms in definitive form in an aggregate principal amount equal to the principal amount of such Global Security or Securities representing such series or portion thereof in exchange for such Global Security or Securities.

(iii) If specified by the Company pursuant to Sections 202 and 301 with respect to Securities issued or issuable in the form of a Global Security, the Depositary for such Global Security may surrender such Global Security in exchange in whole or in part for individual Securities of such series of like tenor and terms in definitive form on such terms as are acceptable to the Company and such Depositary. Thereupon the Company shall execute, and the Trustee or its agent shall authenticate and deliver, without

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service charge, (1) to each Person specified by such Depositary a new 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 Person's 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 Securities delivered to the Holders thereof.

(iv) In any exchange provided for in any of the preceding three paragraphs, the Company will execute and the Trustee or its agent will authenticate and deliver individual Securities in definitive registered form in authorized denominations. Upon the exchange of the entire principal amount of a Global Security for individual Securities, such Global Security shall be canceled by the Trustee or its agent. Except as provided in the preceding paragraph, Securities issued in exchange for a Global Security pursuant to this Section 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 Security Registrar. The Trustee or the Security Registrar shall deliver such Securities to the Persons in whose names such Securities are so registered.

[SECTION 205. FORM OF NOTATION OF GUARANTEE. The form of notation of Guarantee to be endorsed on any Security issued pursuant to this Indenture shall be substantially as follows:

NOTATION OF GUARANTEE

White Mountains Insurance Group, Ltd., a company existing under the law of Bermuda (the "Guarantor", which term includes any successor thereto under the Indenture (the "Indenture") referred to in the Security on which this notation is endorsed) has unconditionally guaranteed,

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pursuant to the terms of the Guarantee contained in Article Twelve of the Indenture, the due and punctual payment of the principal of and any premium and interest on this Security, when and as the same shall become due and payable, whether at the Stated Maturity, by declaration of acceleration, call for redemption, early repayment or otherwise, in accordance with the terms of this Security and the Indenture.

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

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

WHITE MOUNTAINS INSURANCE GROUP, LTD.

by

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

ARTICLE THREE

THE SECURITIES

Section 301. GENERAL TITLE; GENERAL LIMITATIONS; ISSUABLE IN SERIES; TERMS OF PARTICULAR SERIES. The aggregate principal amount of Securities which may be authenticated and delivered and Outstanding under this Indenture is not limited.

The Securities may be issued in one or more series up to an aggregate principal amount of Securities as from time to time may be authorized by the Board of Directors. All Securities of each series under this Indenture shall in

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all respects be equally and ratably entitled to the benefits hereof with respect to such series without preference, priority or distinction on account of the actual time of the authentication and delivery or Stated Maturity of the Securities of such series.

Each series of Securities shall be created either by or pursuant to a Board Resolution or by or pursuant to an indenture supplemental hereto. The Securities of each such series may bear such date or dates, be payable at such place or places, have such Stated Maturity or Maturities, be issuable at such premium over or discount from their face value, bear interest at such rate or rates (which may be fixed or floating), from such date or dates, payable in such installments and on such dates and at such place or places to the Holders of Securities registered as such on such Regular Record Dates, or may bear no interest, and may be redeemable or repayable at such Redemption Price or Prices or Repayment Price or Prices, as the case may be, whether at the option of the Holder or otherwise, and upon such terms, all as shall be provided for in or pursuant to the Board Resolution or in or pursuant to the supplemental indenture creating that series. There may also be established in or pursuant to a Board



Resolution or in or pursuant to a supplemental indenture prior to the issuance of Securities of each such series, provision for:

(1) the exchange or conversion of the Securities of that series, at the option of the Holders thereof, for or into new Securities of a different series or other securities or other property of the Company[, the Guarantor] or another Person, including shares of common stock, preferred stock, indebtedness or securities of any kind of the Company[, the Guarantor], any Subsidiary of the Company [or of the Guarantor] or of any other Person or securities directly or indirectly convertible into or exchangeable for any such securities;

(2) a sinking or purchase fund or other analogous obligation;

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(3) if other than U.S. dollars, the currency or currencies or units based on or related to currencies (including European Currency Units) in which the Securities of such series shall be denominated and in which payments of principal of, and any premium and interest on, such Securities shall or may be payable;

(4) if the principal of (and premium, if any) or interest, if any, on the Securities of such series are to be payable, at the election of the Company or a holder thereof, in a currency or currencies or units based on or related to currencies (including European Currency Units) other than that in which the Securities are stated to be payable, the period or periods within which, and the terms and conditions upon which, such election may be made;

(5) if the amount of payments of principal of (and premium, if any) or interest, if any, on the Securities of such series may be determined with reference to an index based on (i) a currency or currencies or units based on or related to currencies (including European Currency Units) other than that in which the Securities are stated to be payable, (ii) changes in the price of one or more other securities or groups or indexes of securities or (iii) changes in the prices of one or more commodities or groups or indexes of commodities, or any combination of the foregoing, the manner in which such amounts shall be determined;

(6) if the aggregate principal amount of the Securities of that series is to be limited, such limitations, and the maturity date of the principal amount of such Securities of that series (which may be fixed or extendible), and the rate or rates (which may be fixed or floating) per annum at which the Securities of that series will bear interest, if any, or the method of determining such rate or rates, and the payment dates and record dates relating to such interest payments;

(7) the exchange of Securities of that series, at the option of the Holders thereof, for other Securities of the same series of the same aggregate principal amount of a different authorized kind or different

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authorized denomination or denominations, or both;

(8) the appointment by the Trustee of an Authenticating Agent in one or more places other than the location of the office of the Trustee with power to act on behalf of the Trustee and subject to its direction in the authentication and delivery of the Securities of any one or more series in connection with such transactions as shall be specified in the provisions of this Indenture or in or pursuant to the Board Resolution or the supplemental indenture creating such series;

(9) the percentage of their principal amount at which such Securities will be issued, and the portion of the principal amount of Securities of the series, if other than the total principal amount thereof, which shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 502 or provable in bankruptcy pursuant to Section 504;

(10) any Event of Default with respect to the Securities of such series, if not set forth herein and any additions, deletions or other changes to the Events of Default set forth herein that shall be applicable to the Securities of such series (including a provision making any Event of Default set forth herein inapplicable to the Securities of that series);

(11) any covenant solely for the benefit of the Securities of such series and any additions, deletions or other changes to the provisions of Article Ten or any definitions relating to such Article that shall be applicable to the Securities of such series (including a provision making any Section of such Article inapplicable to the Securities of such series);

(12) the applicability of Section 402(b) of this Indenture to the Securities of such series;

(13) if the Securities of the series shall be issued in whole or in part in the form of a Global Security or

Global Securities, the terms and conditions, if any, upon which such Global Security or Global Securities may be exchanged in whole or in part for other individual Securities; and the Depositary for such Global Security or Global Securities (if other than the Depositary specified in Section 101 hereof);

(14) the subordination of the Securities of such series to any other indebtedness of the Company [and the Guarantor], including without limitation, the Securities of any other series; and

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

all upon such terms as may be determined in or pursuant to a Board Resolution or in or pursuant to a supplemental indenture with respect to such series. All Securities of the same series shall be substantially identical in tenor and effect, except as to denomination.

The form of the Securities of each series shall be established pursuant to the provisions of this Indenture in or pursuant to the Board Resolution or in or pursuant to the supplemental indenture creating such series. The Securities of each series shall be distinguished from the Securities of each other series in such manner, reasonably satisfactory to the Trustee, as the Board of Directors may determine.

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

Any terms or provisions in respect of the Securities of any series issued under this Indenture may be determined pursuant to this Section by providing in a Board Resolution or supplemental indenture for the method by which such terms or provisions shall be determined.

Section 302. DENOMINATIONS. The Securities of each series shall be issuable in such denominations and

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

Section 303. EXECUTION, AUTHENTICATION AND DELIVERY AND DATING. The Securities shall be executed on behalf of the Company by its Chairman of the Board, its President, one of its Vice Presidents or its Treasurer under its corporate seal reproduced thereon and attested by its Secretary or one of its Assistant Secretaries. The signature of any of these officers on the Securities may be manual or facsimile.

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

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities executed by the Company to the Trustee for authentication; and the Trustee shall, upon Company Order, authenticate and make available for delivery such Securities as in this Indenture provided and not otherwise.

Prior to any such authentication and delivery, the Trustee shall be entitled to receive, in addition to any Officers' Certificate and Opinion of Counsel required to be furnished to the Trustee pursuant to Section 102, and the Board Resolution and any certificate relating to the issuance of the series of Securities required to be furnished pursuant to Section 202, an Opinion of Counsel stating that:

(1) all instruments furnished to the Trustee conform to the requirements of the Indenture and constitute sufficient authority hereunder for the Trustee to authenticate and deliver such Securities;

(2) the form and terms (or in connection with the issuance of medium-term Securities under Section 311, the manner of determining the terms) of such Securities have been established in conformity with the provisions of this Indenture;

(3) all laws and requirements with respect to the execution and delivery by the Company of such Securities have been complied with, the Company has the corporate power to issue such Securities and such

Securities have been duly authorized and delivered by the Company and, assuming due authentication and delivery by the Trustee, constitute legal, valid and binding obligations of the Company enforceable in accordance with their terms (subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, fraudulent conveyance, moratorium or other laws and legal principles affecting creditors' rights generally from time to time in effect and to general equitable principles, whether applied in an action at law or in equity) and entitled to the benefits of this Indenture, equally and ratably with all other Securities, if any, of such series Outstanding; and

(4) such other matters as the Trustee may reasonably request;

and, if the authentication and delivery relates to a new series of Securities created by an indenture supplemental hereto, also stating that all laws and requirements with respect to the form and execution by the Company of the supplemental indenture with respect to that series of Securities have been complied with, the Company has corporate power to execute and deliver any such supplemental indenture and has taken all necessary corporate action for those purposes and any such supplemental indenture has been executed and delivered and constitutes the legal, valid and binding obligation of the Company enforceable in accordance with its terms (subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, fraudulent conveyance, moratorium or other laws and legal

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principles affecting creditors' rights generally from time to time in effect and to general equitable principles, whether applied in an action at law or in equity).

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

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

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

Section 304. TEMPORARY SECURITIES. Pending the preparation of definitive Securities of any series, the Company may execute, and, upon receipt of the documents required by Section 303, together with a Company Order, the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

If temporary Securities of any series are issued, the Company will cause definitive Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company in a Place of Payment, without charge to the Holder; and upon surrender for cancellation of any one or

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more temporary Securities the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of such series of authorized denominations and of like tenor and terms. Until so exchanged the temporary Securities of such series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

Section 305. REGISTRATION, TRANSFER AND EXCHANGE. The Company shall keep or cause to be kept a register (herein sometimes referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities, or of Securities of a particular series, and for transfers of Securities or of Securities of such series. Any such register shall be in written form or in any other form capable of being converted into written form within a reasonable time. At all reasonable times the information contained in such register or registers shall be available for inspection by the Trustee at the office or agency to be maintained by the Company as provided in Section 1002.

Subject to Section 204, upon surrender for transfer of any Security of any series at the office or agency of the Company in a Place of Payment, the Company shall execute, and the Trustee shall authenticate and make available for delivery, in the name of the designated transferee or transferees, one or more new Securities of such series of any authorized denominations, of a like aggregate principal amount and Stated Maturity and of like tenor and terms.

Subject to Section 204, at the option of the Holder, Securities of any series may be exchanged for other Securities of such series of any authorized denominations, of a like aggregate principal amount and Stated Maturity and of like tenor and terms, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and make available for delivery, the Securities which the

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Securityholder making the exchange is entitled to receive.

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

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

Unless otherwise provided in the Security to be transferred or exchanged, no service charge shall be made on any Securityholder for any transfer or exchange of Securities, but the Company may (unless otherwise provided in such Security) require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Securities, other than exchanges pursuant to Section 304 or 906 not involving any transfer.

The Company shall not be required (i) to issue, transfer or exchange any Security of any series during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Securities of such series selected for redemption under Section 1103 and ending at the close of business on the date of such mailing, or (ii) to transfer or exchange any Security so selected for redemption in whole or in part, except for the portion of such Security not so selected for redemption.

None of the Company, [the Guarantor,] the Trustee, any agent of the Trustee, any Paying Agent or the Security Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

The Company initially appoints the Trustee to act

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as Security Registrar for the Securities on its behalf. The Company may at any time and from time to time authorize any Person to act as Security Registrar in place of the Trustee with respect to any series of Securities issued under this Indenture.

Section 306. MUTILATED, DESTROYED, LOST AND STOLEN SECURITIES. If (i) any mutilated Security is surrendered to the Trustee, or the Company [, the Guarantor] and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Security, and (ii) there is delivered to the Company [, the Guarantor] and the Trustee such security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Company [, the Guarantor] or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and upon its request the Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Security, a new Security of like tenor, series, Stated Maturity and principal amount, bearing a number not contemporaneously Outstanding.

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

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

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

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any and all other Securities of the same series duly issued hereunder.

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

Section 307. PAYMENT OF INTEREST; INTEREST RIGHTS PRESERVED. Unless otherwise provided with respect to such Security pursuant to Section 301, interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

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

(1) The Company [or the Guarantor], may elect to make payment of any Defaulted Interest to the Persons in whose names any such Securities (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company [or the Guarantor, as the case may be,] shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each such Security and the date of the proposed payment, and at the same time the Company [or the Guarantor, as the case may be] 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

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such Defaulted Interest as in this Clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company [or Guarantor, as the case may be,] of such Special Record Date and, in the name and at the expense of the Company [or the Guarantor], shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to the Holder of each such Security at his address as it appears in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names such Securities (or their respective Predecessor Securities) are registered on such Special Record Date and shall no longer be payable pursuant to the following Clause (2).

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

If any installment of interest the Stated Maturity of which is on or prior to the Redemption Date for any Security called for redemption pursuant to Article Eleven is not paid or duly provided for on or prior to the Redemption Date in accordance with the foregoing provisions of this Section, such interest shall be payable as part of the Redemption Price of such Securities.

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

Section 308. PERSONS DEEMED OWNERS. The Company [, the Guarantor], the Trustee and any agent of the Company [, the Guarantor,] or the Trustee may treat the Person in whose name any Security is registered in the Security Register as the owner of such Security for the purpose of receiving payment of principal of (and premium, if any), and (subject to Section 307) interest on, such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, [the Guarantor] the Trustee nor any agent of the Company [, the Guarantor] or the Trustee shall be affected by notice to the contrary.

Section 309. CANCELLATION. All Securities surrendered for payment, redemption, transfer, conversion or exchange or credit against a sinking fund shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and, if not already canceled, shall be promptly canceled by it. The

Company [or the Guarantor] may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company [or the Guarantor] may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly canceled by the Trustee. No Security shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section, except as expressly permitted by this Indenture. The Trustee shall return all canceled Securities to the Company.

Section 310. COMPUTATION OF INTEREST. Unless otherwise provided as contemplated in Section 301, interest on the Securities shall be calculated on the basis of a 360-day year of twelve 30-day months.

Section 311. MEDIUM-TERM SECURITIES. Notwithstanding any contrary provision herein, if all Securities of a series are not to be originally issued at one time, it shall not be necessary for the Company to deliver to the Trustee an Officers' Certificate, Board

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Resolution, supplemental indenture, Opinion of Counsel or Company Request otherwise required pursuant to Sections 202, 301 and 303 at or prior to the time of authentication of each 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 Security of such series to be issued; provided that any subsequent request by the Company to the Trustee to authenticate Securities of such series upon original issuance shall constitute a representation and warranty by the Company that as of the date of such request, the statements made in the Officers' Certificate delivered pursuant to Section 102 shall be true and correct as if made on such date.

An Officers' Certificate, supplemental indenture or Board Resolution delivered by the Company to the Trustee in the circumstances set forth in the preceding paragraph may provide that 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 Officers' Certificate, Board Resolution or supplemental indenture (any such telephonic instructions to be confirmed promptly in writing by such persons) and that such persons are authorized to determine, consistent with such Officers' Certificate, supplemental indenture or Board Resolution, such terms and conditions of said Securities as are specified in such Officers' Certificate, supplemental indenture or Board Resolution.

Section 312. CUSIP NUMBERS. The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; PROVIDED that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the "CUSIP"

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numbers.

SECTION 313. GLOBAL SECURITIES. (a) Each Global Security authenticated under this Indenture shall be registered in the name of the Depository designated by the Company for such Global Security or a nominee thereof and delivered to such Depository or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.

(b) Notwithstanding any other provision of this Indenture, no Global Security may be exchanged in whole or in part for Securities registered, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depository for such Global Security or a nominee thereof unless (i) such Depository (A) has notified the Company that it is unwilling or unable to continue as Depository for such Global Security or (B) has ceased to be a clearing agency registered as such under the Exchange Act or announces an intention permanently to cease business or does in fact do so or (ii) there shall have occurred and be continuing an Event of Default with respect to such Global Security.

(c) If any Global Security is to be exchanged for other Securities or canceled in whole, it shall be surrendered by or on behalf of the Depository or its nominee to the Trustee, as Security Registrar, for exchange or cancellation, as provided in this Article Three. If any Global Security is to be exchanged for other Securities or canceled in part, or if another Security is to be exchanged in whole or in part for a beneficial interest in any Global Security, in each case, as provided in Section 305, then either (i) such Global Security shall be so surrendered for exchange or cancellation, as provided in this Article Three or (ii) the principal amount thereof shall be reduced or increased by an amount equal to the portion thereof to be so exchanged or canceled, or equal to the principal amount of such other Security to be so exchanged for a beneficial interest therein, as the case may be, by means of an appropriate adjustment made on the records of the Trustee, as Security Registrar, whereupon the Trustee, in accordance with the Applicable Procedures, shall instruct the Depository or its authorized representative to make a

corresponding adjustment to its records. Upon any such surrender or adjustment of a Global Security, the Trustee shall, subject to Section 305 and as otherwise provided in this Article Three authenticate and deliver any Securities issuable in exchange for such Global Security (or any portion thereof) to or upon the order of, and registered in such names as may be directed by, the Depository or its authorized representative. Upon the request of the Trustee in connection with the occurrence of any of the events specified in the preceding paragraph, the Company shall promptly make available to the Trustee a reasonable supply of Securities that are not in the form of Global Securities. The Trustee shall be entitled to rely upon any order, direction or request of the Depository or its authorized representative which is given or made pursuant to this Article Three if such order, direction or request is given or made in accordance with the Applicable Procedures.

(d) Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security or any portion thereof, whether pursuant to this Article Three or otherwise, shall be authenticated and delivered in the form of, and shall be, a registered Global Security, unless such Security is registered in the name of a Person other than the Depository for such Global Security or a nominee thereof, in which case such Registered Security shall be authenticated and delivered in definitive, fully registered form, without interest coupons.

(e) The Depository or its nominee, as registered owner of a Global Security, shall be the Holder of such Global Security for all purposes under the Indenture and the Registered Securities, and owners of beneficial interests in a Global Security shall hold such interests pursuant to the Applicable Procedures. Accordingly, any such owner's beneficial interest in a Global Security will be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depository or its nominee or its Agent Members and such owners of beneficial interests in a Global Security will not be considered the owners or holders thereof.

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#### ARTICLE FOUR

##### SATISFACTION AND DISCHARGE OF INDENTURE; DEFEASANCE; UNCLAIMED MONEYS

SECTION 401. APPLICABILITY OF ARTICLE. If, pursuant to Section 301, provision is made for the defeasance of Securities of a series and if the Securities of such series are denominated and payable only in Dollars (except as provided pursuant to Section 301), then the provisions of this Article Four relating to defeasance of Securities shall be applicable except as otherwise specified pursuant to Section 301 for Securities of such series. Defeasance provisions, if any, for Securities denominated in a Foreign Currency may be specified pursuant to Section 301.

##### SECTION 402. SATISFACTION AND DISCHARGE OF INDENTURE; DEFEASANCE.

(a) If at any time (i) the Company shall have delivered to the Trustee for cancellation all Securities of any series theretofore authenticated and delivered (other than (1) any Securities of such series which shall have been destroyed, lost or stolen and which shall have been replaced or paid as provided in Section 306 and (2) Securities for whose payment money has theretofore been deposited in trust and thereafter repaid to the Company as provided in Section 405) or (ii) all 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 Company shall deposit with the Trustee as trust funds the entire amount in the Currency in which such Securities are denominated (except as otherwise provided pursuant to Section 301) sufficient (in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee) without consideration of any reinvestment and after payment of all taxes or other charges and assessments in respect thereof payable by the Trustee, to pay at maturity or upon redemption all Securities of such series not theretofore delivered to the Trustee for cancellation, including principal and premium, if any, and

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interest due or to become due on such date of maturity or redemption date, as the case may be, no default with respect to the Securities has occurred and is continuing on the date of such deposit, such deposit does not result in a breach or violation of, or constitute a default under, the Indenture or any other agreement or instrument to which the Company is a party and the Company delivers an Officers' Certificate and an Opinion of Counsel each stating that such conditions have been complied with and if in either case the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Indenture shall cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of such Securities herein expressly provided for and rights to receive payments of principal of, and premium, if any, and interest on, such Securities) with respect to the Securities of such series, and the Trustee, on demand of the Company, shall

execute proper instruments acknowledging satisfaction of and discharging this Indenture.

(b) Subject to Sections 402(c), 403 and 407, the Company at any time may terminate, with respect to Securities of a particular series, (i) all of the Company's and the Guarantor's obligations under the Securities of such series and this Indenture with respect to the Securities of such series ("legal defeasance option") or (ii) the Company's and the Guarantor's obligations under any covenants specified pursuant to Section 301 applicable to the Securities of such series ("covenant defeasance option"). The Company may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option.

If the Company exercises the legal defeasance option, payment of the Securities of the defeased series may not be accelerated because of an Event of Default. If the Company exercises the covenant defeasance option, payment of the Securities may not be accelerated because of an Event of Default related to the specified covenants.

Upon satisfaction of the conditions set forth herein and upon request of the Company [or the Guarantor],

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the Trustee shall acknowledge in writing the discharge of those obligations that the Company terminates.

(c) Notwithstanding clause (a) above and the exercise of the legal defeasance option in clause (b) above, the Company's [and the Guarantor's] obligations in Sections 305, 306, 405, 406, 407, 607, 608, 701 and 1002 shall survive until the Securities of the defeased series have been paid in full. Thereafter, the Company's [and the Guarantor's] obligations in Sections 607, 405 and 406 shall survive.

SECTION 403. CONDITIONS OF DEFEASANCE. The Company may exercise the legal defeasance option or the covenant defeasance option with respect to Securities of a particular series only if:

(1) the Company [or the Guarantor] 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 Securities of such series to maturity or redemption, as the case may be;

(2) the Company [or the Guarantor] delivers to the Trustee a certificate from a nationally recognized firm of independent public 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, if any, and interest when due on all the 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 501(5) or (6) with respect to the Company 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;

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(5) the deposit does not constitute a default under any other agreement binding on the Company [or the Guarantor];

(6) the Company [or the Guarantor] 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 Company [or the Guarantor] shall have delivered to the Trustee an Opinion of Counsel stating that (i) the Company 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 to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of 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 Company [or the Guarantor] shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of 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 Company [or the Guarantor] delivers to the Trustee an



Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Securities of such series as contemplated by this Article Four have been complied with.

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Before or after a deposit, the Company [or the Guarantor] may make arrangements satisfactory to the Trustee for the redemption of Securities of such series at a future date in accordance with Article Eleven.

SECTION 404. APPLICATION OF TRUST MONEY. The Trustee shall hold in trust money or U.S. Government Obligations deposited with it pursuant to this Article Four. 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 Securities of the defeased series.

SECTION 405. REPAYMENT TO COMPANY [OR GUARANTOR]. The Trustee and any paying agent shall promptly turn over to the Company [or the Guarantor] 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 Company [or the Guarantor] 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 Company [or the Guarantor] for payment as general creditors and all liability of the Trustee or such paying agent with respect to such money shall thereupon cease.

SECTION 406. INDEMNITY FOR U.S. GOVERNMENT OBLIGATIONS. The Company [and the Guarantor (without duplication)] shall pay and shall indemnify the Trustee 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 407. REINSTATEMENT. If the Trustee or any paying agent is unable to apply any money or U.S. Government Obligations in accordance with this Article Four 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 Company's [and the Guarantor's] obligations under this Indenture and the Securities of the defeased series shall be

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revived and reinstated as though no deposit had occurred pursuant to this Article Four 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 Four.

## ARTICLE FIVE

### REMEDIES

Section 501. EVENTS OF DEFAULT. "Event of Default", wherever used herein, means with respect to any series of Securities any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), unless such event is either inapplicable to a particular series or it is specifically deleted or modified in the supplemental indenture creating such series of Securities or in the form of Security for such series:

(1) default in the payment of any interest upon any Security of that series when it becomes due and payable, and continuance of such default for a period of 90 days; or

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

(3) default in the payment of any sinking or purchase fund or analogous obligation when the same becomes due by the terms of the Securities of such series; or

(4) default in the performance, or breach, of any covenant or warranty of the Company [or the Guarantor] in this Indenture in respect of the Securities of such series (other than a covenant or warranty in respect of the Securities of such series a default in the performance of which or the breach of which is else where in this Section specifically dealt with), all

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of such covenants and warranties in the Indenture which are not expressly stated to be for the benefit of a particular series of Securities being deemed in respect of the Securities of all series for this purpose, and continuance of such default or breach for a period of 90 days after there

has been given, by registered or certified mail, to the Company [and the Guarantor] by the Trustee or to the Company [and the Guarantor] and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of such series, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(5) the entry of an order for relief against the Company [or the Guarantor] under the Federal Bankruptcy Code by a court having jurisdiction in the premises or a decree or order by a court having jurisdiction in the premises adjudging the Company [or the Guarantor] a bankrupt or insolvent under any other applicable Federal, State or Foreign law, or the entry of a decree or order approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company [or the Guarantor] under the Federal Bankruptcy Code or any other applicable Federal, State or Foreign law (other than a reorganization under a foreign law that does not relate to insolvency), or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company [or the Guarantor] or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or

(6) the consent by the Company [or the Guarantor] to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the Federal Bankruptcy Code or any other applicable Federal, State or Foreign law (other than a reorganization under a foreign law that does not relate

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to insolvency) law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company [or the Guarantor] or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company [or the Guarantor] in furtherance of any such action; or

(7) any other Event of Default provided in the supplemental indenture under which such series of Securities is issued or in the form of Security for such series.

Section 502. ACCELERATION OF MATURITY; RESCISSION AND ANNULMENT. If an Event of Default described in paragraph (1), (2), (3), (4) or (7) (if the Event of Default under paragraph (4) or (7) is with respect to less than all series of Securities then Outstanding) of Section 501 occurs and is continuing with respect to any series, then and in each and every such case, unless the principal of all the Securities of such series shall have already become due and payable, either the Trustee or the Holders of not less than 25% in aggregate principal amount of the Securities of such series then Outstanding hereunder (each such series acting as a separate class), by notice in writing to the Company [and the Guarantor] (and to the Trustee if given by Holders), may declare the principal amount (or, if the Securities of such series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of that series) of all the Securities of such series then Outstanding and all accrued interest thereon to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Securities of such series contained to the contrary notwithstanding. If an Event of Default described in paragraph (4) or (7) (if the Event of Default under paragraph (4) or (7) is with respect to all series of Securities then Outstanding), or (5) or (6) of Section 501 occurs and is continuing, then and in each and every such case, unless the principal of all the Securities shall have

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already become due and payable, either the Trustee or the Holders of not less than 25% in aggregate principal amount of all the Securities then Outstanding hereunder (treated as one class), by notice in writing to the Company [and the Guarantor] (and to the Trustee if given by Holders), may declare the principal amount (or, if any Securities are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms thereof) of all the Securities then Outstanding and all accrued interest thereon to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Securities contained to the contrary notwithstanding.

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

(1) the Company [or the Guarantor] has paid or deposited with the Trustee a sum sufficient to pay

(A) all overdue installments of interest on the Securities of

such series,

(B) the principal of (and premium, if any, on) any Securities of such series which have become due otherwise than by such declaration of acceleration, and interest thereon at the rate or rates prescribed therefor by the terms of the Securities of such series, to the extent that payment of such interest is lawful,

(C) interest upon overdue installments of interest at the rate or rates prescribed therefor by the terms of the Securities of such series to the extent that payment of such interest is

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lawful, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts due the Trustee under Section 607; and

(2) all Events of Default with respect to such series of Securities, other than the nonpayment of the principal of the Securities of such series which have become due solely by such acceleration, have been cured or waived as provided in Section 513.

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

Section 503. COLLECTION OF INDEBTEDNESS AND SUITS FOR ENFORCEMENT BY TRUSTEE. The Company [and the Guarantor each] covenants that if

(1) default is made in the payment of any installment of interest on any Security of any series when such interest becomes due and payable, or

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

(3) default is made in the payment of any sinking or purchase fund or analogous obligation when the same becomes due by the terms of the Securities of any series,

and any such default continues for any period of grace provided with respect to the Securities of such series, the Company [or the Guarantor, as the case may be,] will, upon demand of the Trustee, pay to it, for the benefit of the Holder of any such Security (or the Holders of any such series in the case of Clause (3) above), the whole amount then due and payable on any such Security (or on the Securities of any such series in the case of Clause (3) above) for principal (and premium, if any) and interest, with interest, to the extent that payment of such interest shall be legally enforceable, upon the overdue principal

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(and premium, if any) and upon overdue installments of interest, at such rate or rates as may be prescribed therefor by the terms of any such Security (or of Securities of any such series in the case of Clause (3) above); and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts due the Trustee under Section 607.

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

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

Section 504. TRUSTEE MAY FILE PROOFS OF CLAIM. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company [, Guarantor] or any other obligor upon the Securities or the property of the Company [, Guarantor] or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of

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whether the Trustee shall have made any demand on the Company [or the Guarantor] for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceedings or otherwise,

(i) to file and prove a claim for the whole amount of principal (and premium, if any) and interest owing and unpaid in respect of the Securities and to file such other papers or documents as may be necessary and advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts due the Trustee under Section 607) and of the Securityholders allowed in such judicial proceeding, and

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

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

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

Section 505. TRUSTEE MAY ENFORCE CLAIMS WITHOUT POSSESSION OF SECURITIES. All rights of action and claims under this Indenture or the Securities of any series may be prosecuted and enforced by the Trustee without the possession of any of the Securities of such series or the production thereof in any proceeding relating thereto, and

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any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agent and counsel, be for the ratable benefit of the Holders of the Securities of the series in respect of which such judgment has been recovered.

Section 506. APPLICATION OF MONEY COLLECTED. Any money collected by the Trustee with respect to a series of Securities pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest, upon presentation of the Securities of such series and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 607.

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

THIRD: To the Company [or the Guarantor or both, as they are entitled].

Section 507. LIMITATION ON SUITS. No Holder of any Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

(1) such Holder has previously given written notice to the Trustee of a continuing Event of Default

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with respect to Securities of such series;

(2) the Holders of not less than 25% in principal amount of the Outstanding Securities of such series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(3) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

(4) the Trustee for 60 days after its receipt of such notice,

request and offer of indemnity has failed to institute any such proceeding; and

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

it being understood and intended that no one or more Holders of Securities of such series shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders of Securities of such series, or to obtain or to seek to obtain priority or preference over any other such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and proportionate benefit of all the Holders of all Securities of such series.

Section 508. UNCONDITIONAL RIGHT OF SECURITY HOLDERS TO RECEIVE PRINCIPAL, PREMIUM AND INTEREST. Notwithstanding any other provisions in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of (and premium, if any) and (subject to Section 307) interest on such Security on the respective Stated Maturities expressed in such Security (or, in the case of redemption or repayment, on the Redemption Date or Repayment Date, as the case may be) and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder.

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Section 509. RESTORATION OF RIGHTS AND REMEDIES. If the Trustee or any Securityholder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, then and in every such case the Company, [the Guarantor,] the Trustee and the Securityholders shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and the Securityholders shall continue as though no such proceeding had been instituted.

Section 510. RIGHTS AND REMEDIES CUMULATIVE. No right or remedy herein conferred upon or reserved to the Trustee or to the Securityholders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 511. DELAY OR OMISSION NOT WAIVER. No delay or omission of the Trustee or of any Holder of any Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Securityholders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Securityholders, as the case may be.

Section 512. CONTROL BY SECURITYHOLDERS. The Holders of a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the

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Securities of such series, provided that

(1) the Trustee shall have the right to decline to follow any such direction if the Trustee, being advised by counsel, determines that the action so directed may not lawfully be taken or would conflict with this Indenture or if the Trustee in good faith shall, by a Responsible Officer, determine that the proceedings so directed would involve it in personal liability or be unjustly prejudicial to the Holders not taking part in such direction, and

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

Section 513. WAIVER OF PAST DEFAULTS. The Holders of not less than a majority in principal amount of the Outstanding Securities of any series may on behalf of the Holders of all the Securities of such series waive any past default hereunder with respect to such series and its consequences, except a default not theretofore cured

(1) in the payment of the principal of (or premium, if any) or interest on any Security of such series, or in the payment of any sinking or purchase fund or analogous obligation with respect to the Securities of such series, or

(2) in respect of a covenant or provision hereof which under Article Nine cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series.

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

Section 514. UNDERTAKING FOR COSTS. All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or

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omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any Securityholder, or group of Securityholders, holding in the aggregate more than 10% in principal amount of the Outstanding Securities of any series to which the suit relates, or to any suit instituted by any Securityholder for the enforcement of the payment of the principal of (or premium, if any) or interest on any Security on or after the respective Stated Maturities expressed in such Security (or, in the case of redemption or repayment, on or after the Redemption Date or Repayment Date).

Section 515. WAIVER OF STAY OR EXTENSION LAWS. The Company [and the Guarantor each] covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company [and the Guarantor each] (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

#### ARTICLE SIX

#### THE TRUSTEE

Section 601. CERTAIN DUTIES AND RESPONSIBILITIES. (a) Except during the continuance of an Event of Default with respect to any series of Securities,

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

(2) in the absence of bad faith on its part, the Trustee may, with respect to Securities of such series, conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

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

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

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

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

(3) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the

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place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture with respect to the Securities of such series; and

(4) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

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

Section 602. NOTICE OF DEFAULTS. Within 90 days after the occurrence of any default hereunder with respect to Securities of any series, the Trustee shall transmit by mail to all Securityholders of such series, as their names and addresses appear in the Security Register, notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; PROVIDED, HOWEVER, that, except in the case of a default in the payment of the principal of (or premium, if any) or interest on any Security of such series or in the payment of any sinking or purchase fund installment or analogous obligation with respect to Securities of such series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Securityholders of such series; and PROVIDED, FURTHER, that in the case of any default of the character specified in Section 501(4) with respect to Securities of such series no such notice to Securityholders of such series shall be given until at least

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90 days after the occurrence thereof. For the purpose of this Section, the term "default", with respect to Securities of any series, means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

Section 603. CERTAIN RIGHTS OF TRUSTEE. Except as otherwise provided in Section 601:

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

(b) any request or direction of the Company [or the Guarantor] mentioned herein shall be sufficiently evidenced by a Company Request or Company Order[, or a Guarantor Request or Guarantor Order, as applicable,] and any resolution of the Board of Directors [or the Guarantor Board of Directors] may be sufficiently evidenced by a Board Resolution [or a Guarantor's Board Resolution, as applicable];

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

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

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this

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Indenture at the request or direction of any of the Securityholders pursuant to this Indenture, unless such Securityholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

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

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

hereunder.

Section 604. NOT RESPONSIBLE FOR RECITALS OR ISSUANCE OF SECURITIES. The recitals contained herein and in the Securities, except the certificates of authentication, shall be taken as the statements of the Company [or the Guarantor, as applicable], and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. The Trustee shall not be accountable for the use or application by the Company [or the Guarantor] of Securities or the proceeds thereof.

Section 605. MAY HOLD SECURITIES. The Trustee, any Paying Agent, the Security Registrar or any other agent of the Company [or the Guarantor], in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 608 and 613, may otherwise deal with the Company [or the Guarantor] with the same rights it would have if it were not Trustee, Paying

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Agent, Security Registrar or such other agent.

Section 606. MONEY HELD IN TRUST. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company [or the Guarantor].

Section 607. COMPENSATION AND REIMBURSEMENT. The Company [and the Guarantor (without duplication)] agrees

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

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

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

As security for the performance of the obligations of the Company [and the Guarantor] under this Section the Trustee shall have a lien prior to the Securities upon all property and funds held or collected by the Trustee as such,

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except funds held in trust for the payment of principal of (and premium, if any) or interest on particular Securities.

Section 608. DISQUALIFICATION; CONFLICTING INTERESTS. The Trustee for the Securities of any series issued hereunder shall be subject to the provisions of Section 310(b) of the Trust Indenture Act during the period of time provided for therein. In determining whether the Trustee has a conflicting interest as defined in Section 310(b) of the Trust Indenture Act with respect to the Securities of any series, there shall be excluded for purposes of the conflicting interest provisions of such Section 310(b) the Securities of every other series issued under this Indenture (i) and every series of securities issued under any other indentures if the requirements for such exclusion set forth in Section 310(b) of the Trust Indenture Act are met. Nothing herein shall prevent the Trustee from filing with the Commission the application referred to in the second to last paragraph of Section 310(b) of the Trust Indenture Act.

Section 609. CORPORATE TRUSTEE REQUIRED; ELIGIBILITY. There shall at all times be a Trustee hereunder with respect to each series of Securities, which shall be a corporation organized and doing business under the laws of the United States of America or of any State, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by Federal or State authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee with respect to any series of Securities shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 610. RESIGNATION AND REMOVAL; APPOINTMENT OF SUCCESSOR. (a)



Article shall become effective until the acceptance of appointment by the successor Trustee under Section 611.

(b) The Trustee may resign with respect to any series of Securities at any time by giving written notice thereof to the Company [and the Guarantor]. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of removal, the removed Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed with respect to any series of Securities at any time by Act of the Holders of a majority in principal amount of the Outstanding Securities of that series, delivered to the Trustee and to the Company [and the Guarantor]. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of removal, the removed Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(d) If at any time:

(1) the Trustee shall fail to comply with Section 310(b) of the Trust Indenture Act pursuant to Section 608(a) with respect to any series of Securities after written request therefor by the Company [, by the Guarantor] or by any Securityholder who has been a bona fide Holder of a Security of that series for at least 6 months, or

(2) the Trustee shall cease to be eligible under Section 609 with respect to any series of Securities and shall fail to resign after written request therefor by the Company [, by the Guarantor] or by any such Securityholder, or

(3) the Trustee shall become incapable of acting with respect to any series of Securities, or

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

then, in any such case, (i) the Company by a Board Resolution [, or the Guarantor by a Guarantor's Board Resolution,] may remove the Trustee, with respect to the series, or in the case of Clause (4), with respect to all series, or (ii) subject to Section 514, any Securityholder who has been a bona fide Holder of a Security of such series for at least 6 months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee with respect to the series, or, in the case of Clause (4), with respect to all series.

(e) If the Trustee shall resign, be removed or become incapable of acting with respect to any series of Securities, or if a vacancy shall occur in the office of the Trustee with respect to any series of Securities for any cause, the Company, by a Board Resolution, shall promptly appoint a successor Trustee for that series of Securities. If, within one year after such resignation, removal or incapacity, or the occurrence of such vacancy, a successor Trustee with respect to such series of Securities shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company [, the Guarantor] and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee with respect to such series and supersede the successor Trustee appointed by the Company with respect to such series. If no successor Trustee with respect to such series shall have been so appointed by the Company or the Securityholders of such series and accepted appointment in the manner hereinafter provided, any Securityholder who has been a bona fide Holder of a Security of that series for at least 6 months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to such series.

(f) The Company shall give notice of each resignation and each removal of the Trustee with respect to any series and each appointment of a successor Trustee with respect to any series by mailing written notice of such event by first-class mail, postage prepaid, to the Holders of Securities of that series as their names and addresses appear in the Security Register. Each notice shall include the name of the successor Trustee and the address of its principal Corporate Trust Office.

Trustee appointed hereunder shall execute, acknowledge and deliver to the Company [, the Guarantor] and to the predecessor Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the predecessor Trustee shall become effective with respect to any series as to which it is resigning or being removed as Trustee, and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the predecessor Trustee with respect to any such series; but, on request of the Company [, the Guarantor] or the successor Trustee, such predecessor Trustee shall, upon payment of its reasonable charges, if any, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the predecessor Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such predecessor Trustee hereunder with respect to all or any such series, subject nevertheless to its lien, if any, provided for in Section 607. Upon request of any such successor Trustee, the Company [and the Guarantor] shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, [, the Guarantor] the predecessor Trustee and each successor Trustee with respect to the Securities of any applicable series shall

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execute and deliver an indenture supplemental hereto which shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the predecessor Trustee with respect to the Securities of any series as to which the predecessor Trustee is not being succeeded shall continue to be vested in the predecessor Trustee, and shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be Trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee.

No successor Trustee with respect to any series of Securities shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible with respect to that series under this Article.

Section 612. MERGER, CONVERSION, CONSOLIDATION OR SUCCESSION TO BUSINESS. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

Section 613. PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY. (a) Subject to Subsection (b) of this Section, if the Trustee shall be or shall become a creditor, directly or indirectly, secured or unsecured, of the Company within 3 months prior to a default, as defined in

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Subsection (c) of this Section, or subsequent to such a default, then, unless and until such default shall be cured, the Trustee shall set apart and hold in a special account for the benefit of the Trustee individually, the Holders of the Securities and the holders of other indenture securities (as defined in Subsection (c) of this Section):

(1) an amount equal to any and all reductions in the amount due and owing upon any claim as such creditor in respect of principal or interest, effected after the beginning of such 3-month period and valid as against the Company and its other creditors, except any such reduction resulting from the receipt or disposition of any property described in paragraph (2) of this Subsection, or from the exercise of any right of set-off which the Trustee could have exercised if a petition in bankruptcy had been filed by or against the Company upon the date of such default; and

(2) all property received by the Trustee in respect of any claim as such creditor, either as security therefor, or in satisfaction or composition thereof, or otherwise, after the beginning of such 3-month period, or an amount equal to the proceeds of any such property, if disposed of, subject, however, to the rights, if any, of the Company and its other creditors in such property or such proceeds.

Nothing herein contained, however, shall affect the right of the Trustee

(A) to retain for its own account (i) payments made on account of any such claim by any Person (other than the Company) who is

liable thereon, and (ii) the proceeds of the bona fide sale of any such claim by the Trustee to a third person, and (iii) distributions made in cash, securities or other property in respect of claims filed against the Company in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law;

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(B) to realize, for its own account, upon any property held by it as security for any such claim, if such property was so held prior to the beginning of such 3-month period;

(C) to realize, for its own account, but only to the extent of the claim hereinafter mentioned, upon any property held by it as security for any such claim, if such claim was created after the beginning of such 3-month period and such property was received as security therefor simultaneously with the creation thereof, and if the Trustee shall sustain the burden of proving that at the time such property was so received the Trustee had no reasonable cause to believe that a default as defined in Subsection (c) of this Section would occur within 3 months; or

(D) to receive payment on any claim referred to in paragraph (B) or (C), against the release of any property held as security for such claim as provided in paragraph (B) or (C), as the case may be, to the extent of the fair value of such property.

For the purposes of paragraphs (B), (C) and (D), property substituted after the beginning of such 3-month period for property held as security at the time of such substitution shall, to the extent of the fair value of the property released, have the same status as the property released, and, to the extent that any claim referred to in any of such paragraphs is created in renewal of or in substitution for or for the purpose of repaying or refunding any pre-existing claim of the Trustee as such creditor, such claim shall have the same status as such pre-existing claim.

If the Trustee shall be required to account, the funds and property held in such special account and the proceeds thereof shall be apportioned between the Trustee, the Securityholders and the holders of other indenture securities in such manner that the Trustee, the Securityholders and the holders of other indenture securities realize, as a result of payments from such special account and payments of dividends on claims filed

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against the Company in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law, the same percentage of their respective claims, figured before crediting to the claim of the Trustee anything on account of the receipt by it from the Company of the funds and property in such special account and before crediting to the respective claims of the Trustee and the Securityholders and the holders of other indenture securities dividends on claims filed against the Company in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law, but after crediting thereon receipts on account of the indebtedness represented by their respective claims from all sources other than from such dividends and from the funds and property so held in such special account. As used in this paragraph, with respect to any claim, the term "dividends" shall include any distribution with respect to such claim, in bankruptcy or receivership or proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law, whether such distribution is made in cash, securities, or other property, but shall not include any such distribution with respect to the secured portion, if any, of such claim. The court in which such bankruptcy, receivership or proceedings for reorganization is pending shall have jurisdiction (i) to apportion between the Trustee and the Securityholders and the holders of other indenture securities in accordance with the provisions of this paragraph, the funds and property held in such special account and proceeds thereof, or (ii) in lieu of such apportionment, in whole or in part, to give to the provisions of this paragraph due consideration in determining the fairness of the distributions to be made to the Trustee and the Securityholders and the holders of other indenture securities with respect to their respective claims, in which event it shall not be necessary to liquidate or to appraise the value of any securities or other property held in such special account or as security for any such claim, or to make a specific allocation of such distributions as between the secured and unsecured portions of such claims, or otherwise to apply the provisions of this paragraph as a mathematical formula.

Any Trustee which has resigned or been removed after the beginning of such 3-month period shall be subject to the provisions of this Subsection as though such

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resignation or removal had not occurred. If any Trustee has resigned or been removed prior to the beginning of such 3-month period, it shall be subject to the provisions of this Subsection if and only if the following conditions exist:

(i) the receipt of property or reduction of claim, which would have given rise to the obligation to account, if such Trustee had continued as Trustee, occurred after the beginning of such 3-month period; and

(ii) such receipt of property or reduction of claim occurred within 3 months after such resignation or removal.

(b) There shall be excluded from the operation of Subsection (a) of this Section a creditor relationship arising from

(1) the ownership or acquisition of securities issued under any indenture, or any security or securities having a maturity of one year or more at the time of acquisition by the Trustee;

(2) advances authorized by a receivership or bankruptcy court of competent jurisdiction, or by this Indenture, for the purpose of preserving any property which shall at any time be subject to the lien of this Indenture or of discharging tax liens or other prior liens or encumbrances thereon, if notice of such advances and of the circumstances surrounding the making thereof is given to the Securityholders at the time and in the manner provided in this Indenture;

(3) disbursements made in the ordinary course of business in the capacity of trustee under an indenture, transfer agent, registrar, custodian, paying agent, fiscal agent or depositary, or other similar capacity;

(4) an indebtedness created as a result of services rendered or premises rented; or an indebtedness created as a result of goods or securities sold in a cash transaction as defined in Subsection (c) of this Section;

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(5) the ownership of stock or of other securities of a corporation organized under the provisions of Section 25(a) of the Federal Reserve Act, as amended, which is directly or indirectly a creditor of the Company; or

(6) the acquisition, ownership, acceptance or negotiation of any drafts, bills of exchange, acceptances or obligations which fall within the classification of self liquidating paper as defined in Subsection (c) of this Section.

(c) For the purposes of this Section only:

(1) The term "default" means any failure to make payment in full of the principal of or interest on any of the Securities or upon the other indenture securities when and as such principal or interest becomes due and payable.

(2) The term "other indenture securities" means securities upon which the Company is an obligor outstanding under any other indenture (i) under which the Trustee is also trustee, (ii) which contains provisions substantially similar to the provisions of this Section, and (iii) under which a default exists at the time of the apportionment of the funds and property held in such special account.

(3) The term "cash transaction" means any transaction in which full payment for goods or securities sold is made within 7 days after delivery of the goods or securities in currency or in checks or other orders drawn upon banks or bankers and payable upon demand.

(4) The term "self-liquidating paper" means any draft, bill of exchange, acceptance or obligation which is made, drawn, negotiated or incurred by the Company for the purpose of financing the purchase, processing, manufacturing, shipment, storage or sale of goods, wares or merchandise and which is secured by documents

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evidencing title to, possession of, or a lien upon, the goods, wares or merchandise or the receivables or proceeds arising from the sale of the goods, wares or merchandise previously constituting the security, provided the security is received by the Trustee simultaneously with the creation of the creditor relationship with the Company arising from the making, drawing, negotiating or incurring of the draft, bill of exchange, acceptance or obligation.

(5) The term "Company" means any obligor upon the Securities.

Section 614. APPOINTMENT OF AUTHENTICATING AGENT. At any time when any of the Securities remain Outstanding the Trustee, with the approval of the Company, may appoint an Authenticating Agent or Agents with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 306, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated

by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to act as an Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 and, if other than the Company itself, subject to supervision or examination by Federal or State authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section,

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the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and, if other than the Company, to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and, if other than the Company, to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee, with the approval of the Company, may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall mail written notice of such appointment by first-class mail, postage prepaid, to all Holders of Securities of the series with respect to which such Authenticating Agent will serve, as their names and addresses appear in the Security Register. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

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The Trustee agrees to pay to each Authenticating Agent (other than an Authenticating Agent appointed at the request of the Company from time to time) reasonable compensation for its services under this Section, and the Trustee shall be entitled to be reimbursed for such payments, subject to the provisions of Section 607.

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

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

[ \_\_\_\_\_ ],  
as Trustee

By: \_\_\_\_\_  
As Authenticating Agent

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

ARTICLE SEVEN

SECURITYHOLDERS' LISTS AND REPORTS BY  
TRUSTEE [, GUARANTOR] AND COMPANY

Section 701. COMPANY TO FURNISH TRUSTEE NAMES AND ADDRESSES OF SECURITYHOLDERS. The Company will furnish or cause to be furnished to the Trustee

(a) semi-annually, not more than 30 days after each Regular Record Date, in each year in such form as the Trustee may reasonably require, a list of the names

and addresses of the Holders of Securities of such series as of such date, and

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

excluding from any such list names and addresses received by the Trustee in its capacity as Security Registrar.

Section 702. PRESERVATION OF INFORMATION; COMMUNICATIONS TO SECURITYHOLDERS. (a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders of Securities contained in the most recent list furnished to the Trustee as provided in Section 701 and the names and addresses of Holders of Securities received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 701 upon receipt of a new list so furnished.

(b) If 3 or more Holders of Securities of any series (hereinafter referred to as "applicants") apply in writing to the Trustee, and furnish to the Trustee reasonable proof that each such applicant has owned a Security of such series for a period of at least 6 months preceding the date of such application, and such application states that the applicants desire to communicate with other Holders of Securities of such series or with the Holders of all Securities with respect to their rights under this Indenture or under such Securities and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Trustee shall, within 5 Business Days after the receipt of such application, at its election, either

(i) afford such applicants access to the information preserved at the time by the Trustee in accordance with Section 702(a), or

(ii) inform such applicants as to the approximate number of Holders of Securities of such series or all Securities, as the case may be, whose names and

addresses appear in the information preserved at the time by the Trustee in accordance with Section 702(a), and as to the approximate cost of mailing to such Securityholders the form of proxy or other communication, if any, specified in such application.

If the Trustee shall elect not to afford such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail to each Holder of a Security of such series or to all Security holders, as the case may be, whose names and addresses appear in the information preserved at the time by the Trustee in accordance with Section 702(a), a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless, within 5 days after such tender, the Trustee shall mail to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interests of the Holders of Securities of such series or all Securityholders, as the case may be, or would be in violation of applicable law. Such written statement shall specify the basis of such opinion. If the Commission, after opportunity for a hearing upon the objections specified in the written statement so filed, shall enter an order refusing to sustain any of such objections or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all the objections so sustained have been met and shall enter an order so declaring, the Trustee shall mail copies of such material to all Securityholders of such series or all Securityholders, as the case may be, with reasonable promptness after the entry of such order and the renewal of such tender; otherwise the Trustee shall be relieved of any obligation or duty to such applicants respecting their application.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee

that neither the Company nor the Trustee shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Securities in accordance with Section 702(b), regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 702(b).

Section 703. REPORTS BY TRUSTEE. (a) The term "reporting date" as used in this Section means [ ] of each year. Within 60 days after the

reporting date in each year, beginning in 200 , the Trustee shall transmit by mail to all Securityholders, as their names and addresses appear in the Security Register, a brief report dated as of such reporting date with respect to any of the following events which may have occurred during the 12 months preceding the date of such report (but if no such event has occurred within such period no report need be transmitted):

(1) any change to its eligibility under Section 609 and its qualifications under Section 608;

(2) the creation of or any material change to a relationship specified in Section 310(b)(1) through Section 310(b)(10) of the Trust Indenture Act;

(3) the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) which remain unpaid on the date of such report, and for the reimbursement of which it claims or may claim a lien or charge, prior to that of Securities of any series, on any property or funds held or collected by it as Trustee, except that the Trustee shall not be required (but may elect) to report such advances if such advances so remaining unpaid aggregate not more than [1%] of the principal amount of the Securities of such series outstanding on the date of such report;

(4) any change to the amount, interest rate and maturity date of all other indebtedness owing by the Company (or by any other obligor on the Securities) to the Trustee in its individual capacity, on the date of such report, with a brief description of any property

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held as collateral security therefor, except an indebtedness based upon a creditor relationship arising in a manner described in Section 613(b)(2), (3), (4) or (6);

(5) any change to the property and funds, if any, physically in the possession of the Trustee as such on the date of such report;

(6) any additional issue of Securities which the Trustee has not previously reported; and

(7) any action taken by the Trustee in the performance of its duties hereunder which it has not previously reported and which in its opinion materially affects the Securities, except action in respect of a default, notice of which has been or is to be withheld by the Trustee in accordance with Section 602.

(b) The Trustee shall transmit by mail to all Securityholders, as their names and addresses appear in the Security Register, a brief report with respect to the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) since the date of the last report transmitted pursuant to Subsection (a) of this Section (or if no such report has yet been so transmitted, since the date of execution of this instrument) for the reimbursement of which it claims or may claim a lien or charge, prior to that of the Securities of any series, on property or funds held or collected by it as Trustee, and which it has not previously reported pursuant to this Subsection, except that the Trustee shall not be required (but may elect) to report such advances if such advances remaining unpaid at any time aggregate [ ]% or less of the principal amount of the Securities Outstanding of such series at such time, such report to be transmitted within 90 days after such time.

(c) A copy of each such report shall, at the time of such transmission to Securityholders, be filed by the Trustee with each stock exchange upon which the Securities

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are listed, and also with the Commission. The Company will notify the Trustee when the Securities are listed on any stock exchange.

Section 704. REPORTS BY COMPANY [AND GUARANTOR]. The Company [and the Guarantor each] will

(1) file with the Trustee, within 30 days after the Company [or the Guarantor] is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company [or the Guarantor] may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934; or, if [neither] the Company [nor the Guarantor] is [not] required to file information, documents or reports pursuant to either of said Sections, then [it] [the Guarantor] will file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Securities Exchange Act of 1934 in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(2) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company [or the Guarantor] with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(3) transmit by mail to all Securityholders, as their names and addresses appear in the Security Register, within [30] days after the filing thereof

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with the Trustee, such summaries of any information, documents and reports required to be filed by the Company [or the Guarantor] pursuant to paragraphs (1) and (2) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

#### ARTICLE EIGHT

##### CONSOLIDATION, AMALGAMATION, MERGER, CONVEYANCE OR TRANSFER

###### Section 801. COMPANY MAY CONSOLIDATE, ETC., ONLY ON CERTAIN TERMS.

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

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

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

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that such consolidation, merger, conveyance or transfer and such supplemental indenture comply with

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this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

Section 802. SUCCESSOR PERSON SUBSTITUTED FOR COMPANY. Upon any consolidation, amalgamation or merger, or any conveyance or transfer of the properties and assets of the Company substantially as an entirety in accordance with Section 801, the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor corporation had been named as the Company herein. In the event of any such conveyance or transfer, the Company as the predecessor corporation may be dissolved, wound up or liquidated at any time thereafter.

[Section 803. Guarantor May Consolidate, etc., only on Certain Terms. The Guarantor shall not consolidate or amalgamate with or merge into any other Person or convey or transfer its properties and assets substantially as an entirety to any Person, unless:

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

(2) immediately after giving effect to such transaction, no Event of Default, and no event which,

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after notice or lapse of time, or both, would become an Event of Default, shall have happened and be continuing; and

(3) either the Guarantor or the successor Person has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that such consolidation, amalgamation, merger, conveyance or transfer and such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.]

[Section 804. Successor Person Substituted for Guarantor. Upon any consolidation, amalgamation or merger, or any conveyance or transfer of the properties and assets of the Guarantor substantially as an entirety in accordance with Section 803, the successor Person formed by such consolidation or amalgamation or into which the Guarantor is merged or to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Guarantor under this Indenture with the same effect as if such successor Person had been named as the Guarantor herein. In the event of any such conveyance or transfer, the Guarantor as the predecessor corporation may be dissolved, wound up or liquidated at any time thereafter.]

## ARTICLE NINE

### SUPPLEMENTAL INDENTURES

Section 901. SUPPLEMENTAL INDENTURES WITHOUT CONSENT OF SECURITYHOLDERS. Without the consent of the Holders of any Securities, the Company, when authorized by a Board Resolution, [the Guarantor, when authorized by a Guarantor's Board Resolution,] and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another Person to the Company, [or the Guarantor] and the assumption by any such successor of the covenants of the Company [or the Guarantor] herein and in the Securities

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contained; or

(2) to add to the covenants of the Company [or the Guarantor], or to surrender any right or power herein conferred upon the Company [or the Guarantor], for the benefit of the Holders of the Securities of any or all series (and if such covenants or the surrender of such right or power are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included or such surrenders are expressly being made solely for the benefit of one or more specified series); or

(3) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture; or

(4) to add to this Indenture such provisions as may be expressly permitted by the TIA, excluding, however, the provisions referred to in Section 316(a)(2) of the TIA as in effect at the date as of which this instrument was executed or any corresponding provision in any similar federal statute hereafter enacted; or

(5) to establish any form of Security, as provided in Article Two, and to provide for the issuance of any series of Securities as provided in Article Three and to set forth the terms thereof, and/or to add to the rights of the Holders of the Securities of any series; or

(6) to evidence and provide for the acceptance of appointment by another corporation as a successor Trustee hereunder with respect to one or more series of Securities and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to Section 611; or

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(7) to add any additional Events of Default in respect of the Securities of any or all series (and if such additional Events of Default are to be in respect of less than all series of Securities, stating that such Events of Default are expressly being included solely for the benefit of one or more specified series); or

(8) to provide for the issuance of Securities in coupon as well as fully registered form.

No supplemental indenture for the purposes identified in Clauses (2), (3), (5) or (7) above may be entered into if to do so would adversely affect the interest of the Holders of Securities of any series.

### Section 902. SUPPLEMENTAL INDENTURES WITH CONSENT OF

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

(1) change the Maturity of the principal of, or the Stated Maturity of any premium on, or any installment of interest on, any Security, or reduce the principal amount thereof or the interest or any premium thereon, or change the method of computing the amount of principal thereof or interest thereon on any date or change any Place of Payment where, or the coin or currency in which, any Security or any premium or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Maturity or the Stated Maturity, as the

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case may be, thereof (or, in the case of redemption or repayment, on or after the Redemption Date or the Repayment Date, as the case may be); or

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

(3) modify any of the provisions of this Section or Section 513, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby.

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

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

Section 903. EXECUTION OF SUPPLEMENTAL INDENTURES. In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 601) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may,

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but shall not (except to the extent required in the case of a supplemental indenture entered into under Section 901(4) or 901(6)) be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 904. EFFECT OF SUPPLEMENTAL INDENTURES. Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby to the extent provided therein.

Section 905. CONFORMITY WITH TRUST INDENTURE ACT. Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the TIA as then in effect.

Section 906. REFERENCE IN SECURITIES TO SUPPLEMENTAL INDENTURES. Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities.

Section 1001. PAYMENT OF PRINCIPAL, PREMIUM AND INTEREST. With respect to each series of Securities, the Company will duly and punctually pay the principal of (and premium, if any) and interest on such Securities in accordance with their terms and this Indenture, and will duly comply with all the other terms, agreements and conditions contained in, or made in the Indenture for the

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benefit of, the Securities of such series.

Section 1002. MAINTENANCE OF OFFICE OR AGENCY. The Company will maintain an office or agency in each Place of Payment where Securities may be presented or surrendered for payment, where Securities may be surrendered for transfer or exchange and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and of any change in the location, of such office or agency. If at any time the Company shall fail to maintain such office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the principal Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee its agent to receive all such presentations, surrenders, notices and demands.

[The Guarantor will maintain an office or agency in each Place of Payment where Securities to which the Guarantee applies may be presented or surrendered for payment pursuant to the Guarantee and where notices and demands to or upon the Guarantor in respect of the Guarantee and this Indenture may be served. The Guarantor 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 Guarantor shall fail to maintain any such office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders and demands may be made or served at the Principal Corporate Trust Office of the Trustee, and the Guarantor hereby appoints the Trustee as its agent to receive all such presentations, surrenders and demands.]

Section 1003. MONEY FOR SECURITY PAYMENTS TO BE HELD IN TRUST. If the Company shall at any time act as its own Paying Agent for any series of Securities, it will, on or before each due date of the principal of (and premium, if any) or interest on, any of the Securities of such series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal (and

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

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

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

(1) hold all sums held by it for the payment of principal of (and premium, if any) or interest on Securities of such series in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Trustee notice of any default by the Company (or any other obligor upon the Securities of such series) in the making of any such payment of principal (and premium, if any) or interest on the Securities of such series; and

(3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Company [or the Guarantor] may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture with respect to any series of Securities or for any other purpose, pay, or by Company Order [or the

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Guarantor Order] direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company [, the Guarantor] or such Paying Agent in respect of each and every series of Securities as to which it seeks to discharge this Indenture or, if for any other purpose, all sums so held in trust by the Company [or the Guarantor] in respect of all Securities, such sums to be held by the Trustee

upon the same trusts as those upon which such sums were held by the Company [, the Guarantor] or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company [or the Guarantor], in trust for the payment of the principal of (and premium, if any) or interest on any Security of any series and remaining unclaimed for two years after such principal (and premium, if any) or interest has become due and payable shall be paid to the Company on Company Request [(or, if deposited by the Guarantor, paid to the Guarantor upon Guarantor Request)], or (if then held by the Company [or the Guarantor]) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company [and the Guarantor] for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease. The Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company [and the Guarantor] mail to the Holders of the Securities as to which the money to be repaid was held in trust, as their names and addresses appear in the Security Register, a notice that such moneys remain unclaimed and that, after a date specified in the notice, which shall not be less than [30] days from the date on which the notice was first mailed to the Holders of the Securities as to which the money to be repaid was held in trust, any unclaimed balance of such moneys then remaining will be paid to the Company [or the Guarantor, as the case may be,] free of the trust formerly impressed upon it.

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The Company initially authorizes the Trustee to act as Paying Agent for the Securities on its behalf. The Company may at any time and from time to time authorize one or more Persons to act as Paying Agent in addition to or in place of the Trustee with respect to any series of Securities issued under this Indenture.

Section 1004. STATEMENT AS TO COMPLIANCE. The Company [and the Guarantor each] will deliver to the Trustee, within [120] days after the end of each fiscal year, a written statement signed by the principal executive officer, principal financial officer or principal accounting officer of the Company [or the Guarantor, as the case may be], stating that

(1) a review of the activities of the Company [or the Guarantor, as the case may be,] during such year and of its performance under this Indenture and under the terms of the Securities has been made under his supervision; and

(2) to the best of his knowledge, based on such review, the Company [or the Guarantor, as the case may be,] has complied with all conditions and covenants under this Indenture through such year, or, if there has been a default in the fulfillment of any such obligation, specifying each such default known to him and the nature and status thereof.

For purposes of this Section 1004, compliance shall be determined without regard to any grace period or requirement of notice provided pursuant to the terms of this Indenture.

Section 1005. CORPORATE EXISTENCE. Subject to Article Eight [each of] the Company [and the Guarantor] will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

#### ARTICLE ELEVEN

##### REDEMPTION OF SECURITIES

Section 1101. APPLICABILITY OF ARTICLE. The

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Company may reserve the right to redeem and pay before Stated Maturity all or any part of the Securities of any series, either by optional redemption, sinking or purchase fund or analogous obligation or otherwise, by provision therefor in the form of Security for such series established and approved pursuant to Section 202 and on such terms as are specified in such form or in the Board Resolution or indenture supplemental hereto with respect to Securities of such series as provided in Section 301. Redemption of Securities of any series shall be made in accordance with the terms of such Securities and, to the extent that this Article does not conflict with such terms, the succeeding Sections of this Article.

Section 1102. ELECTION TO REDEEM; NOTICE TO TRUSTEE. The election of the Company to redeem any Securities redeemable at the election of the Company shall be evidenced by, or made pursuant to authority granted by, a Board Resolution. In case of any redemption at the election of the Company of any Securities of any series, the Company shall, at least 60 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date and of the principal amount of Securities of such series to be redeemed.

In the case of any redemption of Securities (i) prior to the expiration of any restriction on such redemption provided in the terms of such

Securities or elsewhere in this Indenture, or (ii) pursuant to an election of the Company which is subject to a condition specified in the terms of such Securities, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction or condition.

Section 1103. SELECTION BY TRUSTEE OF SECURITIES TO BE REDEEMED. If less than all the Securities of like tenor and terms of any series are to be redeemed, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series not previously called for redemption, by such method as the

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Trustee shall deem fair and appropriate and which may include provision for the selection for redemption of portions of the principal of Securities of such series of a denomination larger than the minimum authorized denomination for Securities of that series. Unless otherwise provided in the terms of a particular series of Securities, the portions of the principal of Securities so selected for partial redemption shall be equal to the minimum authorized denomination of the Securities of such series, or an integral multiple thereof, and the principal amount which remains outstanding shall not be less than the minimum authorized denomination for Securities of such series. If less than all the Securities of unlike tenor and terms of a series are to be redeemed, the particular Securities to be redeemed shall be selected by the Company.

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

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

Section 1104. NOTICE OF REDEMPTION. Notice of redemption shall be given by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date, to each holder of Securities to be redeemed, at his address appearing in the Security Register.

All notices of redemption shall state:

- (1) the Redemption Date;
- (2) the Redemption Price;
- (3) if less than all Outstanding Securities of any series are to be redeemed, the identification,

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including CUSIP Numbers (and, in the case of partial redemption, the respective principal amounts) of the Securities to be redeemed, from the Holder to whom the notice is given;

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

(5) the place where such Securities are to be surrendered for payment of the Redemption Price, which shall be the office or agency of the Company in the Place of Payment; and

(6) that the redemption is on account of a sinking or purchase fund, or other analogous obligation, if that be the case.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company. Such notice shall be deemed to have been given to each Holder if sent in accordance with Section 105 hereof.

Section 1105. DEPOSIT OF REDEMPTION PRICE. On or prior to 10:00 a.m. on any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 1003) an amount of money sufficient to pay the Redemption Price of all the Securities which are to be redeemed on that date.

Section 1106. SECURITIES PAYABLE ON REDEMPTION DATE. Notice of Redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified and from and after such date (unless the Company shall default in the payment of the Redemption Price) such Securities shall cease to bear interest. Upon surrender of such Securities for redemption in accordance with the notice, such Securities shall be paid by the Company at the Redemption Price. Installments of interest the Stated Maturity of which is on or prior to the Redemption Date

shall be payable to the Holders of such Securities registered as such on the relevant Regular Record Dates according to their terms and the provisions of Section 307.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid, bear interest from the Redemption Date at the rate borne by the Security, or as otherwise provided in such Security.

Section 1107. SECURITIES REDEEMED IN PART. Any Security which is to be redeemed only in part shall be surrendered at the office or agency of the Company in the Place of Payment with respect to that series (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Security or Securities of the same series and Stated Maturity and of like tenor and terms, 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 Security so surrendered.

Section 1108. PROVISIONS WITH RESPECT TO ANY SINKING FUNDS. Unless the form or terms of any series of Securities shall provide otherwise, in lieu of making all or any part of any mandatory sinking fund payment with respect to such series of Securities in cash, the Company may at its option (1) deliver to the Trustee for cancellation any Securities of such series theretofore acquired by the Company, or (2) receive credit for any Securities of such series (not previously so credited) acquired by the Company and theretofore delivered to the Trustee for cancellation or redeemed by the Company other than through the mandatory sinking fund, and if it does so then (i) Securities so delivered or credited shall be credited at the applicable sinking fund Redemption Price with respect to Securities of such series, and (ii) on or before the 60th day next preceding each sinking fund Redemption Date with respect to

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such series of Securities, the Company will deliver to the Trustee (A) an Officers' Certificate specifying the portions of such sinking fund payment to be satisfied by payment of cash and by delivery or credit of Securities of such series acquired by the Company or so redeemed, and (B) such Securities so acquired, to the extent not previously surrendered. Such Officers' Certificate shall also state the basis for such credit and that the Securities for which the Company elects to receive credit have not been previously so credited and were not redeemed by the Company through operation of the mandatory sinking fund, if any, provided with respect to such Securities and shall also state that no Event of Default with respect to Securities of such series has occurred and is continuing. All Securities so delivered to the Trustee shall be canceled by the Trustee and no Securities shall be authenticated in lieu thereof.

If the sinking fund payment or payments (mandatory or optional) with respect to any series of Securities made in cash plus any unused balance of any preceding sinking fund payments with respect to Securities of such series made in cash shall exceed \$50,000 (or a lesser sum if the Company shall so request), unless otherwise provided by the terms of such series of Securities, that cash shall be applied by the Trustee on the sinking fund Redemption Date with respect to Securities of such series next following the date of such payment to the redemption of Securities of such series at the applicable sinking fund Redemption Price with respect to Securities of such series, together with accrued interest, if any, to the date fixed for redemption, with the effect provided in Section 1106. The Trustee shall select, in the manner provided in Section 1103, for redemption on such sinking fund Redemption Date a sufficient principal amount of Securities of such series to utilize that cash and shall thereupon cause notice of redemption of the Securities of such series for the sinking fund to be given in the manner provided in Section 1104 (and with the effect provided in Section 1106) for the redemption of Securities in part at the option of the Company. Any sinking fund moneys not so applied or allocated by the Trustee to the redemption of Securities of such series shall be added to the next cash sinking fund payment with respect to Securities of such series received by the Trustee and, together with such payment, shall be applied in accordance with the provisions of this Section 1108. Any and all sinking fund moneys with

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respect to Securities of any series held by the Trustee at the Maturity of Securities of such series, and not held for the payment or redemption of particular Securities of such series, shall be applied by the Trustee, together with other moneys, if necessary, to be deposited sufficient for the purpose, to the payment of the principal of the Securities of such series at Maturity.

On or before each sinking fund Redemption Date provided with respect to Securities of any series, the Company shall pay to the Trustee in cash a sum equal to all accrued interest, if any, to the date fixed for redemption on Securities to be redeemed on such sinking fund Redemption Date pursuant to this Section 1108.

## SUBORDINATION

Section 1201. AGREEMENT OF SECURITYHOLDERS THAT SECURITIES SUBORDINATED TO EXTENT PROVIDED. The Company, for itself, its successors and assigns, covenants and agrees and each Holder of the Securities by his or her acceptance thereof likewise covenants and agrees that the payment of the principal of, premium, if any, and interest on each and all of the Securities is hereby expressly subordinated, to the extent and in the manner hereinafter set forth, to the prior payment in full of all Senior Indebtedness. The provisions of this Article shall constitute a continuing offer to all persons who, in reliance upon such provisions, become holders of, or continue to hold, Senior Indebtedness, and such provisions are made for the benefit of the holders of Senior Indebtedness, and such holders are hereby made obligees hereunder the same as if their names were written herein as such, and the and/or each of them may proceed to enforce such provisions.

Section 1202. COMPANY NOT TO MAKE PAYMENTS WITH RESPECT TO SECURITIES IN CERTAIN CIRCUMSTANCES. (a) Upon the maturity of any Senior Indebtedness by lapse of time, acceleration or otherwise, all principal thereof and premium, if any, and interest thereon shall first be paid in

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full, or such payment duly provided for in cash or in a manner satisfactory to the holder or holders of such Senior Indebtedness, before any payment is made on account of the principal of or premium, if any, or interest on the Securities or to acquire any of the Securities or on account of any sinking fund (except sinking fund payments made in Securities acquired by the Company before the maturity of such Senior Indebtedness).

(b) Upon the happening of (i) an event of default with respect to any Senior Indebtedness, as such event of default is defined therein or in the instrument under which it is outstanding, permitting the holders to accelerate the maturity thereof, or (ii) an event which, with the giving of notice, or lapse of time, or both, would constitute such an event of default, then, unless and until such event shall have been cured or waived or shall have ceased to exist, no payment shall be made by the Company with respect to the principal of or premium, if any, or interest on the Securities or to acquire any of the Securities or on account of any sinking fund for the Securities (except sinking fund payments made in Securities acquired by the Company before such default and notice thereof).

(c) In the event that notwithstanding the provisions of this Section 1202 the Company shall make any payment to the Trustee on account of the principal of or premium, if any, or interest on the Securities, or on account of any sinking fund, or the Holders of the Securities shall receive any such payment, after the happening of a default in payment of the principal of or premium, if any, or interest on Senior Indebtedness, then, unless and until such default or event of default shall have been cured or waived or shall have ceased to exist, such payment (subject to the provisions of Section 1206) shall be held by the Trustee or the Holders of the Securities, as the case may be, in trust for the benefit of, and shall be paid forthwith over and delivered to, the holders of Senior Indebtedness (pro rata as to each of such holders on the basis of the respective amounts of Senior Indebtedness held by them) or their representatives or the trustee under the indenture or other agreement (if any) pursuant to which any instruments evidencing any Senior Indebtedness may have been issued, as their respective interests may appear, for application to the payment of all Senior Indebtedness

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remaining unpaid to the extent necessary to pay all Senior Indebtedness in full in accordance with the terms of such Senior Indebtedness, after giving effect to any concurrent payment or distribution to or for the holders of Senior Indebtedness. The Company shall give prompt written notice to the Trustee of any default under any Senior Indebtedness or under any agreement pursuant to which Senior Indebtedness may have been issued.

Section 1203. SECURITIES SUBORDINATED TO PRIOR PAYMENTS OF ALL SENIOR INDEBTEDNESS ON DISSOLUTION, LIQUIDATION OR REORGANIZATION OF THE COMPANY. Upon any distribution of assets of the Company upon any dissolution, winding up, liquidation or reorganization of the Company (whether in bankruptcy, insolvency or receivership proceedings or upon an assignment for the benefit of creditors or otherwise):

(a) the holders of all Senior Indebtedness shall first be entitled to receive payment in full of the principal thereof, premium, if any, and interest due thereon before the Holders of the Securities are entitled to receive any payment on account of the principal of, premium, if any, or interest on the Securities;

(b) any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the Holders of the Securities or the Trustees would be entitled except for the provisions of this Article Twelve, shall be paid by the liquidating trustee or agent or other person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or other trustee or agent, directly to the holders of Senior Indebtedness or

their representative or representatives, or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Indebtedness may have been issued, to the extent necessary to make payment in full of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution or

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provision therefor to the holders of such Senior Indebtedness;

(c) in the event that notwithstanding the foregoing provisions of this Section 1203, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, shall be received by the Trustee or the Holders of the Securities on account of principal, or premium, if any, or interest on the Securities before all Senior Indebtedness is paid in full, or effective provisions made for its payment, such payment or distribution (subject to the provisions of Sections 1206 and 1207) shall be received and held in trust for and shall be paid over to the holders of the Senior Indebtedness remaining unpaid or unprovided for or their representative or representatives, or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Indebtedness may have been issued, for application to the payment of such Senior Indebtedness until all such Senior Indebtedness shall have been paid in full, after giving effect to any concurrent payment or distribution or provision therefor to the holders of such Senior Indebtedness.

Section 1204. SECURITYHOLDERS TO BE SUBROGATED TO RIGHT OF HOLDERS OF SENIOR INDEBTEDNESS. Subject to the payment in full of all Senior Indebtedness, the Holders of the Securities shall be subrogated to the rights of the holders of Senior Indebtedness to receive payments or distributions of assets of the Company applicable to the Senior Indebtedness until all amounts owing on the Securities shall be paid in full, and for the purpose of such subrogation no payments or distributions to the holders of the Senior Indebtedness by or on behalf of the Company or by or on behalf of the Holders of the Securities by virtue of this Article which otherwise would have been made to the Holders of the Securities, be deemed to be payment by the Company to or on account of the Senior Indebtedness, it being understood that the provisions of this Article Twelve are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities, on the one hand, and the holders of the Senior Indebtedness, on the other hand.

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Section 1205. OBLIGATION OF THE COMPANY UNCONDITIONAL. Nothing contained in this Article Twelve or elsewhere in this Indenture or in the Securities is intended to or shall impair as between the Company and the Holders of the Securities, the obligations of the Company, which is absolute and unconditional, to pay to the Holders of the Securities the principal of, premium, if any, and interest on the Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the Holders of the Securities and creditors of the Company other than the holders of the Senior Indebtedness, nor shall anything herein or therein prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture subject to the rights, if any, under this Article Twelve of the holders of Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of any such remedy. Upon any distribution of assets of the Company referred to in this Article Twelve, the Trustee, subject to the provisions of Section 601, and the Holders of the Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which such dissolution, winding up, liquidation or reorganization proceedings are pending, or a certificate of the liquidating trustee or agent or other person making any distribution to the Trustee or to the Holders of the Securities, for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article Twelve.

Section 1206. TRUSTEE ENTITLED TO ASSUME PAYMENTS NOT PROHIBITED IN ABSENCE OF NOTICE. The Trustee shall not at any time be charged with knowledge of the existence of any facts which would prohibit the making of any payment of monies to or by the Trustee, unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the Company or from one or more holders of

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Senior Indebtedness or from any trustee therefor; and, prior to the receipt of any such written notice, the Trustee, subject to the provisions of Section 601, shall be entitled to assume conclusively that no such facts exist.

Section 1207. APPLICATION BY TRUSTEE OF MONIES DEPOSITED WITH IT. Anything in this Indenture to the contrary notwithstanding, any deposit of monies by the Company with the Trustee or any paying agent (whether or not in trust) for the payment of the principal of or premium, if any, or interest on any Securities shall be subject to the provisions of Sections 1201, 1202, 1203



and 1204 except that, if prior to the date on which by the terms of this Indenture any such monies may become payable for any purpose (including, without limitation, the payment of either the principal of or interest or premium, if any, on any Security) a Responsible Officer of the Trustee shall not have received with respect to such monies the notice provided for in Section 1206, then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such monies and to apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it on or after such date.

Section 1208. SUBORDINATION RIGHTS NOT IMPAIRED BY ACTS OR OMISSIONS OF COMPANY OR HOLDERS OF SENIOR INDEBTEDNESS. No right of any present or future holders of any Senior Indebtedness to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof which any such holder may have or be otherwise charged with.

Section 1209. SECURITYHOLDERS AUTHORIZE TRUSTEE TO EFFECTUATE SUBORDINATION OF SECURITIES. Each Holder of the Securities by his or her acceptance thereof authorizes and expressly directs the Trustee on his or her behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article Twelve and appoints the Trustee his/her attorney-in-fact for such purpose, including, in the event of any dissolution, winding

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up, liquidation or reorganization of the Company (whether in bankruptcy, insolvency or receivership proceedings or upon an assignment for the benefit of creditors or otherwise) tending towards liquidation of the business and assets of the Company, the immediate filing of a claim for the unpaid balance of its or his or her Securities in the form required in said proceedings and cause said claim to be approved. If the trustee does not file a proper claim or proof of debt in the form required in such proceeding prior to 30 days before the expiration of the time to file such claim or claims, then the holder or holders of the Senior Indebtedness are hereby authorized to and have the right to file an appropriate claim for and on behalf of the holders of said Securities.

Section 1210. RIGHT OF TRUSTEE TO HOLD SENIOR INDEBTEDNESS. The Trustee shall be entitled to all of the rights set forth in this Article Twelve in respect of any Senior Indebtedness at any time held by it to the same extent as any other holder of Senior Indebtedness, and nothing in Section 613 or elsewhere in this Indenture shall be construed to deprive the Trustee of any of its rights as such holder.

Section 1211. ARTICLE TWELVE NOT TO PREVENT EVENTS OF DEFAULT. The failure to make a payment on account of principal, interest or sinking fund by reason of any provision of this Article Twelve shall not be construed as preventing the occurrence of an Event of Default under Section 501.

[ARTICLE THIRTEEN]

[GUARANTEE OF SECURITIES]

[SECTION 1301. GUARANTEE. The Guarantor hereby fully and unconditionally guarantees to each Holder of a Security of each series issued by the Company, authenticated and delivered by the Trustee, the due and punctual payment of the principal (including any amount due in respect of any Original Issue Discount Security) of and any premium and

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interest on such Security, and the due and punctual payment of any sinking fund payments provided for pursuant to the terms of such Security, when and as the same shall become due and payable, whether at the Stated Maturity, by declaration of acceleration, call for redemption, early repayment or otherwise, in accordance with the terms of such Security and 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 Security of any series or this Indenture, any failure to enforce the provisions of any Security of any series or this Indenture, any waiver, modification or indulgence granted to the Company with respect thereto by the Holder of any Security of any series 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 Security 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 the Company, any right to require a proceeding first against the Company, the benefit of discussion, protest or notice with respect to any Security or the indebtedness evidenced thereby or with respect to any sinking fund payment required pursuant to the terms of such Security issued under this Indenture and all demands whatsoever, and covenants that this Guarantee will not be discharged with respect to such Security except by payment in full of the principal thereof and any premium and interest thereon or as provided in Article Four or Section

802. If any Holder or the Trustee is required by any court or otherwise to return to the Company, the Guarantor, or any custodian, trustee, liquidator or other similar official acting in relation to the Company or the Guarantor any amount paid by the Company 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 Maturity of the obligations guaranteed

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hereby may be accelerated as provided in Article Five 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 also 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 waives any right of set off which the Guarantor may have against the Holder of any Security in respect of any amounts which are or may become payable by such Holder to the Company.

The Guarantor shall be subrogated to all rights of the Holders of any series of Securities and the Trustee against the Company in respect of any amounts paid to such Holders and the Trustee by the Guarantor pursuant to the provisions of the Guarantee; 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, if any, on all of the 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 1301 by reason of his, her or its status as such stockholder, officer, director, employee or incorporator.

The Guarantee set forth in this Section 1301 shall not be valid or become obligatory for any purpose with respect to any Security until the certificate of authentication on such Security shall have been signed by or on behalf of the Trustee.]

[SECTION 1302. SUBORDINATION OF GUARANTEE. The obligation of the Guarantor under the Guarantee pursuant to

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this Article 13 shall be junior and subordinated to Senior Indebtedness of the Guarantor on the same basis as the Securities are junior and subordinated to Senior Indebtedness of the Company. For purposes of the foregoing sentence, the Trustee and the Holders shall have the right to receive and/or retain payments by the Guarantor only at such times as they may receive and/or retain payments in respect of the Securities pursuant to this Indenture, including Article 12 hereof. The Guarantee made by the Guarantor hereunder and evidenced by any notation of Guarantee endorsed on any Security is subject to the provisions of Article 12 hereof.]

[SECTION 1303. EXECUTION OF NOTATIONS OF GUARANTEE. To evidence its Guarantee to the Holders specified in Section 1301, the Guarantor hereby agrees to execute the notation of the Guarantee in substantially the form set forth in Section 205 to be endorsed on each Security authenticated and delivered by the Trustee. The Guarantor hereby agrees that its Guarantee set forth in Section 1301 shall remain in full force and effect notwithstanding any failure to endorse on any Security a notation of such Guarantee. Each such notation of Guarantee shall be signed on behalf of the Guarantor by any proper officer of the Guarantor prior to the authentication of the Security on which it is endorsed, and the delivery of such 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 proper officer of the Guarantor and may be imprinted or otherwise reproduced below the notation of the Guarantee, and in case any such proper officer of the Guarantor who shall have signed the notation of the Guarantee shall cease to be such officer before the Security on which such notation is endorsed shall have been authenticated and delivered by the Trustee or disposed of by the Company, such Security nevertheless may be authenticated and delivered or disposed of as though the person who signed the notation of the Guarantee had not ceased to be such officer of the Guarantor.]

IN WITNESS WHEREOF, the parties hereto have caused

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this Indenture to be duly executed, all as of the day and year first above written.

by

Name:  
Title:

FUND AMERICAN COMPANIES, INC.,

by

Name:  
Title:

BANK ONE, NATIONAL  
ASSOCIATION,

by

Name:  
Title:

[Form of Junior Subordinated Indenture]

WHITE MOUNTAINS INSURANCE GROUP, LTD.  
Guarantor

FUND AMERICAN COMPANIES, INC.  
Company

and

BANK ONE, NATIONAL ASSOCIATION  
Trustee

JUNIOR SUBORDINATED INDENTURE

Dated as of \_\_\_\_\_, 200\_

Providing for Issuance of Securities in Series

CROSS-REFERENCE TABLE

TIA SECTION -----	INDENTURE SECTION -----
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(a)(4)	N.A.
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(c)	602
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N.A. means Not Applicable.

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Note: This Cross-Reference Table shall not, for any purpose,  
be deemed to be part of the Indenture.

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[Form of]

JUNIOR SUBORDINATED INDENTURE (this "Indenture") between WHITE MOUNTAINS INSURANCE GROUP, LTD. a company existing under the laws of Bermuda (the "Guarantor") having its principal office at 80 South Main Street, Hanover, New Hampshire 03755-2053, FUND AMERICAN COMPANIES, INC., a Delaware corporation (the "Company") having its principal office at One Beacon Street, Boston, Massachusetts 02108-3100 (White Mountains Insurance Group, Ltd., and Fund American Companies Inc., each hereinafter called the "Company"), and BANK ONE, NATIONAL ASSOCIATION, trustee (hereinafter called the "Trustee"), is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 200\_.

##### RECITALS OF THE COMPANY AND THE GUARANTOR

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

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

##### AGREEMENTS OF THE PARTIES

To set forth or to provide for the establishment of the terms and conditions upon which the Securities are and are to be authenticated, issued and delivered, and in consideration of the premises and the purchase of Securities by the Holders thereof, it is mutually covenanted and agreed

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as follows, for the equal and proportionate benefit of all Holders of the Securities or of a series thereof, as the case may be:

#### ARTICLE ONE

##### DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 101. DEFINITIONS. For all purposes of this Indenture and of any indenture supplemental hereto, except as otherwise expressly provided or unless the context otherwise requires:



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

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

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

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

(5) "including" and words of similar import shall be deemed to be followed by "without limitation".

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Certain terms, used principally in Article Six, are defined in that Article.

"ACT", when used with respect to any Securityholder, has the meaning specified in Section 104.

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

"AUTHENTICATING AGENT" means any Person authorized by the Trustee to authenticate Securities under Section 614.

"BOARD OF DIRECTORS" means either the board of directors of the Company or any duly authorized committee of that board.

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

"BUSINESS DAY" means each day which is neither a Saturday, Sunday or other day on which banking institutions in the pertinent Place or Places of Payment are authorized or required by law or executive order to be closed.

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

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duties on such date.

"COMMON SECURITIES" means the common undivided beneficial interests in the assets of the applicable Fund American Trust.

"COMPANY" means the Person named as the "Company" in the first paragraph of this instrument until a successor replaces it and, thereafter, "Company" shall mean the successor and, for purposes of any provision contained herein and required by the TIA, each other obligor on the Securities.

"COMPANY REQUEST", "COMPANY ORDER" and "COMPANY CONSENT" mean, respectively, a written request, order or consent signed in the name of the Company by its Chairman of the Board, President or a Vice President, and by its Treasurer, an Assistant Treasurer, Controller, an Assistant Controller, Secretary or an Assistant Secretary, and delivered to the Trustee.

"CORPORATE TRUST OFFICE" means the principal office of the Trustee in [ ] at which at any particular time its corporate trust business shall be principally administered, which office at the date hereof is located at [ ], except that with respect to the presentation of Securities for payment or for registration of transfer and exchange, such term shall mean the office or the agency of the Trustee in said city at which at any particular time its corporate agency business shall be conducted, which office at the date hereof is located at [ ].

"DEBT" means indebtedness for money borrowed.

"DECLARATION OF TRUST" means the Declaration of Trust of the Fund American Trust, if any, specified in the applicable Board Resolution or supplemental indenture establishing a particular series of Securities pursuant to Section 301.

"DEFAULTED INTEREST" has the meaning specified in Section 307.

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"DEPOSITARY" means, unless otherwise specified by the Company pursuant to either Section 204 or 301, with respect to Securities of any series issuable or issued as a Global Security, The Depository Trust Company, New York, New York, or any successor thereto registered as a clearing agency under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation.

"FUND AMERICAN TRUST" means, as the context requires, Fund American Trust I, Fund American Trust II or Fund American Trust III, each a business trust created under the laws of the State of Delaware, or any other business trust created under the laws of the State of Delaware, any of which may be specified in the applicable Board Resolution or supplemental indenture establishing a particular series of Securities pursuant to Section 301 as the Person who will hold such series of Securities.

"FUND AMERICAN TRUST GUARANTEE" means the guarantee, if any, that the Guarantor may enter into that operates directly or indirectly for the benefit of holders of Preferred Securities issued by a Fund American Trust.

"EVENT OF DEFAULT" has the meaning specified in Article Five.

"EXTENSION PERIOD" has the meaning specified in Section 314 of this Indenture.

"GLOBAL SECURITY" means with respect to any series of Securities issued hereunder, a Security which is executed by the Company and authenticated and delivered by the Trustee to the Depository or pursuant to the Depository's instruction, all in accordance with this Indenture and an indenture supplemental hereto, if any, or Board Resolution and pursuant to a Company Request, which shall be registered in the name of the Depository or its nominee and which shall represent, and shall be denominated in an amount equal to the aggregate principal amount of, all of the Outstanding 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.

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"GUARANTEE" means the irrevocable and unconditional guarantee by the Guarantor of any Security of any series of the Company authenticated and delivered pursuant to Article Thirteen.

"GUARANTOR" means the Person named as the "Guarantor" in the first paragraph of this instrument until a successor replaces it and, thereafter, "Guarantor" shall mean the successor.

"GUARANTOR BOARD OF DIRECTORS" means either the board of directors of the Guarantor or any duly authorized committee of that board.

"GUARANTOR'S BOARD RESOLUTION" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Guarantor to have been duly adopted by the Guarantor Board of Directors.

"GUARANTOR REQUEST", "GUARANTOR ORDER", "GUARANTOR CONSENT" means, respectively, a written request, order or consent signed in the name of the Guarantor by its Chairman of the Board, President or a Vice President, and by its Treasurer, an Assistant Treasurer, Controller, an Assistant Controller, Secretary or an Assistant Secretary, and delivered to the Trustee.

"HOLDER", when used with respect to any Security, means a Securityholder.

"INDENTURE" or "THIS INDENTURE" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms of particular series of Securities established as contemplated by Section 301.

"INTEREST", when used with respect to an Original Issue Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity.

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"INTEREST PAYMENT DATE", when used with respect to any series of Securities, means the Stated Maturity of any installment of interest on those Securities.

"MATURITY", when used with respect to any Securities, means the date on which the principal of any such Security becomes due and payable as therein

or herein provided, whether on a Repayment Date, at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

"OFFICERS' CERTIFICATE" means, with respect to the Company or the Guarantor, a certificate signed by the Chairman of the Board, the President or a Vice President, and by the Treasurer, an Assistant Treasurer, the Controller, an Assistant Controller, the Secretary or an Assistant Secretary of the Company or the Guarantor, as the case may be, and delivered to the Trustee. Wherever this Indenture requires that an Officers' Certificate be signed also by an engineer or an accountant or other expert, such engineer, accountant or other expert (except as otherwise expressly provided in this Indenture) may be in the employ of the Company or the Guarantor, as the case may be, and shall be acceptable to the Trustee.

"OPINION OF COUNSEL" means a written opinion of counsel, who may (except as otherwise expressly provided in this Indenture) be an employee of or of counsel to the Company or the Guarantor. Such counsel shall be acceptable to the Trustee, whose acceptance shall not be unreasonably withheld.

"ORIGINAL ISSUE DISCOUNT SECURITY" means (i) any Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof, and (ii) any other Security deemed an Original Issue Discount Security for United States Federal income tax purposes.

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

- (i) such Securities theretofore canceled by

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the Trustee or delivered to the Trustee for cancellation;

- (ii) such Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent in trust for the Holders of such Securities; provided that, if such 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) such Securities in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, or which shall have been paid pursuant to the terms of Section 306 (except with respect to any such Security as to which proof satisfactory to the Trustee is presented that such Security is held by a person in whose hands such Security is a legal, valid and binding obligation of the Company).

In determining whether the Holders of the requisite principal amount of such Securities Outstanding have given any request, demand, authorization, direction, notice, consent or waiver hereunder, (i) the principal amount of any Original Issue Discount Security that shall be deemed to be Outstanding shall be the amount of the principal thereof that would be due and payable as of the date of the taking of such action upon a declaration of acceleration of the Maturity thereof and (ii) Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding. In determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which a Responsible Officer assigned to the corporate trust department of the Trustee knows to be owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction

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of the Trustee the pledgee's right to act as owner with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor.

"PAYING AGENT" means any Person authorized by the Company to pay the principal of (and premium, if any) or interest on any Securities on behalf of the Company.

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

"PLACE OF PAYMENT" means with respect to any series of Securities issued hereunder the city or political subdivision so designated with respect to the series of Securities in question in accordance with the provisions of Section 301.

"PREDECESSOR SECURITIES" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 306 in lieu of a lost, destroyed or stolen Security shall be deemed to evidence the same debt as the lost, destroyed or stolen Security.

"PREFERRED SECURITIES" means the preferred undivided beneficial interests in the assets of the applicable Fund American Trust.

"PROPERTY TRUSTEE" means the entity performing the function of the Property Trustee under the applicable Declaration of Trust of a Fund American Trust.

"REDEMPTION DATE", when used with respect to any Security to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture.

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"REDEMPTION PRICE", when used with respect to any Security to be redeemed, means the price specified in the Security at which it is to be redeemed pursuant to this Indenture.

"REGULAR RECORD DATE" for the interest payable on any Security on any Interest Payment Date means the date specified in such Security as the Regular Record Date.

"REPAYMENT DATE", when used with respect to any Security to be repaid, means the date fixed for such repayment pursuant to such Security.

"REPAYMENT PRICE", when used with respect to any Security to be repaid, means the price at which it is to be repaid pursuant to such Security.

"RESPONSIBLE OFFICER", when used with respect to the Trustee, means the chairman or vice-chairman of the board of directors, the chairman or vice-chairman of the executive committee of the board of directors, the president, any vice president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, the cashier, any assistant cashier, any senior trust officer or trust officer, the controller and any assistant controller or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"SECURITY" or "SECURITIES" means any note or notes, bond or bonds, debenture or debentures, or any other evidences of indebtedness, as the case may be, of any series authenticated and delivered from time to time under this Indenture.

"SECURITY EXCHANGE" when used with respect to the Securities of any series which are held as trust assets of a Fund American Trust pursuant to the Declaration of Trust of such Fund American Trust means the distribution of the Securities of such series by such Fund American Trust in exchange for the Preferred Securities and Common Securities of such Fund American Trust in dissolution of such Fund

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American Trust pursuant to the Declaration of Trust of such Fund American Trust.

"SECURITY REGISTER" shall have the meaning specified in Section 305.

"SECURITY REGISTRAR" means the Person who keeps the Security Register specified in Section 305.

"SECURITYHOLDER" means a Person in whose name a Security is registered in the Security Register.

"SENIOR INDEBTEDNESS" means the principal of and premium, if any, and interest on the following, whether outstanding on the date of execution of this Indenture or thereafter incurred or created (i) indebtedness of the Company or the Guarantor for money borrowed by the Company or the Guarantor (including purchase money obligations with an original maturity in excess of one year) or evidenced by securities (other than the Securities), notes, bankers' acceptances or other corporate debt securities or similar instruments issued by the Company or the Guarantor; (ii) obligations with respect to letters of credit; (iii) indebtedness of the Company or the Guarantor constituting a guarantee of indebtedness of others of the type referred to in the preceding clauses (i) and (ii); or (iv) renewals, extensions or refundings of any of the indebtedness referred to in the preceding clauses (i), (ii) and (iii) unless, in the case of any particular indebtedness, renewal, extension or refunding, under the express provisions of the instrument creating or evidencing the same, or pursuant to which the same is outstanding, such indebtedness or such renewal, extension or refunding thereof is not superior in right of payment to the Securities.

"SPECIAL RECORD DATE" for the payment of any Defaulted Interest (as defined in Section 307) means a date fixed by the Trustee pursuant to Section 307.

"STATED MATURITY" when used with respect to any Security or any installment of principal thereof or interest thereon means the date specified in such Security as the

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fixed date on which the principal of such Security or such installment of

principal or interest is due and payable.

"SUBSIDIARY" of any specified Person means any corporation, limited liability company, limited or general partnership, business trust or other business entity at least a majority of whose outstanding Voting Stock shall at the time be owned, directly or indirectly, by the specified Person or by one or more of its Subsidiaries, or both.

"TRUST INDENTURE ACT" or "TIA" means the Trust Indenture Act of 1939, as amended by the Trust Indenture Reform Act of 1990, as in force at the date as of which this instrument was executed except as provided in Section 905.

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

"U.S. GOVERNMENT OBLIGATIONS" means securities that are (x) direct obligations of the United States of America 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 of America, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof.

"VICE PRESIDENT" when used with respect to the Guarantor, the Company or the Trustee means any vice president, whether or not designated by a number or a word or words added before or after the title "vice president", including, without limitation, an assistant vice president.

"VOTING STOCK", as applied to the stock of any Person, means stock of any class or classes (however designated) having by the terms thereof ordinary voting power to elect a majority of the members of the board of

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directors (or other governing body) of such Person other than stock having such power only by reason of the happening of a contingency.

Section 102. COMPLIANCE CERTIFICATES AND OPINIONS. Upon any application or request by the Company or the Guarantor to the Trustee to take any action under any provision of this Indenture, the Company or the Guarantor, as applicable, shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such Counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (except for the written statement required by Section 1004) shall include

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

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

(3) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

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

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been complied with.

Section 103. FORM OF DOCUMENTS DELIVERED TO TRUSTEE. In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to the other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company or the Guarantor may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his

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

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

Section 104. ACTS OF SECURITYHOLDERS. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Securityholders or Securityholders of any series may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Securityholders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided,

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such action shall become effective when such instrument or instruments are delivered to the Trustee, and, where it is hereby expressly required, to the Company or the Guarantor, or both of them. If any Securities are denominated in coin or currency other than that of the United States, then for the purposes of determining whether the Holders of the requisite principal amount of Securities have taken any action as herein described, the principal amount of such Securities shall be deemed to be that amount of United States dollars that could be obtained for such principal amount on the basis of the spot rate of exchange into United States dollars for the currency in which such Securities are denominated (as evidenced to the Trustee by an Officers' Certificate) as of the date the taking of such action by the Holders of such requisite principal amount is evidenced to the Trustee as provided in the immediately preceding sentence. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Securityholders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 601) conclusive in favor of the Trustee, the Company and the Guarantor, if made in the manner provided in this Section.

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

(c) The ownership of Securities shall be proved

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by the Security Register.

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

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

Section 105. NOTICES, ETC., TO TRUSTEE, GUARANTOR AND COMPANY. Any request, demand, authorization, direction, notice, consent, waiver or Act of Securityholders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Trustee by any Securityholder or by the Company or the Guarantor shall be sufficient for every purpose hereunder if made, given, furnished or filed in

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writing to or with the Trustee at its Corporate Trust Office, or

(2) the Company or the Guarantor by the Trustee or by any Securityholder shall be sufficient for every purpose hereunder (except as provided in Section 501(4) or, in the case of a request for repayment, as specified in the Security carrying the right to repayment) if in writing and mailed, first-class postage prepaid, to the Company or the Guarantor, as the case may be, addressed to it at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee by the Company or the Guarantor, as the case may be.

Section 106. NOTICES TO SECURITYHOLDERS; WAIVER. Where this Indenture or any Security provides for notice to Securityholders of any event, such notice shall be sufficiently given (unless otherwise herein or in such Security expressly provided) if in writing and mailed, first-class postage prepaid, to each Securityholder affected by such event, at his address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Securityholders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Securityholder shall affect the sufficiency of such notice with respect to other Securityholders. Where this Indenture or any Security provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Securityholders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case, by reason of the suspension of regular mail service as a result of a strike, work stoppage or otherwise, it shall be impractical to mail notice of any

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event to any Securityholder when such notice is required to be given pursuant to any provision of this Indenture, then any method of notification as shall be satisfactory to the Trustee, the Guarantor and the Company shall be deemed to be a sufficient giving of such notice.

Section 107. CONFLICT WITH TRUST INDENTURE ACT. If any provision hereof limits, qualifies or conflicts with the duties imposed by any of Sections 310 to 317, inclusive, of the Trust Indenture Act through the operation of Section 318(c) thereof, such imposed duties shall control.

Section 108. EFFECT OF HEADINGS AND TABLE OF CONTENTS. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 109. SUCCESSORS AND ASSIGNS. All covenants and agreements in this Indenture by each of the Company and the Guarantor shall bind its successors and assigns, whether so expressed or not.

Section 110. SEPARABILITY CLAUSE. In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 111. BENEFITS OF INDENTURE. Nothing in this Indenture or in any Securities, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any Authenticating Agent or Paying Agent, the Security Registrar and the Holders of Securities (or such of them as may be affected thereby), any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 112. GOVERNING LAW. This Indenture shall be construed in accordance with and governed by the laws of the State of New York.

Section 113. COUNTERPARTS. This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

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Section 114. JUDGMENT CURRENCY. The Company and the Guarantor each agrees, to the fullest extent that it may effectively do so under applicable law, that (a) if for the purpose of obtaining judgment in any court it is necessary to convert the sum due in respect of the principal of, or premium or interest, if any, on the Securities of any series (the "Required Currency") into a currency in which a judgment will be rendered (the "Judgment Currency"), the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in New York City the Required Currency with the Judgment Currency on the Banking Day (as defined below)

immediately preceding the date on which final unappealable judgment is given and (b) its obligations under this Indenture to make payments in the Required Currency (i) shall not be discharged or satisfied by any tender, or any recovery pursuant to any judgment (whether or not entered in accordance with subsection (a)), in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the actual receipt, by the payee, of the full amount of the Required Currency expressed to be payable in respect of such payments, (ii) shall be enforceable as an alternative or additional cause of action for the purpose of recovering in the Required Currency the amount, if any, by which such actual receipt shall fall short of the full amount of the Required Currency so expressed to be payable and (iii) shall not be affected by judgment being obtained for any other sum due under this Indenture. For purposes of the foregoing, "Banking Day" means any day except a Saturday, Sunday or a legal holiday in New York City or a day on which banking institutions in New York City are authorized or required by law or executive order to close.

Section 115. CERTAIN RIGHTS OF HOLDERS OF PREFERRED SECURITIES. The Company hereby acknowledges that, to the extent specifically set forth herein, prior to a Security Exchange with respect to the Securities of any series held as trust assets of a Fund American Trust, the holders of the Preferred Securities of such Fund American Trust shall expressly be third party beneficiaries of this

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Indenture. The Company further acknowledges that, prior to a Security Exchange with respect to Securities of any series held as trust assets of a Fund American Trust, if the Property Trustee of such Fund American Trust fails to enforce its rights under this Indenture as the holder of the Securities of a series held as trust assets of such Fund American Trust, any holder of the Preferred Securities of such Fund American Trust may institute legal proceedings directly against the Company to enforce such Property Trustee's rights under this Indenture without first instituting any legal proceedings against such Property Trustee or any other Person.

## ARTICLE TWO

### SECURITY FORMS

Section 201. FORMS GENERALLY. The Securities shall have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon, as may be required to comply with applicable laws or regulations or with the rules of any securities exchange, or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution of the Securities. Any portion of the text of any Security may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Security.

The definitive Securities shall be printed, lithographed or engraved or produced by any combination of these methods on steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities, subject, with respect to the Securities of any series, to the rules of any securities exchange on which such Securities are listed.

Section 202. FORMS OF SECURITIES. Each Security shall be in one of the forms approved from time to time by

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or pursuant to a Board Resolution, or established in one or more indentures supplemental hereto. Prior to the delivery of a Security to the Trustee for authentication in any form approved by or pursuant to a Board Resolution, the Company shall deliver to the Trustee the Board Resolution by or pursuant to which such form of Security has been approved, which Board Resolution shall have attached thereto a true and correct copy of the form of Security which has been approved thereby or, if a Board Resolution authorizes a specific officer or officers to approve a form of Security, a certificate of such officer or officers approving the form of Security attached thereto. Any form of Security approved by or pursuant to a Board Resolution must be acceptable as to form to the Trustee, such acceptance to be evidenced by the Trustee's authentication of Securities in that form or a certificate signed by a Responsible Officer of the Trustee and delivered to the Company.

Each Security shall bear a notation of Guarantee in substantially the form set forth in Section 205. Notwithstanding the foregoing, the notation of Guarantee to be endorsed on the Securities of any series may have such appropriate insertions, omissions, substitutions and other corrections from the form thereof referred to above as are required or permitted by this Indenture and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may, consistently herewith, be determined by the officers delivering the same, in each case as evidenced by such delivery.

Section 203. FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION. The form of Trustee's Certificate of Authentication for any Security issued pursuant to this Indenture shall be substantially as follows:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION



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

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[ \_\_\_\_\_ ],  
as Trustee,

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

Section 204. SECURITIES ISSUABLE IN THE FORM OF A GLOBAL SECURITY.

(a) If the Company shall establish pursuant to Sections 202 and 301 that the 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 Company shall execute and the Trustee or its agent shall, in accordance with Section 303 and the Company Request delivered to the Trustee or its agent thereunder, 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 Securities of such series to be represented by such Global Security or Securities, or such portion thereof as the Company shall specify in a Company Request, (ii) shall be registered in the name of the Depositary for such Global Security or Securities or its nominee, (iii) shall be delivered by the Trustee or its agent to the Depositary or pursuant to the Depositary'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 Securities represented hereby, this Global Security may not be transferred except as a whole by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary."

(b) Notwithstanding any other provisions of this Section 204 or of Section 305, 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 individual Securities, a Global Security may be transferred, in whole but not in part

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and in the manner provided in Section 305, only to a nominee of the Depositary for such Global Security, or to the Depositary, or a successor Depositary for such Global Security selected or approved by the Company, or to a nominee of such successor Depositary.

(c)(i) If at any time the Depositary for a Global Security notifies the Company that it is unwilling or unable to continue as Depositary for such Global Security or if at any time the Depositary for the Securities for such series ceases to be a clearing agency registered under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation, the Company shall appoint a successor Depositary with respect to such Global Security. If a successor Depositary for such Global Security is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such ineligibility, the Company will execute, and the Trustee or its agent, upon receipt of a Company Request for the authentication and delivery of individual Securities of such series in exchange for such Global Security, will authenticate and deliver, individual Securities of such series of like tenor and terms in an aggregate principal amount equal to the principal amount of the Global Security in exchange for such Global Security.

(ii) The Company may at any time and in its sole discretion determine that the 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 Company will execute, and the Trustee, upon receipt of a Company Request for the authentication and delivery of individual Securities of such series in exchange in whole or in part for such Global Security, will authenticate and deliver individual Securities of such series of like tenor and terms in definitive form in an aggregate principal amount equal to the principal amount of such Global Security or Securities representing such series or portion thereof in exchange for such Global Security or Securities.

(iii) If specified by the Company pursuant to Sections 202 and 301 with respect to Securities issued or issuable in the form of a Global Security, the Depositary for such Global Security may surrender such Global Security

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in exchange in whole or in part for individual Securities of such series of like tenor and terms in definitive form on such terms as are acceptable to the Company and such Depositary. Thereupon the Company shall execute, and the Trustee or its agent shall authenticate and deliver, without service charge, (1) to each Person specified by such Depositary a new 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 Person's beneficial interest in the Global Security; and (2) to such Depositary 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 Securities

delivered to the Holders thereof.

(iv) In any exchange provided for in any of the preceding three paragraphs, the Company will execute and the Trustee or its agent will authenticate and deliver individual Securities in definitive registered form in authorized denominations. Upon the exchange of the entire principal amount of a Global Security for individual Securities, such Global Security shall be canceled by the Trustee or its agent. Except as provided in the preceding paragraph, Securities issued in exchange for a Global Security pursuant to this Section 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 Security Registrar. The Trustee or the Security Registrar shall deliver such Securities to the Persons in whose names such Securities are so registered.

SECTION 205. FORM OF NOTATION OF GUARANTEE. The form of notation of Guarantee to be endorsed on any Security issued pursuant to this Indenture shall be substantially as follows:

NOTATION OF GUARANTEE

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White Mountains Insurance Group, Ltd., a company existing under the law of Bermuda (the "Guarantor", which term includes any successor thereto under the Indenture (the "Indenture") referred to in the Security on which this notation is endorsed) has unconditionally guaranteed, pursuant to the terms of the Guarantee contained in Article Twelve of the Indenture, the due and punctual payment of the principal of and any premium and interest on this Security, when and as the same shall become due and payable, whether at the Stated Maturity, by declaration of acceleration, call for redemption, early repayment or otherwise, in accordance with the terms of this Security and the Indenture.

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

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

WHITE MOUNTAINS INSURANCE GROUP, LTD.

by

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

ARTICLE THREE

THE SECURITIES

Section 301. GENERAL TITLE; GENERAL LIMITATIONS; ISSUABLE IN SERIES; TERMS OF PARTICULAR SERIES. The aggregate principal amount of Securities which may be authenticated and delivered and Outstanding under this

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Indenture is not limited.

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

Each series of Securities shall be created either by or pursuant to a Board Resolution or by or pursuant to an indenture supplemental hereto. The Securities of each such series may bear such date or dates, be payable at such place or places, have such Stated Maturity or Maturities, be issuable at such premium over or discount from their face value, bear interest at such rate or rates (which may be fixed or floating), from such date or dates, payable in such installments and on such dates and at such place or places to the Holders of Securities registered as such on such Regular Record Dates, or may bear no interest, and may be redeemable or repayable at such Redemption Price or Prices or Repayment Price or Prices, as the case may be, whether at the option of the Holder or otherwise, and upon such terms, all as shall be provided for in or pursuant to the Board Resolution or in or pursuant to the supplemental indenture creating that series. There may also be established in or pursuant to a Board Resolution or in or pursuant to a supplemental indenture prior to the issuance of Securities of each such series, provision for:

(1) the exchange or conversion of the Securities of that series, at the option of the Holders thereof, for or into new Securities of a different series or other securities or other property of the Company, the Guarantor or another Person, including shares of common stock, preferred stock, indebtedness or securities of any kind of the Company, the

into or exchangeable for any such securities;

(2) a sinking or purchase fund or other analogous obligation;

(3) if other than U.S. dollars, the currency or currencies or units based on or related to currencies (including European Currency Units) in which the Securities of such series shall be denominated and in which payments of principal of, and any premium and interest on, such Securities shall or may be payable;

(4) if the principal of (and premium, if any) or interest, if any, on the Securities of such series are to be payable, at the election of the Company or a holder thereof, in a currency or currencies or units based on or related to currencies (including European Currency Units) other than that in which the Securities are stated to be payable, the period or periods within which, and the terms and conditions upon which, such election may be made;

(5) if the amount of payments of principal of (and premium, if any) or interest, if any, on the Securities of such series may be determined with reference to an index based on (i) a currency or currencies or units based on or related to currencies (including European Currency Units) other than that in which the Securities are stated to be payable, (ii) changes in the price of one or more other securities or groups or indexes of securities or (iii) changes in the prices of one or more commodities or groups or indexes of commodities, or any combination of the foregoing, the manner in which such amounts shall be determined;

(6) if the aggregate principal amount of the Securities of that series is to be limited, such limitations, and the maturity date of the principal amount of the Securities of that series (which may be fixed or extendible), and the rate or rates (which may be fixed or floating) per annum at which the Securities of such series will bear interest, if any, or the

method of determining such rate or rates and the payment dates and record dates relating to interest payments;

(7) the exchange of Securities of that series, at the option of the Holders thereof, for other Securities of the same series of the same aggregate principal amount of a different authorized kind or different authorized denomination or denominations, or both;

(8) the appointment by the Trustee of an Authenticating Agent in one or more places other than the location of the office of the Trustee with power to act on behalf of the Trustee and subject to its direction in the authentication and delivery of the Securities of any one or more series in connection with such transactions as shall be specified in the provisions of this Indenture or in or pursuant to the Board Resolution or the supplemental indenture creating such series;

(9) the percentage of their principal amount of which such Securities will be issued and the portion of the principal amount of Securities of the series, if other than the total principal amount thereof, which shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 502 or provable in bankruptcy pursuant to Section 504;

(10) any Event of Default with respect to the Securities of such series, if not set forth herein and any additions, deletions or other changes to the Events of Default set forth herein that shall be applicable to the Securities of such series (including a provision making any Event of Default set forth herein inapplicable to the Securities of that series);

(11) any covenant solely for the benefit of the Securities of such series and any additions, deletions or other changes to the provisions of Article Ten or any definitions relating to such Article that shall be applicable to the Securities of such series (including a provision making any Section of such Article inapplicable to the Securities of such series);

(12) the applicability of Section 402(b) of this Indenture to the Securities of such series;

(13) if the Securities of the series shall be issued in whole or in part in the form of a Global Security or Global Securities, the terms and conditions, if any, upon which such Global Security or Global Securities may be exchanged in whole or in part for other individual Securities; and the Depositary for such Global Security or Global Securities (if other than the Depositary specified in Section 101 hereof);

(14) the subordination of the Securities of such series to any other indebtedness of the Company and the Guarantor, including without limitation, the Securities of any other series;

(15) if the Securities of the series are to be deposited as trust assets in a Fund American Trust, the name of the applicable Fund American Trust (which shall distinguish such statutory business trust from all other Fund American Trusts) into which the Securities of the series are to be deposited as trust assets and the date of its Declaration of Trust;

(16) if the Securities of the series are to have an interest deferral feature, the terms relating to such interest deferral feature; and

(17) any other terms of the series, which shall not be inconsistent with the provisions of this Indenture;

all upon such terms as may be determined in or pursuant to a Board Resolution or in or pursuant to a supplemental indenture with respect to such series. All Securities of the same series shall be substantially identical in tenor and effect, except as to denomination.

The form of the Securities of each series shall be established pursuant to the provisions of this Indenture in or pursuant to the Board Resolution or in or pursuant to the supplemental indenture creating such series. The Securities

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of each series shall be distinguished from the Securities of each other series in such manner, reasonably satisfactory to the Trustee, as the Board of Directors may determine.

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

Any terms or provisions in respect of the Securities of any series issued under this Indenture may be determined pursuant to this Section by providing in a Board Resolution or supplemental indenture for the method by which such terms or provisions shall be determined.

Section 302. DENOMINATIONS. The Securities of each series shall be issuable in such denominations and currency as shall be provided in the provisions of this Indenture or in or pursuant to the Board Resolution or the supplemental indenture creating such series. In the absence of any such provisions with respect to the Securities of any series, the Securities of that series shall be issuable only in fully registered form in denominations of \$25 and any integral multiple thereof.

Section 303. EXECUTION, AUTHENTICATION AND DELIVERY AND DATING. The Securities shall be executed on behalf of the Company by its Chairman of the Board, its President, one of its Vice Presidents or its Treasurer. The signature of any of these officers on the Securities may be manual or facsimile.

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

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities executed by the Company to the Trustee for authentication; and the Trustee shall, upon Company Order, authenticate and make available for delivery such

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Securities as in this Indenture provided and not otherwise.

Prior to any such authentication and delivery, the Trustee shall be entitled to receive, in addition to any Officers' Certificate and Opinion of Counsel required to be furnished to the Trustee pursuant to Section 102, and the Board Resolution and any certificate relating to the issuance of the series of Securities required to be furnished pursuant to Section 202, an Opinion of Counsel stating that:

(1) all instruments furnished to the Trustee conform to the requirements of the Indenture and constitute sufficient authority hereunder for the Trustee to authenticate and deliver such Securities;

(2) the form and terms (or in connection with the issuance of medium-term Securities under Section 311, the manner of determining the terms) of such Securities have been established in conformity with the provisions of this Indenture;

(3) all laws and requirements with respect to the execution and delivery by the Company of such Securities have been complied with, the Company has the corporate power to issue such Securities and such Securities have been duly authorized and delivered by the Company and, assuming due authentication and delivery by the Trustee, constitute legal, valid and binding obligations of the Company enforceable in accordance

with their terms (subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, fraudulent conveyance, moratorium or other laws and legal principles affecting creditors' rights generally from time to time in effect and to general equitable principles, whether applied in an action at law or in equity) and entitled to the benefits of this Indenture, equally and ratably with all other Securities, if any, of such series Outstanding; and

(4) such other matters as the Trustee may reasonably request;

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and, if the authentication and delivery relates to a new series of Securities created by an indenture supplemental hereto, also stating that all laws and requirements with respect to the form and execution by the Company of the supplemental indenture with respect to that series of Securities have been complied with, the Company has corporate power to execute and deliver any such supplemental indenture and has taken all necessary corporate action for those purposes and any such supplemental indenture has been executed and delivered and constitutes the legal, valid and binding obligation of the Company enforceable in accordance with its terms (subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, fraudulent conveyance, moratorium or other laws and legal principles affecting creditors' rights generally from time to time in effect and to general equitable principles, whether applied in an action at law or in equity).

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

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

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

Section 304. TEMPORARY SECURITIES. Pending the preparation of definitive Securities of any series, the Company may execute, and, upon receipt of the documents required by Section 303, together with a Company Order, the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination,

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substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

If temporary Securities of any series are issued, the Company will cause definitive Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company in a Place of Payment, without charge to the Holder; and upon surrender for cancellation of any one or more temporary Securities the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of such series of authorized denominations and of like tenor and terms. Until so exchanged the temporary Securities of such series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

Section 305. REGISTRATION, TRANSFER AND EXCHANGE. The Company shall keep or cause to be kept a register (herein sometimes referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities, or of Securities of a particular series, and for transfers of Securities or of Securities of such series. Any such register shall be in written form or in any other form capable of being converted into written form within a reasonable time. At all reasonable times the information contained in such register or registers shall be available for inspection by the Trustee at the office or agency to be maintained by the Company as provided in Section 1002.

Subject to Section 204, upon surrender for transfer of any Security of any series at the office or agency of the Company in a Place of Payment, the Company shall execute, and the Trustee shall authenticate and make

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available for delivery, in the name of the designated transferee or transferees, one or more new Securities of such series of any authorized denominations, of a like aggregate principal amount and Stated Maturity and of like tenor and terms.

Subject to Section 204, at the option of the Holder, Securities of any series may be exchanged for other Securities of such series of any

authorized denominations, of a like aggregate principal amount and Stated Maturity and of like tenor and terms, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and make available for delivery, the Securities which the Securityholder making the exchange is entitled to receive.

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

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

Unless otherwise provided in the Security to be transferred or exchanged, no service charge shall be made on any Securityholder for any transfer or exchange of Securities, but the Company may (unless otherwise provided in such Security) require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Securities, other than exchanges pursuant to Section 304 or 906 not involving any transfer.

The Company shall not be required (i) to issue, transfer or exchange any Security of any series during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Securities of such series selected for redemption under

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Section 1103 and ending at the close of business on the date of such mailing, or (ii) to transfer or exchange any Security so selected for redemption in whole or in part, except for the portion of such Security not so selected for redemption.

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

The Company initially appoints the Trustee to act as Security Registrar for the Securities on its behalf. The Company may at any time and from time to time authorize any Person to act as Security Registrar in place of the Trustee with respect to any series of Securities issued under this Indenture.

Section 306. MUTILATED, DESTROYED, LOST AND STOLEN SECURITIES. If (i) any mutilated Security is surrendered to the Trustee, or the Company, the Guarantor and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Security, and (ii) there is delivered to the Company, the Guarantor and the Trustee such Security or indemnity as may be required by them to save each of them harmless, then, in the absence of notice to the Company, the Guarantor or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and upon its request the Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Security, a new Security of like tenor, series, Stated Maturity and principal amount, bearing a number not contemporaneously Outstanding.

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

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

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

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

Section 307. PAYMENT OF INTEREST; INTEREST RIGHTS PRESERVED. Unless otherwise provided with respect to such Security pursuant to Section 301, interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

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

(1) The Company or the Guarantor may elect to make payment of any Defaulted Interest to the Persons in whose names any such Securities (or their respective Predecessor Securities) are registered at the close of

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

(2) The Company or the Guarantor may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Securities may be

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listed, and upon such notice as may be required by such exchange, if, after notice given by the Company or the Guarantor, as the case may be, to the Trustee of the proposed payment pursuant to this Clause, such manner of payment shall be deemed practicable by the Trustee.

If any installment of interest the Stated Maturity of which is on or prior to the Redemption Date for any Security called for redemption pursuant to Article Eleven is not paid or duly provided for on or prior to the Redemption Date in accordance with the foregoing provisions of this Section, such interest shall be payable as part of the Redemption Price of such Securities.

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

Section 308. PERSONS DEEMED OWNERS. The Company, the Guarantor, the Trustee and any agent of the Company, the Guarantor or the Trustee may treat the Person in whose name any Security is registered in the Security Register as the owner of such Security for the purpose of receiving payment of principal of (and premium, if any), and (subject to Section 307) interest on, such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Guarantor, the Trustee nor any agent of the Company, the Guarantor or the Trustee shall be affected by notice to the contrary.

Section 309. CANCELLATION. All Securities surrendered for payment, redemption, transfer, conversion or exchange or credit against a sinking fund shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and, if not already canceled, shall be promptly canceled by it. The Company or the Guarantor may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company or the Guarantor may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly canceled by the Trustee. No Security shall be authenticated in lieu of or in exchange for any Securities

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canceled as provided in this Section, except as expressly permitted by this Indenture. The Trustee shall return all canceled Securities to the Company.

Section 310. COMPUTATION OF INTEREST. Unless otherwise provided as contemplated in Section 301, interest on the Securities shall be calculated on the basis of a 360-day year of twelve 30-day months.

Section 311. MEDIUM-TERM SECURITIES. Notwithstanding any contrary provision herein, if all Securities of a series are not to be originally issued at one time, it shall not be necessary for the Company to deliver to the Trustee an Officers' Certificate, Board Resolution, supplemental indenture, Opinion of Counsel or Company Request otherwise required pursuant to Sections 202, 301 and 303 at or prior to the time of authentication of each 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 Security of such series to be issued; provided that any subsequent request by the Company to the Trustee to authenticate Securities of such series upon original issuance shall constitute a representation and warranty by the Company that as of the date of such request, the statements made in the Officers' Certificate delivered pursuant to Section 102 shall be true and correct as if made on such date.

An Officers' Certificate, supplemental indenture or Board Resolution delivered by the Company to the Trustee in the circumstances set forth in the preceding paragraph may provide that 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 Officers' Certificate, Board Resolution or supplemental indenture (any such telephonic instructions to be confirmed promptly in writing by such persons) and that such persons are authorized to determine, consistent with such Officers' Certificate, supplemental indenture or Board Resolution, such terms and conditions of said Securities as are specified in such Officers' Certificate, supplemental

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indenture or Board Resolution.

Section 312. CUSIP NUMBERS. The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the "CUSIP" numbers.

Section 313. GLOBAL SECURITIES. (a) Each Global Security authenticated under this Indenture shall be registered in the name of the Depository designated by the Company for such Global Security or a nominee thereof and delivered to such Depository or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.

(b) Notwithstanding any other provision of this Indenture, no Global Security may be exchanged in whole or in part for Securities registered, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depository for such Global Security or a nominee thereof unless (i) such Depository (A) has notified the Company that it is unwilling or unable to continue as Depository for such Global Security or (B) has ceased to be a clearing agency registered as such under the Exchange Act or announces an intention permanently to cease business or does in fact do so or (ii) there shall have occurred and be continuing an Event of Default with respect to such Global Security.

(c) If any Global Security is to be exchanged for other Securities or canceled in whole, it shall be surrendered by or on behalf of the Depository or its nominee

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to the Trustee, as Security Registrar, for exchange or cancellation, as provided in this Article Three. If any Global Security is to be exchanged for other Securities or canceled in part, or if another Security is to be exchanged in whole or in part for a beneficial interest in any Global Security, in each case, as provided in Section 305, then either (i) such Global Security shall be so surrendered for exchange or cancellation, as provided in this Article Three or (ii) the principal amount thereof shall be reduced or increased by an amount equal to the portion thereof to be so exchanged or canceled, or equal to the principal amount of such other Security to be so exchanged for a beneficial interest therein, as the case may be, by means of an appropriate adjustment made on the records of the Trustee, as Security Registrar, whereupon the Trustee in accordance with the Applicable Procedures, shall instruct the Depository or its authorized representative to make a corresponding adjustment to its records. Upon any such surrender or adjustment of a Global Security, the Trustee shall, subject to Section 305 and as otherwise provided in this Article Three, authenticate and deliver any Securities issuable in exchange for such Global Security (or any portion thereof) to or upon the order of, and registered in such names as may be directed by, the Depository or its authorized representative. Upon the request of the Trustee in connection with the occurrence of any of the events specified in the preceding paragraph, the Company shall promptly make available to the Trustee a reasonable supply of Securities that are not in the form of Global Securities. The Trustee shall be entitled to rely upon any order, direction or request of the Depository or its authorized representative which is given or made pursuant to this Article Three if such order, direction or request is given or made in accordance with the Applicable Procedures.



(d) Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security or any portion thereof, whether pursuant to this Article Three or otherwise, shall be authenticated and delivered in the form of, and shall be, a registered Global Security, unless such Security is registered in the name of a Person other than the Depository for such Global Security or a nominee thereof, in which case such Registered Security shall be authenticated and delivered in definitive, fully registered form, without

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interest coupons.

(e) The Depository or its nominee, as registered owner of a Global Security, shall be the Holder of such Global Security for all purposes under the Indenture and the Registered Securities, and owners of beneficial interests in a Global Security shall hold such interests pursuant to the Applicable Procedures. Accordingly, any such owner's beneficial interest in a Global Security will be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depository or its nominee or its Agent Members and such owners of beneficial interests in a Global Security will not be considered the owners of holders thereof.

Section 314. DEFERRALS OF INTEREST PAYMENT DATES. If the Securities of a particular series are to be deposited as trust assets in a Fund American Trust and as specified by Section 301 with respect to the Securities of such series, provided that no Event of Default has occurred and is continuing with respect to such Securities, the Company shall have the right, at any time or from time to time during the term of such series, to defer the payment of interest on such Securities for such period or periods as may be specified as contemplated by Section 301 (each, an "Extension Period") during which Extension Periods the Company shall have the right to make partial payments of interest on any Interest Payment Date. No Extension Period shall end on a date other than an Interest Payment Date. At the end of any such Extension Period the Company shall pay all interest then accrued and unpaid on the Securities (together with interest thereon accrued in a manner to be specified in Section 301 compounded in a manner to be specified in Section 301 from the relevant Interest Payment Date, to the extent permitted by applicable law), provided, however, that no Extension Period may extend beyond the Stated Maturity of such Securities. During an Extension Period, interest will continue to accrue and Holders of the Securities will be required to accrue interest income for U.S. Federal income tax purposes. During any such Extension Period, the Company shall not (i) declare or pay dividends or distributions on, or redeem, purchase, acquire or make a

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liquidation payment with respect to, any of the Company's capital stock (which includes the Common Stock and the Preferred Stock), or (ii) make any payment of principal, interest, or premium, if any, on or repay, repurchase or redeem any debt securities of the Company (including other Securities) that rank pari passu with or junior in interest to the Securities of such series or (iii) make any guarantee payments with respect to any guarantee by the Company of the debt securities of any Subsidiary of the Company if such guarantee ranks pari passu with or junior in interest to the Securities of such series (other than (a) dividends or distributions in Common Stock, (b) any declaration of a dividend in connection with the implementation of a stockholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto, (c) payments under the applicable Fund American Trust Guarantee, (d) purchases or acquisitions of shares of the Common Stock in connection with the satisfaction by the Company of its obligations under any employee benefit plan or other contractual obligation of the Company (other than a contractual obligation ranking pari passu with or junior to these Securities), (e) as a result of a reclassification of the Company's capital stock or the exchange or conversion of one class or series of the Company's capital stock for another class or series of the Company's capital stock, or (f) the purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged). Prior to the termination of any such Extension Period, the Company may further extend such Extension Period; PROVIDED, HOWEVER, that no Extension Period shall exceed the specified number of specified consecutive periods or extend beyond the Stated Maturity of such Securities. Upon termination of any Extension Period and upon the payment of all accrued and unpaid interest then due on any Interest Payment Date, and subject to the foregoing limitations, the Company may elect to begin a new Extension Period. No interest shall be due and payable during an Extension Period, except at the end thereof. The Company shall give the Holders and the Trustee notice of its election to begin any such Extension Period (or an extension thereof) at least three Business Days prior to the Interest Payment Date or, with respect to the Securities of a series issued to a Fund American Trust, prior to the earlier of (i)

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the date the distributions on the Common Securities and the Preferred Securities of such Fund American Trust would have been payable except for the election to begin or extend such Extension Period or (ii) the date the regular trustees of such Fund American Trust are required to give notice to any automated quotation system or to holders of the Common Securities and the Preferred Securities of the record date or the date such distributions are payable, but in any event not less than three Business Days prior to such record date. There is no limitation

on the number of times that the Company may elect to begin an Extension Period.

#### ARTICLE FOUR

##### SATISFACTION AND DISCHARGE OF INDENTURE; DEFEASANCE; UNCLAIMED MONEYS

Section 401. APPLICABILITY OF ARTICLE. If, pursuant to Section 301, provision is made for the defeasance of Securities of a series and if the Securities of such series are denominated and payable only in U.S. dollars (except as provided pursuant to Section 301), then the provisions of this Article Four relating to defeasance of Securities shall be applicable except as otherwise specified pursuant to Section 301 for Securities of such series. Defeasance provisions, if any, for Securities denominated in a currency other than U.S. dollars may be specified pursuant to Section 301.

##### Section 402. SATISFACTION AND DISCHARGE OF INDENTURE; DEFEASANCE.

(a) If at any time (i) the Company or the Guarantor shall have delivered to the Trustee for cancellation all Securities of any series theretofore authenticated and delivered (other than (1) any Securities of such series which shall have been destroyed, lost or stolen and which shall have been replaced or paid as provided in Section 306 and (2) Securities for whose payment money has theretofore been deposited in trust and thereafter repaid to the Company or the Guarantor as provided in Section 405) or (ii) all Securities of such series not theretofore delivered to the Trustee for cancellation shall

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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 Company shall deposit with the Trustee as trust funds the entire amount in the currency in which such Securities are denominated (except as otherwise provided pursuant to Section 301) sufficient (in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee) without consideration of any reinvestment and after payment of all taxes or other charges and assessments in respect thereof payable by the Trustee, to pay at maturity or upon redemption all 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, no default with respect to the Securities has occurred and is continuing on the date of such deposit, such deposit does not result in a breach or violation of, or constitute a default under, the Indenture or any other agreement or instrument to which the Company of the Guarantor is a party and the Company delivers an Officers' Certificate and an Opinion of Counsel each stating that such conditions have been complied with and if in either case the Company or the Guarantor shall also pay or cause to be paid all other sums payable hereunder by the Company or the Guarantor, then this Indenture shall cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of such Securities herein expressly provided for and rights to receive payments of principal of, and premium, if any, and interest on, such Securities) with respect to the Securities of such series, and the Trustee, on demand of the Company or the Guarantor, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture.

(b) Subject to Sections 402(c), 403 and 407, the Company at any time may terminate, with respect to Securities of a particular series, (i) all of the Company's and the Guarantor's obligations under the Securities of such series and this Indenture with respect to the Securities of such series ("legal defeasance option") or (ii) the Company's and the Guarantor's obligations under any covenants specified pursuant to Section 301 applicable to

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the Securities of such Series ("covenant defeasance option"). The Company may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option.

If the Company exercises its legal defeasance option, payment of the Securities of the defeased series may not be accelerated because of an Event of Default. If the Company exercises its covenant defeasance option, payment of the Securities may not be accelerated because of an Event of Default related to the specified covenants.

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

(c) Notwithstanding clause (a) above and the exercise of the legal defeasance option in clause (b) above, the Company's and the Guarantor's obligations in Sections 305, 306, 405, 406, 407, 607, 608, 701 and 1002 shall survive until the Securities of the defeased series have been paid in full. Thereafter, the Company's and the Guarantor's obligations in Sections 607, 405 and 406 shall survive.

Section 403. CONDITIONS OF DEFEASANCE. The Company may exercise the legal defeasance option or the covenant defeasance option with respect to Securities of a particular series only if:

(1) the Company or the Guarantor 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 Securities of such series to maturity or redemption, as the case may be;

(2) the Company or the Guarantor delivers to the Trustee a certificate from a nationally recognized firm of independent public accountants expressing their opinion that the payments of principal and interest when due and without reinvestment on the deposited U.S.

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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, if any, and interest when due on all the 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 501(5) or (6) with respect to the Company 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 the Guarantor;

(6) the Company or the Guarantor 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 Company or the Guarantor shall have delivered to the Trustee an Opinion of Counsel stating that (i) the Company 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 to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of 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 Company or the Guarantor shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of Securities of such series will not recognize income, gain or loss for Federal

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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 Company or the Guarantor delivers to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Securities of such series as contemplated by this Article Four have been complied with.

Before or after a deposit, the Company or the Guarantor may make arrangements satisfactory to the Trustee for the redemption of Securities of such series at a future date in accordance with Article Eleven.

Section 404. APPLICATION OF TRUST MONEY. The Trustee shall hold in trust money or U.S. Government Obligations deposited with it pursuant to this Article Four. 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 Securities of the defeased series.

Section 405. REPAYMENT TO COMPANY OR GUARANTOR. The Trustee and any paying agent shall promptly turn over to the Company or the Guarantor 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 Company or the Guarantor 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 Company or the Guarantor for payment as general creditors and all liability of the Trustee or such paying agent with respect to such money shall thereupon cease.

Section 406. INDEMNITY FOR U.S. GOVERNMENT

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OBLIGATIONS. The Company and the Guarantor (without duplication) shall pay and shall indemnify the Trustee 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 407. REINSTATEMENT. If the Trustee or any paying agent is unable to apply any money or U.S. Government Obligations in accordance with this Article Four 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 Company's and the Guarantor's obligations under this Indenture and the Securities of the defeased series shall be revived and reinstated as though no deposit had occurred pursuant to this Article Four 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 Four.

## ARTICLE FIVE

### REMEDIES

Section 501. EVENTS OF DEFAULT. "Event of Default", wherever used herein, means with respect to any series of Securities any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), unless such event is either inapplicable to a particular series or it is specifically deleted or modified in the supplemental indenture creating such series of Securities or in the form of Security for such series:

(1) default in the payment of any interest upon any Security of that series when it becomes due and payable, and continuance of such default for a period of 90 days (subject to the deferral of any due date in the case of an Extension Period); or

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

(3) default in the payment of any sinking or purchase fund or analogous obligation when the same becomes due by the terms of the Securities of such series; or

(4) default in the performance, or breach, of any covenant or warranty of the Company or the Guarantor in this Indenture in respect of the Securities of such series (other than a covenant or warranty in respect of the Securities of such series a default in the performance of which or the breach of which is elsewhere in this Section specifically dealt with), all of such covenants and warranties in the Indenture which are not expressly stated to be for the benefit of a particular series of Securities being deemed in respect of the Securities of all series for this purpose, and continuance of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to the Company and the Guarantor by the Trustee or to the Company, the Guarantor and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of such series, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(5) the entry of an order for relief against the Company or the Guarantor under the Federal Bankruptcy Code by a court having jurisdiction in the premises or a decree or order by a court having jurisdiction in the premises adjudging the Company or the Guarantor a bankrupt or insolvent under any other applicable Federal, State or foreign law, or the entry of a decree or order approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under the Federal Bankruptcy Code or any other applicable Federal, State or foreign law (other than a reorganization under a

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foreign law that does not relate to insolvency), or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or the Guarantor or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or

(6) the consent by the Company or the Guarantor to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the Federal Bankruptcy Code or any other applicable Federal, State or foreign law (other than a reorganization under a foreign law that does not relate to insolvency), or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or the Guarantor or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company or the Guarantor in furtherance of any such action; or

(7) any other Event of Default provided in the supplemental indenture under which such series of Securities is issued or in the form of Security for such series.

Section 502. ACCELERATION OF MATURITY; RESCISSION AND ANNULMENT. If an Event of Default described in paragraph (1), (2), (3), (4) or (7) (if the Event of Default under paragraph (4) or (7) is with respect to less than all series of Securities then Outstanding) of Section 501 occurs and is continuing with respect to any series, then and in each and every such case, unless the principal of all the Securities of such series shall have already become due and payable, either the Trustee or the Holders of not less than 25% in aggregate principal amount of the Securities of such

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series then Outstanding hereunder (each such series acting as a separate class), by notice in writing to the Company and the Guarantor (and to the Trustee if given by Holders), may declare the principal amount (or, if the Securities of such series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of that series) of all the Securities of such series then Outstanding and all accrued interest thereon to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Securities of such series contained to the contrary notwithstanding. If an Event of Default described in paragraph (4) or (7) (if the Event of Default under paragraph (4) or (7) is with respect to all series of Securities then Outstanding), or (5) or (6) of Section 501 occurs and is continuing, then and in each and every such case, unless the principal of all the Securities shall have already become due and payable, either the Trustee or the Holders of not less than 25% in aggregate principal amount of all the Securities then Outstanding hereunder (treated as one class), by notice in writing to the Company and the Guarantor (and to the Trustee if given by Holders), may declare the principal amount (or, if any Securities are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms thereof) of all the Securities then Outstanding and all accrued interest thereon to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Securities contained to the contrary notwithstanding.

At any time after such a declaration of acceleration has been made with respect to the Securities of any series and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in principal amount of the Outstanding Securities of such series (subject to, in the case of any series of Securities held as trust assets of a Fund American Trust and with respect to which a Security Exchange has not theretofore occurred, such consent of the holders of the Preferred Securities and the Common Securities of such Fund American Trust as may be required under the Declaration of Trust of such Fund American Trust), by written notice to the

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Company and the Trustee, may rescind and annul such declaration and its consequences if

(1) the Company or the Guarantor has paid or deposited with the Trustee a sum sufficient to pay

(A) all overdue installments of interest on the Securities of such series,

(B) the principal of (and premium, if any, on) any Securities of such series which have become due otherwise than by such declaration of acceleration, and interest thereon at the rate or rates prescribed therefor by the terms of the Securities of such series, to the extent that payment of such interest is lawful,

(C) interest upon overdue installments of interest at the rate or rates prescribed therefor by the terms of the Securities of such series to the extent that payment of such interest is lawful, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts due the Trustee under Section 607;

and

(2) all Events of Default with respect to such series of Securities, other than the nonpayment of the principal of the Securities of such series which have become due solely by such acceleration, have been cured or waived as provided in Section 513.

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

Section 503. COLLECTION OF INDEBTEDNESS AND SUITS FOR ENFORCEMENT BY TRUSTEE. The Company and the Guarantor

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each covenants that if

(1) default is made in the payment of any installment of interest on any Security of any series when such interest becomes due and payable, or

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

(3) default is made in the payment of any sinking or purchase fund or analogous obligation when the same becomes due by the terms of the Securities of any series,

and any such default continues for any period of grace provided with respect to the Securities of such series, the Company or the Guarantor, as the case may be, will, upon demand of the Trustee, pay to it, for the benefit of the Holder of any such Security (or the Holders of any such series in the case of Clause (3) above), the whole amount then due and payable on any such Security (or on the Securities of any such series in the case of Clause (3) above) for principal (and premium, if any) and interest, with interest, to the extent that payment of such interest shall be legally enforceable, upon the overdue principal (and premium, if any) and upon overdue installments of interest, at such rate or rates as may be prescribed therefor by the terms of any such Security (or of Securities of any such series in the case of Clause (3) above); and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts due the Trustee under Section 607.

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

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the Company or the Guarantor or any other obligor upon such Securities, wherever situated.

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

Section 504. TRUSTEE MAY FILE PROOFS OF CLAIM. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company, the Guarantor or any other obligor upon the Securities or the property of the Company, the Guarantor or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company or the Guarantor for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceedings or otherwise,

(i) to file and prove a claim for the whole amount of principal (and premium, if any) and interest owing and unpaid in respect of the Securities and to file such other papers or documents as may be necessary and advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts due the Trustee under Section 607) and of the Securityholders allowed in such judicial proceeding, and

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

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

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

Section 505. TRUSTEE MAY ENFORCE CLAIMS WITHOUT POSSESSION OF SECURITIES. All rights of action and claims under this Indenture or the Securities of any series may be prosecuted and enforced by the Trustee without the possession of any of the Securities of such series or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable

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

Section 506. APPLICATION OF MONEY COLLECTED. Any money collected by the Trustee with respect to a series of Securities pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest, upon presentation of the Securities of such series and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

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FIRST: To the payment of all amounts due the Trustee under Section 607.

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

THIRD: To the Company or the Guarantor or both, as they are entitled.

Section 507. LIMITATION ON SUITS. No Holder of any Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

(1) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to Securities of such series;

(2) the Holders of not less than 25% in principal amount of the Outstanding Securities of such series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(3) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

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

(5) no direction inconsistent with such written request has been given to the Trustee during such 60-

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day period by the Holders of a majority in principal amount of the Outstanding Securities of such series (subject to, in the case of any series of Securities held as trust assets of a Fund American Trust and with respect to which a Security Exchange has not theretofore occurred, such consent of the holders of the Preferred Securities and the Common Securities of such Fund American Trust as may be required under the Declaration of Trust of such Fund American Trust);

it being understood and intended that no one or more Holders of Securities of such series shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders of Securities of such series, or to obtain or to seek to obtain priority or preference over any other such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and proportionate benefit of all the Holders of all Securities of such series.

The Company expressly acknowledges that if, prior to a Security Exchange with respect to the Securities of any series, a Default with respect to the Securities of such series shall have occurred, under the circumstances set forth in the applicable Declaration of Trust, any holder of Preferred Securities of the applicable Fund American Trust may, to the extent permitted by applicable law, enforce directly against the Company the applicable Property Trustee's rights hereunder. In furtherance of the foregoing and for the avoidance of any doubt, the Company acknowledges that, under the circumstances described in the applicable Declaration of Trust, any such holder of Preferred Securities, in its own name, in the name of the applicable Fund American Trust or in the name of the holders of the Preferred Securities issued by such Fund American Trust, may institute or cause to be instituted a proceeding, including, without limitation, any suit in equity, an action at law or other judicial or administrative proceeding, to enforce the applicable Property Trustee's rights hereunder directly against the Company as issuer of the applicable series of Securities, and may prosecute such proceeding to judgment or final decree, and enforce the same against the Company.

Section 508. UNCONDITIONAL RIGHT OF

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SECURITYHOLDERS TO RECEIVE PRINCIPAL, PREMIUM AND INTEREST. Notwithstanding any other provisions in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of (and premium, if any) and (subject to Section 307) interest on such Security on the respective Stated Maturities expressed in such Security (or, in the case of redemption or repayment, on the Redemption Date or Repayment Date, as the case may be) and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder.

Section 509. RESTORATION OF RIGHTS AND REMEDIES. If the Trustee or any Securityholder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, then and in every such case the Company, the Trustee, the Guarantor and the Securityholders shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and the Securityholders shall continue as though no such proceeding had been instituted.

Section 510. RIGHTS AND REMEDIES CUMULATIVE. No right or remedy herein conferred upon or reserved to the Trustee or to the Securityholders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 511. DELAY OR OMISSION NOT WAIVER. No delay or omission of the Trustee or of any Holder of any Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this

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Article or by law to the Trustee or to the Securityholders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Securityholders, as the case may be.

Section 512. CONTROL BY SECURITYHOLDERS. The Holders of a majority in principal amount of the Outstanding Securities of any series (subject to, in the case of any series of Securities held as trust assets of a Fund American Trust and with respect to which a Security Exchange has not theretofore occurred, such consent of the holders of the Preferred Securities and the Common Securities of such Fund American Trust as may be required under the Declaration of Trust of such Fund American Trust) shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Securities of such series, provided that

(1) the Trustee shall have the right to decline to follow any such direction if the Trustee, being advised by counsel, determines that the action so directed may not lawfully be taken or would conflict with this Indenture or if the Trustee in good faith shall, by a Responsible Officer, determine that the proceedings so directed would involve it in personal liability or be unjustly prejudicial to the Holders not taking part in such direction, and

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

Section 513. WAIVER OF PAST DEFAULTS. The Holders of not less than a majority in principal amount of the Outstanding Securities of any series (subject to, in the case of any series of Securities held as trust assets of a Fund American Trust and with respect to which a Security Exchange has not theretofore occurred, such consent of the holders of the Preferred Securities and the Common Securities of such Fund American Trust as may be required under the Declaration of Trust of such Fund American Trust) may on behalf of the Holders of all the Securities of such series waive any past default hereunder with respect to such series and its consequences, except a default not

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theretofore cured

(1) in the payment of the principal of (or premium, if any) or interest on any Security of such series, or in the payment of any sinking or purchase fund or analogous obligation with respect to the Securities of such series, or

(2) in respect of a covenant or provision hereof which under Article Nine cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series.

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

Section 514. UNDERTAKING FOR COSTS. All parties to this Indenture



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

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Date).

Section 515. WAIVER OF STAY OR EXTENSION LAWS. The Company and the Guarantor each covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company and the Guarantor each (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

#### ARTICLE SIX

#### THE TRUSTEE

Section 601. CERTAIN DUTIES AND RESPONSIBILITIES. (a) Except during the continuance of an Event of Default with respect to any series of Securities,

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

(2) in the absence of bad faith on its part, the Trustee may, with respect to Securities of such series, conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon 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

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or not they conform to the requirements of this Indenture.

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

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

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

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

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

(4) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

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

Section 602. NOTICE OF DEFAULTS. Within 90 days after the occurrence of any default hereunder with respect to Securities of any series, the Trustee shall transmit by mail to all Securityholders of such series, as their names and addresses appear in the Security Register, notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; provided, however, that, except in the case of a default in the payment of the principal of (or premium, if any) or interest on any Security of such series or in the payment of any sinking or purchase fund installment or analogous obligation with respect to Securities of such series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Securityholders of such series; and provided, further, that in the case of any default of the character specified in Section 501(4) with respect to Securities of such series no such notice to Securityholders of such series shall be given until at least 90 days after the occurrence thereof. For the purpose of this Section, the term "default", with respect to Securities of any series, means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

Section 603. CERTAIN RIGHTS OF TRUSTEE. Except as otherwise provided in Section 601:

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

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(b) any request or direction of the Company or the Guarantor mentioned herein shall be sufficiently evidenced by a Company Request or Company Order, or a Guarantor Request or Guarantor Order, as applicable, and any resolution of the Board of Directors or the Guarantor Board of Directors may be sufficiently evidenced by a Board Resolution or a Guarantor's Board Resolution, applicable;

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

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

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

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

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or attorney; and

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

Section 604. NOT RESPONSIBLE FOR RECITALS OR ISSUANCE OF SECURITIES. The recitals contained herein and in the Securities, except the certificates of authentication, shall be taken as the statements of the Company or the Guarantor, as applicable, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. The Trustee shall not be accountable for the use or application by the Company or the Guarantor of Securities or the proceeds thereof.

Section 605. MAY HOLD SECURITIES. The Trustee, any Paying Agent, the Security Registrar or any other agent of the Company or the Guarantor, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 608 and 613, may otherwise deal with the Company or the Guarantor with the same rights it would have if it were not Trustee, Paying Agent, Security Registrar or such other agent.

Section 606. MONEY HELD IN TRUST. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company or the Guarantor.

Section 607. COMPENSATION AND REIMBURSEMENT. The Company and the Guarantor each (without duplication) agrees

(1) to pay to the Trustee from time to time such compensation for all services rendered by it hereunder

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as the parties shall agree from time to time (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

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

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

As security for the performance of the obligations of the Company and the Guarantor under this Section the Trustee shall have a lien prior to the 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 Securities.

Section 608. DISQUALIFICATION; CONFLICTING INTERESTS. The Trustee for the Securities of any series issued hereunder shall be subject to the provisions of Section 310(b) of the Trust Indenture Act during the period of time provided for therein. In determining whether the Trustee has a conflicting interest as defined in Section 310(b) of the Trust Indenture Act with respect to the Securities of any series, there shall be excluded for purposes of the conflicting interest provisions of such Section 310(b) the Securities of every other series issued under this Indenture and every series of securities issued under any other indentures if the requirements for such exclusion set forth in Section 310(b) of the Trust Indenture Act are met. Nothing herein shall prevent the Trustee from

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filing with the Commission the application referred to in the second to last paragraph of Section 310(b) of the Trust Indenture Act.

Section 609. CORPORATE TRUSTEE REQUIRED; ELIGIBILITY. There shall at all times be a Trustee hereunder with respect to each series of Securities, which shall be a corporation organized and doing business under the laws of the United States of America or of any State, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by Federal or State authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee with respect to any series of Securities shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 610. RESIGNATION AND REMOVAL; APPOINTMENT OF SUCCESSOR. (a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee under Section 611.

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

of a majority in principal amount of the Outstanding Securities of that series, delivered to the Trustee and to the Company and the Guarantor. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of removal, the removed Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(d) If at any time:

(1) the Trustee shall fail to comply with Section 310(b) of the Trust Indenture Act pursuant to Section 608(a) with respect to any series of Securities after written request therefor by the Company, by the Guarantor or by any Securityholder who has been a bona fide Holder of a Security of that series for at least 6 months, or

(2) the Trustee shall cease to be eligible under Section 609 with respect to any series of Securities and shall fail to resign after written request therefor by the Company, the Guarantor or by any such Securityholder, or

(3) the Trustee shall become incapable of acting with respect to any series of Securities, or

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

then, in any such case, (i) the Company by a Board Resolution, or the Guarantor by a Guarantor's Board Resolution, may remove the Trustee, with respect to the series, or in the case of Clause (4), with respect to all series, or (ii) subject to Section 514, any Securityholder who has been a bona fide Holder of a Security of such series for at least 6 months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee with respect to the

series, or, in the case of Clause (4), with respect to all series.

(e) If the Trustee shall resign, be removed or become incapable of acting with respect to any series of Securities, or if a vacancy shall occur in the office of the Trustee with respect to any series of Securities for any cause, the Company, by a Board Resolution, shall promptly appoint a successor Trustee for that series of Securities. If, within one year after such resignation, removal or incapacity, or the occurrence of such vacancy, a successor Trustee with respect to such series of Securities shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company, the Guarantor and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee with respect to such series and supersede the successor Trustee appointed by the Company with respect to such series. If no successor Trustee with respect to such series shall have been so appointed by the Company or the Securityholders of such series and accepted appointment in the manner hereinafter provided, any Securityholder who has been a bona fide Holder of a Security of that series for at least 6 months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to such series.

(f) The Company shall give notice of each resignation and each removal of the Trustee with respect to any series and each appointment of a successor Trustee with respect to any series by mailing written notice of such event by first-class mail, postage prepaid, to the Holders of Securities of that series as their names and addresses appear in the Security Register. Each notice shall include the name of the successor Trustee and the address of its principal Corporate Trust Office.

Section 611. ACCEPTANCE OF APPOINTMENT BY SUCCESSOR. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company, the

Guarantor and to the predecessor Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the predecessor Trustee shall become effective with respect to any series as to which it is resigning or being removed as Trustee, and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the predecessor Trustee with respect to any such series; but, on request of the Company, the Guarantor or the successor Trustee, such predecessor Trustee shall, upon payment of its reasonable charges, if any, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the predecessor Trustee, and shall duly assign, transfer

and deliver to such successor Trustee all property and money held by such predecessor Trustee hereunder with respect to all or any such series, subject nevertheless to its lien, if any, provided for in Section 607. Upon request of any such successor Trustee, the Company and the Guarantor shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the Guarantor, the predecessor Trustee and each successor Trustee with respect to the Securities of any applicable series shall execute and deliver an indenture supplemental hereto which shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the predecessor Trustee with respect to the Securities of any series as to which the predecessor Trustee is not being succeeded shall continue to be vested in the predecessor Trustee, and shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be Trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder

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administered by any other such Trustee.

No successor Trustee with respect to any series of Securities shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible with respect to that series under this Article.

Section 612. MERGER, CONVERSION, CONSOLIDATION OR SUCCESSION TO BUSINESS. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

Section 613. PREFERENTIAL COLLECTION OF CLAIMS AGAINST COMPANY. (a) Subject to Subsection (b) of this Section, if the Trustee shall be or shall become a creditor, directly or indirectly, secured or unsecured, of the Company within 3 months prior to a default, as defined in Subsection (c) of this Section, or subsequent to such a default, then, unless and until such default shall be cured, the Trustee shall set apart and hold in a special account for the benefit of the Trustee individually, the Holders of the Securities and the holders of other indenture securities (as defined in Subsection (c) of this Section):

(1) an amount equal to any and all reductions in the amount due and owing upon any claim as such creditor in respect of principal or interest, effected after the beginning of such 3-month period and valid as against the Company and its other creditors, except any such reduction resulting from the receipt or disposition of any property described in paragraph (2)

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of this Subsection, or from the exercise of any right of set-off which the Trustee could have exercised if a petition in bankruptcy had been filed by or against the Company upon the date of such default; and

(2) all property received by the Trustee in respect of any claim as such creditor, either as security therefor, or in satisfaction or composition thereof, or otherwise, after the beginning of such 3-month period, or an amount equal to the proceeds of any such property, if disposed of, subject, however, to the rights, if any, of the Company and its other creditors in such property or such proceeds.

Nothing herein contained, however, shall affect the right of the Trustee

(A) to retain for its own account (i) payments made on account of any such claim by any Person (other than the Company) who is liable thereon, and (ii) the proceeds of the bona fide sale of any such claim by the Trustee to a third person, and (iii) distributions made in cash, securities or other property in respect of claims filed against the Company in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law;

(B) to realize, for its own account, upon any property held by it as security for any such claim, if such property was so held prior to the beginning of such 3-month period;

(C) to realize, for its own account, but only to the extent of the claim hereinafter mentioned, upon any property held by it as Security for

any such claim, if such claim was created after the beginning of such 3-month period and such property was received as security therefor simultaneously with the creation thereof, and if the Trustee shall sustain the burden of proving that at the time such property was so received the Trustee had no reasonable cause to believe that a default as

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defined in Subsection (c) of this Section would occur within 3 months; or

(D) to receive payment on any claim referred to in paragraph (B) or (C), against the release of any property held as security for such claim as provided in paragraph (B) or (C), as the case may be, to the extent of the fair value of such property.

For the purposes of paragraphs (B), (C) and (D), property substituted after the beginning of such 3-month period for property held as security at the time of such substitution shall, to the extent of the fair value of the property released, have the same status as the property released, and, to the extent that any claim referred to in any of such paragraphs is created in renewal of or in substitution for or for the purpose of repaying or refunding any pre-existing claim of the Trustee as such creditor, such claim shall have the same status as such pre-existing claim.

If the Trustee shall be required to account, the funds and property held in such special account and the proceeds thereof shall be apportioned between the Trustee, the Securityholders and the holders of other indenture securities in such manner that the Trustee, the Securityholders and the holders of other indenture securities realize, as a result of payments from such special account and payments of dividends on claims filed against the Company in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law, the same percentage of their respective claims, figured before crediting to the claim of the Trustee anything on account of the receipt by it from the Company of the funds and property in such special account and before crediting to the respective claims of the Trustee and the Securityholders and the holders of other indenture securities dividends on claims filed against the Company in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law, but after crediting thereon receipts on account of the indebtedness represented by their respective claims from all sources other than from such dividends and from the funds and property so held in such special account. As used in this paragraph, with respect to any claim, the term "dividends" shall include any

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distribution with respect to such claim, in bankruptcy or receivership or proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law, whether such distribution is made in cash, securities, or other property, but shall not include any such distribution with respect to the secured portion, if any, of such claim. The court in which such bankruptcy, receivership or proceedings for reorganization is pending shall have jurisdiction (i) to apportion between the Trustee and the Securityholders and the holders of other indenture Securities in accordance with the provisions of this paragraph, the funds and property held in such special account and proceeds thereof, or (ii) in lieu of such apportionment, in whole or in part, to give to the provisions of this paragraph due consideration in determining the fairness of the distributions to be made to the Trustee and the Securityholders and the holders of other indenture Securities with respect to their respective claims, in which event it shall not be necessary to liquidate or to appraise the value of any Securities or other property held in such special account or as Security for any such claim, or to make a specific allocation of such distributions as between the secured and unsecured portions of such claims, or otherwise to apply the provisions of this paragraph as a mathematical formula.

Any Trustee which has resigned or been removed after the beginning of such 3-month period shall be subject to the provisions of this Subsection as though such resignation or removal had not occurred. If any Trustee has resigned or been removed prior to the beginning of such 3-month period, it shall be subject to the provisions of this Subsection if and only if the following conditions exist:

(i) the receipt of property or reduction of claim, which would have given rise to the obligation to account, if such Trustee had continued as Trustee, occurred after the beginning of such 3-month period; and

(ii) such receipt of property or reduction of claim occurred within 3 months after such resignation or removal.

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(b) There shall be excluded from the operation of Subsection (a) of this Section a creditor relationship arising from

(1) the ownership or acquisition of securities issued under any indenture, or any security or securities having a maturity of one year or more at the time of acquisition by the Trustee;

(2) advances authorized by a receivership or bankruptcy court of competent jurisdiction, or by this Indenture, for the purpose of preserving any property which shall at any time be subject to the lien of

this Indenture or of discharging tax liens or other prior liens or encumbrances thereon, if notice of such advances and of the circumstances surrounding the making thereof is given to the Securityholders at the time and in the manner provided in this Indenture;

(3) disbursements made in the ordinary course of business in the capacity of trustee under an indenture, transfer agent, registrar, custodian, paying agent, fiscal agent or depositary, or other similar capacity;

(4) an indebtedness created as a result of services rendered or premises rented; or an indebtedness created as a result of goods or securities sold in a cash transaction as defined in Subsection (c) of this Section;

(5) the ownership of stock or of other securities of a corporation organized under the provisions of Section 25(a) of the Federal Reserve Act, as amended, which is directly or indirectly a creditor of the Company; or

(6) the acquisition, ownership, acceptance or negotiation of any drafts, bills of exchange, acceptances or obligations which fall within the classification of self liquidating paper as defined in Subsection (c) of this Section.

(c) For the purposes of this Section only:

(1) The term "default" means any failure to make

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payment in full of the principal of or interest on any of the securities or upon the other indenture securities when and as such principal or interest becomes due and payable.

(2) The term "other indenture securities" means securities upon which the Company is an obligor outstanding under any other indenture (i) under which the Trustee is also trustee, (ii) which contains provisions substantially similar to the provisions of this Section, and (iii) under which a default exists at the time of the apportionment of the funds and property held in such special account.

(3) The term "cash transaction" means any transaction in which full payment for goods or securities sold is made within 7 days after delivery of the goods or securities in currency or in checks or other orders drawn upon banks or bankers and payable upon demand.

(4) The term "self-liquidating paper" means any draft, bill of exchange, acceptance or obligation which is made, drawn, negotiated or incurred by the Company for the purpose of financing the purchase, processing, manufacturing, shipment, storage or sale of goods, wares or merchandise and which is secured by documents evidencing title to, possession of, or a lien upon, the goods, wares or merchandise or the receivables or proceeds arising from the sale of the goods, wares or merchandise previously constituting the security, provided the security is received by the Trustee simultaneously with the creation of the creditor relationship with the Company arising from the making, drawing, negotiating or incurring of the draft, bill of exchange, acceptance or obligation.

(5) The term "Company" means any obligor upon the Securities.

Section 614. APPOINTMENT OF AUTHENTICATING AGENT. At any time when any of the Securities remain Outstanding the Trustee, with the approval of the Company, may appoint

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an Authenticating Agent or Agents with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 306, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to act as an Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 and, if other than the Company itself, subject to supervision or examination by Federal or State authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating





new list so furnished.

(b) If 3 or more Holders of Securities of any series (hereinafter referred to as "applicants") apply in writing to the Trustee, and furnish to the Trustee reasonable proof that each such applicant has owned a Security of such series for a period of at least 6 months preceding the date of such application, and such application states that the applicants desire to communicate with other Holders of Securities of such series or with the Holders of all Securities with respect to their rights under this Indenture or under such Securities and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Trustee shall, within 5 Business Days after the receipt of such application, at its election, either

(i) afford such applicants access to the information preserved at the time by the Trustee in accordance with Section 702(a), or

(ii) inform such applicants as to the approximate number of Holders of Securities of such series or all Securities, as the case may be, whose names and addresses appear in the information preserved at the time by the Trustee in accordance with Section 702(a), and as to the approximate cost of mailing to such Securityholders the form of proxy or other communication, if any, specified in such application.

If the Trustee shall elect not to afford such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail to each Holder of a Security of such series or to all Securityholders, as the case may be, whose names and addresses appear in the information preserved at the time by the Trustee in accordance with Section 702(a), a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless, within 5 days after such tender, the Trustee shall mail to such applicants and file with the

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Commission, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interests of the Holders of Securities of such series or all Securityholders, as the case may be, or would be in violation of applicable law. Such written statement shall specify the basis of such opinion. If the Commission, after opportunity for a hearing upon the objections specified in the written statement so filed, shall enter an order refusing to sustain any of such objections or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all the objections so sustained have been met and shall enter an order so declaring, the Trustee shall mail copies of such material to all Securityholders of such series or all Securityholders, as the case may be, with reasonable promptness after the entry of such order and the renewal of such tender; otherwise the Trustee shall be relieved of any obligation or duty to such applicants respecting their application.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Securities in accordance with Section 702(b), regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 702(b).

Section 703. REPORTS BY TRUSTEE. (a) The term "reporting date" as used in this Section means [ ] of each year. Within 60 days after the reporting date in each year, beginning in 200 , the Trustee shall transmit by mail to all Securityholders, as their names and addresses appear in the Security Register, a brief report dated as of such reporting date with respect to any of the following events which may have occurred during the 12 months preceding the date of such report (but if no such event has occurred within such period no report need be transmitted):

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(1) any change to its eligibility under Section 609 and its qualifications under Section 608;

(2) the creation of or any material change to a relationship specified in Section 310(b)(1) through Section 310(b)(10) of the Trust Indenture Act;

(3) the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) which remain unpaid on the date of such report, and for the reimbursement of which it claims or may claim a lien or charge, prior to that of Securities of any series, on any property or funds held or collected by it as Trustee, except that the Trustee shall not be required (but may elect) to report such advances if such advances so remaining unpaid aggregate not more than 1/2 of 1% of the principal amount of the Securities of such series outstanding on the date of such report;

(4) any change to the amount, interest rate and maturity date of all

other indebtedness owing by the Company (or by any other obligor on the Securities) to the Trustee in its individual capacity, on the date of such report, with a brief description of any property held as collateral security therefor, except an indebtedness based upon a creditor relationship arising in a manner described in Section 613(b)(2), (3), (4) or (6);

(5) any change to the property and funds, if any, physically in the possession of the Trustee as such on the date of such report;

(6) any additional issue of Securities which the Trustee has not previously reported; and

(7) any action taken by the Trustee in the performance of its duties hereunder which it has not previously reported and which in its opinion materially affects the Securities, except action in respect of a default, notice of which has been or is to be withheld by the Trustee in accordance with Section 602.

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(b) The Trustee shall transmit by mail to all Securityholders, as their names and addresses appear in the Security Register, a brief report with respect to the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee (as such) since the date of the last report transmitted pursuant to Subsection (a) of this Section (or if no such report has yet been so transmitted, since the date of execution of this instrument) for the reimbursement of which it claims or may claim a lien or charge, prior to that of the Securities of any series, on property or funds held or collected by it as Trustee, and which it has not previously reported pursuant to this Subsection, except that the Trustee shall not be required (but may elect) to report such advances if such advances remaining unpaid at any time aggregate [ ] or less of the principal amount of the Securities Outstanding of such series at such time, such report to be transmitted within 90 days after such time.

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

Section 704. REPORTS BY COMPANY AND GUARANTOR. The Company and the Guarantor each will

(1) file with the Trustee, within 30 days after the Company or the Guarantor is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company or the Guarantor may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934; or, if neither the Company nor the Guarantor is required to file

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information, documents or reports pursuant to either of said Sections, then the Guarantor will file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Securities Exchange Act of 1934 in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(2) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company or the Guarantor with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(3) transmit by mail to all Securityholders, as their names and addresses appear in the Security Register, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by the Company pursuant to paragraphs (1) and (2) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

#### ARTICLE EIGHT

##### CONSOLIDATION, AMALGAMATION, MERGER, CONVEYANCE OR TRANSFER

Section 801. COMPANY MAY CONSOLIDATE, ETC., ONLY ON CERTAIN TERMS. The Company shall not consolidate or amalgamate with or merge into any other Person or convey or transfer its properties and assets substantially as an entirety to any Person, unless:

(1) the Person formed by such consolidation or amalgamation or into which the Company is merged or the

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Person which acquires by conveyance or transfer the properties and assets of the Company substantially as an entirety shall be a corporation or limited liability company organized and existing under the laws of the United States of America, any State thereof, the District of Columbia or Bermuda, and shall expressly assume, by an indenture supplemental hereto, executed by the successor Person and the Guarantor and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of (and premium, if any) and interest on all the Securities and the performance of every covenant of this Indenture on the part of the Company to be performed or observed;

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

(3) either the Company or the successor Person has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that such consolidation, amalgamation, merger, conveyance or transfer and such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

Section 802. SUCCESSOR PERSON SUBSTITUTED FOR COMPANY. Upon any consolidation, amalgamation or merger, or any conveyance or transfer of the properties and assets of the Company substantially as an entirety in accordance with Section 801, the successor Person formed by such consolidation or amalgamation or into which the Company is merged or to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein. In the event of any such conveyance or transfer, the Company as the predecessor corporation may be dissolved, wound up or liquidated at any time thereafter.

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Section 803. GUARANTOR MAY CONSOLIDATE, ETC., ONLY ON CERTAIN TERMS. The Guarantor shall not consolidate or amalgamate with or merge into any other Person or convey or transfer its properties and assets substantially as an entirety to any Person, unless:

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

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

(3) either the Guarantor or the successor Person has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that such consolidation, amalgamation, merger, conveyance or transfer and such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

Section 804. SUCCESSOR PERSON SUBSTITUTED FOR GUARANTOR. Upon any consolidation, amalgamation or merger, or any conveyance or transfer of the properties and assets of the Guarantor substantially as an entirety in accordance with Section 803, the successor Person formed by such consolidation or amalgamation or into which the Guarantor is merged or to which such conveyance or transfer is made shall

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succeed to, and be substituted for, and may exercise every right and power of, the Guarantor under this Indenture with the same effect as if such successor Person had been named as the Guarantor herein. In the event of any such conveyance or transfer, the Guarantor as the predecessor corporation may be dissolved, wound up or liquidated at any time thereafter.

#### ARTICLE NINE

#### SUPPLEMENTAL INDENTURES

Section 901. SUPPLEMENTAL INDENTURES WITHOUT CONSENT OF SECURITYHOLDERS. Without the consent of the Holders of any Securities, the Company, when authorized by a Board Resolution, the Guarantor, when authorized by a Guarantor's Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another Person to the Company or the Guarantor, and the assumption by any such successor of the covenants of the Company herein and in the Securities contained; or

(2) to add to the covenants of the Company or the Guarantor, or to surrender any right or power herein conferred upon the Company or the Guarantor, for the benefit of the Holders of the Securities of any or all series (and if such covenants or the surrender of such right or power are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included or such surrenders are expressly being made solely for the benefit of one or more specified series); or

(3) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture; or

(4) to add to this Indenture such provisions as may be expressly permitted by the TIA, excluding,

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however, the provisions referred to in Section 316(a)(2) of the TIA as in effect at the date as of which this instrument was executed or any corresponding provision in any similar federal statute hereafter enacted; or

(5) to establish any form of Security, as provided in Article Two, and to provide for the issuance of any series of Securities as provided in Article Three and to set forth the terms thereof, and/or to add to the rights of the Holders of the Securities of any series; or

(6) to evidence and provide for the acceptance of appointment by another corporation as a successor Trustee hereunder with respect to one or more series of Securities and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to Section 611; or

(7) to add any additional Events of Default in respect of the Securities of any or all series (and if such additional Events of Default are to be in respect of less than all series of Securities, stating that such Events of Default are expressly being included solely for the benefit of one or more specified series); or

(8) to provide for the issuance of Securities in coupon as well as fully registered form.

No supplemental indenture for the purposes identified in Clauses (2), (3), (5) or (7) above may be entered into if to do so would adversely affect the interest of the Holders of Securities of any series.

Section 902. SUPPLEMENTAL INDENTURES WITH CONSENT OF SECURITYHOLDERS. With the consent of the Holders of not less than a majority in principal amount of the Outstanding Securities of each series affected by such supplemental

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indenture or indentures (and, in the case of any series of Securities held as trust assets of a Fund American Trust and with respect to which a Security Exchange has not theretofore occurred, such consent of holders of the Preferred Securities and the Common Securities of such Fund American Trust as may be required under the Declaration of Trust of such Fund American Trust), by Act of said Holders delivered to the Company, the Company and the Trustee, the Company, when authorized by a Board Resolution, the Guarantor, when authorized by a Guarantor's Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of the Securities of each such series under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby (and, in the case of any series of Securities held as trust assets of a Fund American Trust and with respect to which a Security Exchange has not theretofore occurred, such consent of holders of the Preferred Securities and the Common Securities of such Fund American Trust as may be required under the Declaration of Trust of such Fund American Trust),

(1) change the Maturity of the principal of, or the Stated Maturity of any premium on, or any installment of interest on, any Security, or reduce the principal amount thereof or the interest or any premium thereon, or change the method of computing the amount of principal thereof or interest thereon on any date or change any Place of Payment where, or the coin or currency in which, any Security or any premium or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Maturity or the Stated Maturity, as the case may be, thereof (or, in the case of redemption or repayment, on or after the Redemption Date or the Repayment Date, as the case may be); or

(2) reduce the percentage in principal amount of the Outstanding Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver of compliance with certain provisions of

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this Indenture or certain defaults hereunder and their consequences, provided for in this Indenture; or

(3) modify any of the provisions of this Section or Section 513, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby.

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

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

Section 903. EXECUTION OF SUPPLEMENTAL INDENTURES. In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 601) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not (except to the extent required in the case of a supplemental indenture entered into under Section 901(4) or 901(6)) be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 904. EFFECT OF SUPPLEMENTAL INDENTURES. Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance

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therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby to the extent provided therein.

Section 905. CONFORMITY WITH TRUST INDENTURE ACT. Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the TIA as then in effect.

Section 906. REFERENCE IN SECURITIES TO SUPPLEMENTAL INDENTURES. Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities.

## ARTICLE TEN

### COVENANTS

Section 1001. PAYMENT OF PRINCIPAL, PREMIUM AND INTEREST. With respect to each series of Securities, the Company will duly and punctually pay the principal of (and premium, if any) and interest on such Securities in accordance with their terms and this Indenture, and will duly comply with all the other terms, agreements and conditions contained in, or made in the Indenture for the benefit of, the Securities of such series.

Section 1002. MAINTENANCE OF OFFICE OR AGENCY. The Company will maintain an office or agency in each Place of Payment where Securities may be presented or surrendered for payment, where Securities may be surrendered for transfer or exchange and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company will give prompt

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written notice to the Trustee of the location, and of any change in the location, of such office or agency. If at any time the Company shall fail to maintain such office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the principal Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee its agent to receive all such presentations, surrenders, notices and demands.

The Guarantor will maintain an office or agency in each Place of Payment where Securities to which the Guarantee applies may be presented or surrendered for payment pursuant to the Guarantee and where notices and demands to or upon the Guarantor in respect of the Guarantee and this Indenture may be served. The Guarantor 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 Guarantor shall fail to maintain any such office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders and demands may be made or served at the Principal Corporate Trust Office of the Trustee, and the Guarantor hereby appoints the Trustee as its agent to receive all such presentations, surrenders and demands.

Section 1003. MONEY FOR SECURITY PAYMENTS TO BE HELD IN TRUST. If the Company shall at any time act as its own Paying Agent for any series of Securities, it will, on or before each due date of the principal of (and premium, if any) or interest on, any of the Securities of such series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal (and premium, if any) or interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided, and will promptly notify the Trustee of its action or failure to act.

Whenever the Company shall have one or more Paying Agents for any series of Securities, it will, on or prior to each due date of the principal of (and premium, if any) or interest on, any Securities of such series, deposit with a

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Paying Agent a sum sufficient to pay the principal (and premium, if any) or interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal (and premium, if any) or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

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

(1) hold all sums held by it for the payment of principal of (and premium, if any) or interest on Securities of such series in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Trustee notice of any default by the Company (or any other obligor upon the Securities of such series) in the making of any such payment of principal (and premium, if any) or interest on the Securities of such series; and

(3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Company or the Guarantor may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture with respect to any series of Securities or for any other purpose, pay, or by Company Order or Guarantor Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company, the Guarantor or such Paying Agent in respect of each and every series of Securities as to which it seeks to discharge this Indenture or, if for any other purpose, all sums so held in trust by the Company or the Guarantor in respect of all Securities, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company, the Guarantor or such Paying Agent; and, upon such payment by

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any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company or the Guarantor, in trust for the payment of the principal of (and premium, if any) or interest on any Security of any series and remaining unclaimed for two years after such principal (and premium, if any) or interest has become due and payable shall be paid to the Company on Company Request (or if deposited by the Guarantor, paid to the Guarantor upon Guarantor Request), or (if then held by the Company or the Guarantor) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company and the Guarantor for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease. The Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company and the Guarantor mail to the Holders of the Securities as to which the money to be repaid was held in trust, as their names and addresses appear in the Security Register, a notice that such moneys remain unclaimed and that, after a date specified in the notice, which shall not be less than 30 days from the date on which the notice was first mailed to the Holders of the Securities as to which the money to be repaid was held in trust, any unclaimed balance of such moneys then remaining will be paid to the Company or the Guarantor, as the case may be, free of the trust formerly impressed upon it.

The Company initially authorizes the Trustee to act as Paying Agent for the Securities on its behalf. The Company may at any time and from time to time authorize one or more Persons to act as Paying Agent in addition to or in place of the Trustee with respect to any series of Securities issued under this Indenture.

Section 1004. STATEMENT AS TO COMPLIANCE. The Company and the Guarantor each will deliver to the Trustee,

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within 120 days after the end of each fiscal year, a written statement signed by the principal executive officer, principal financial officer or principal accounting officer of the Company or the Guarantor, as the case may be, stating that

(1) a review of the activities of the Company or the Guarantor, as the case may be, during such year and of its performance under this Indenture and under the terms of the Securities has been made under his supervision; and

(2) to the best of his knowledge, based on such review, the Company or the Guarantor, as the case may be, has complied with all conditions and covenants under this Indenture through such year, or, if there has been a default in the fulfillment of any such obligation, specifying each such default known to him and the nature and status thereof.

For purposes of this Section 1004, compliance shall be determined without regard to any grace period (other than an Extension Period) or requirement of notice provided pursuant to the terms of this Indenture.

Section 1005. CORPORATE EXISTENCE. Subject to Article Eight each of the Company and the Guarantor will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

Section 1006. ADDITIONAL COVENANTS. The Company and the Guarantor each covenants and agrees with each Holder of Securities of a series issued to a Fund American Trust that it will not declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any shares of its capital stock (other than (a) dividends, distributions, redemptions, purchases, acquisitions or payments made with its capital stock, (b) any declaration or payment of a dividend in connection with the implementation of a stockholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto, (c) payments of accrued dividends on preferred stock upon the redemption, exchange or conversion of any preferred stock as may be outstanding

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from time to time, (d) the purchase of fractional interests in shares of preferred stock upon the redemption, exchange or conversion of such preferred stock, (e) purchases or acquisitions of shares of common stock in connection with the satisfaction of obligations under any employee benefit plan or other contractual obligation or (f) as a result of a reclassification of capital stock or the exchange or conversion of one class or series capital stock for another class or series of capital stock), if at such time (i) there shall have occurred an Event of Default, (ii) the Guarantor shall be in default with respect to its payment of any obligations under the related Fund American Trust Guarantee or (iii) the Company shall have given notice of its election to begin an Extension Period as provided herein and shall not have rescinded such notice, or such Extension Period, or any extension thereof, shall be continuing.

The Company also covenants with each Holder of Securities of a series issued to a Fund American Trust (i) to maintain directly, or indirectly through a wholly owned Subsidiary, 100% ownership of the Common Securities of such Fund American Trust; provided, however, that any permitted successor of the Company hereunder may succeed to the Company's ownership of such Common Securities, (ii) not to voluntarily terminate, windup or liquidate such Fund American Trust, except (a) in connection with a distribution of the Securities of such series to the holders of Preferred Securities in liquidation of such Fund American Trust or (b) in connection with certain mergers, consolidations or amalgamations permitted by the related Declaration of Trust and (iii) to use its reasonable best efforts, consistent with the terms and provisions of such Declaration of Trust, to cause such Fund American Trust to remain classified as a grantor trust and not as an association taxable as a corporation for United States Federal income tax purposes.

#### ARTICLE ELEVEN

##### REDEMPTION OF SECURITIES

Section 1101. APPLICABILITY OF ARTICLE. The

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Company may reserve the right to redeem and pay before Stated Maturity all or any part of the Securities of any series, either by optional redemption, sinking or purchase fund or analogous obligation or otherwise, by provision therefor in the form of Security for such series established and approved pursuant to Section 202 and on such terms as are specified in such form or in the Board

Resolution or indenture supplemental hereto with respect to Securities of such series as provided in Section 301. Redemption of Securities of any series shall be made in accordance with the terms of such Securities and, to the extent that this Article does not conflict with such terms, the succeeding Sections of this Article.

Section 1102. ELECTION TO REDEEM; NOTICE TO TRUSTEE. The election of the Company to redeem any Securities redeemable at the election of the Company shall be evidenced by, or made pursuant to authority granted by, a Board Resolution. In case of any redemption at the election of the Company of any Securities of any series, the Company shall, at least 60 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date and of the principal amount of Securities of such series to be redeemed.

In the case of any redemption of Securities (i) prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, or (ii) pursuant to an election of the Company which is subject to a condition specified in the terms of such Securities, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction or condition.

Section 1103. SELECTION BY TRUSTEE OF SECURITIES TO BE REDEEMED. If less than all the Securities of like tenor and terms of any series are to be redeemed, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may include provision for the selection for redemption of portions of the principal of Securities of such series of a

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denomination larger than the minimum authorized denomination for Securities of that series. Unless otherwise provided in the terms of a particular series of Securities, the portions of the principal of Securities so selected for partial redemption shall be equal to the minimum authorized denomination of the Securities of such series, or an integral multiple thereof, and the principal amount which remains outstanding shall not be less than the minimum authorized denomination for Securities of such series. If less than all the Securities of unlike tenor and terms of a series are to be redeemed, the particular Securities to be redeemed shall be selected by the Company.

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

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

Section 1104. NOTICE OF REDEMPTION. Notice of redemption shall be given by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date, to each holder of Securities to be redeemed, at his address appearing in the Security Register.

All notices of redemption shall state:

- (1) the Redemption Date;
- (2) the Redemption Price;
- (3) if less than all Outstanding Securities of any series are to be redeemed, the identification, including CUSIP numbers (and, in the case of partial redemption, the respective principal amounts) of the Securities to be redeemed, from the Holder to whom the

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notice is given;

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

(5) the place where such Securities are to be surrendered for payment of the Redemption Price, which shall be the office or agency of the Company in the Place of Payment; and

(6) that the redemption is on account of a sinking or purchase fund, or other analogous obligation, if that be the case.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company. Such notice shall be deemed to have been given to each Holder if sent in accordance with Section 105 hereof.

Section 1105. DEPOSIT OF REDEMPTION PRICE. On or prior to 10:00 a.m. on any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate



and hold in trust as provided in Section 1003) an amount of money sufficient to pay the Redemption Price of all the Securities which are to be redeemed on that date.

Section 1106. SECURITIES PAYABLE ON REDEMPTION DATE. Notice of Redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified and from and after such date (unless the Company shall default in the payment of the Redemption Price) such Securities shall cease to bear interest. Upon surrender of such Securities for redemption in accordance with the notice, such Securities shall be paid by the Company at the Redemption Price. Installments of interest the Stated Maturity of which is on or prior to the Redemption Date

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shall be payable to the Holders of such Securities registered as such on the relevant Regular Record Dates according to their terms and the provisions of Section 307.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid, bear interest from the Redemption Date at the rate borne by the Security, or as otherwise provided in such Security.

Section 1107. SECURITIES REDEEMED IN PART. Any Security which is to be redeemed only in part shall be surrendered at the office or agency of the Company in the Place of Payment with respect to that series (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Security or Securities of the same series and Stated Maturity and of like tenor and terms, 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 Security so surrendered.

Section 1108. PROVISIONS WITH RESPECT TO ANY SINKING FUNDS. Unless the form or terms of any series of Securities shall provide otherwise, in lieu of making all or any part of any mandatory sinking fund payment with respect to such series of Securities in cash, the Company may at its option (1) deliver to the Trustee for cancellation any Securities of such series theretofore acquired by the Company, or (2) receive credit for any Securities of such series (not previously so credited) acquired by the Company and theretofore delivered to the Trustee for cancellation or redeemed by the Company other than through the mandatory sinking fund, and if it does so then (i) Securities so delivered or credited shall be credited at the applicable sinking fund Redemption Price with respect to Securities of such series, and (ii) on or before the 60th day next preceding each sinking fund Redemption Date with respect to such series of Securities, the Company will deliver to the Trustee (A) an Officers' Certificate specifying the portions of such sinking fund payment to be satisfied by payment of

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cash and by delivery or credit of Securities of such series acquired by the Company or so redeemed, and (B) such Securities so acquired, to the extent not previously surrendered. Such Officers' Certificate shall also state the basis for such credit and that the Securities for which the Company elects to receive credit have not been previously so credited and were not redeemed by the Company through operation of the mandatory sinking fund, if any, provided with respect to such Securities and shall also state that no Event of Default with respect to Securities of such series has occurred and is continuing. All Securities so delivered to the Trustee shall be canceled by the Trustee and no Securities shall be authenticated in lieu thereof.

If the sinking fund payment or payments (mandatory or optional) with respect to any series of Securities made in cash plus any unused balance of any preceding sinking fund payments with respect to Securities of such series made in cash shall exceed \$50,000 (or a lesser sum if the Company shall so request), unless otherwise provided by the terms of such series of Securities, that cash shall be applied by the Trustee on the sinking fund Redemption Date with respect to Securities of such series next following the date of such payment to the redemption of Securities of such series at the applicable sinking fund Redemption Price with respect to Securities of such series, together with accrued interest, if any, to the date fixed for redemption, with the effect provided in Section 1106. The Trustee shall select, in the manner provided in Section 1103, for redemption on such sinking fund Redemption Date a sufficient principal amount of Securities of such series to utilize that cash and shall thereupon cause notice of redemption of the Securities of such series for the sinking fund to be given in the manner provided in Section 1104 (and with the effect provided in Section 1106) for the redemption of Securities in part at the option of the Company. Any sinking fund moneys not so applied or allocated by the Trustee to the redemption of Securities of such series shall be added to the next cash sinking fund payment with respect to Securities of such series received by the Trustee and, together with such payment, shall be applied in accordance with the provisions of this Section 1108. Any and all sinking fund moneys with

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respect to Securities of any series held by the Trustee at the Maturity of Securities of such series, and not held for the payment or redemption of particular Securities of such series, shall be applied by the Trustee, together with other moneys, if necessary, to be deposited sufficient for the purpose, to the payment of the principal of the Securities of such series at Maturity.

On or before each sinking fund Redemption Date provided with respect to Securities of any series, the Company shall pay to the Trustee in cash a sum equal to all accrued interest, if any, to the date fixed for redemption on Securities to be redeemed on such sinking fund Redemption Date pursuant to this Section 1108.

## ARTICLE TWELVE

### SUBORDINATION

Section 1201. AGREEMENT OF SECURITYHOLDERS THAT SECURITIES SUBORDINATED TO EXTENT PROVIDED. The Company, for itself, its successors and assigns, covenants and agrees and each Holder of the Securities by his or her acceptance thereof likewise covenants and agrees that the payment of the principal of, premium, if any, and interest on each and all of the Securities is hereby expressly subordinated, to the extent and in the manner hereinafter set forth, to the prior payment in full of all Senior Indebtedness. The provisions of this Article shall constitute a continuing offer to all persons who, in reliance upon such provisions, become holders of, or continue to hold, Senior Indebtedness, and such provisions are made for the benefit of the holders of Senior Indebtedness, and such holders are hereby made obligees hereunder the same as if their names were written herein as such, and the and/or each of them may proceed to enforce such provisions.

Section 1202. COMPANY NOT TO MAKE PAYMENTS WITH RESPECT TO SECURITIES IN CERTAIN CIRCUMSTANCES. (a) Upon the maturity of any Senior Indebtedness by lapse of time, acceleration or otherwise, all principal thereof and premium, if any, and interest thereon shall first be paid in full, or such payment duly provided for in cash or in a manner satisfactory to the holder or holders of such Senior

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Indebtedness, before any payment is made on account of the principal of or premium, if any, or interest on the Securities or to acquire any of the Securities or on account of any sinking fund (except sinking fund payments made in Securities acquired by the Company before the maturity of such Senior Indebtedness).

(b) Upon the happening of (i) an event of default with respect to any Senior Indebtedness, as such event of default is defined therein or in the instrument under which it is outstanding, permitting the holders to accelerate the maturity thereof, or (ii) an event which, with the giving of notice, or lapse of time, or both, would constitute such an event of default, then, unless and until such event shall have been cured or waived or shall have ceased to exist, no payment shall be made by the Company with respect to the principal of or premium, if any, or interest on the Securities or to acquire any of the Securities or on account of any sinking fund for the Securities (except sinking fund payments made in Securities acquired by the Company before such default and notice thereof).

(c) In the event that notwithstanding the provisions of this Section 1202 the Company shall make any payment to the Trustee on account of the principal of or premium, if any, or interest on the Securities, or on account of any sinking fund, or the Holders of the Securities shall receive any such payment, after the happening of a default in payment of the principal of or premium, if any, or interest on Senior Indebtedness, then, unless and until such default or event of default shall have been cured or waived or shall have ceased to exist, such payment (subject to the provisions of Section 1206) shall be held by the Trustee or the Holders of the Securities, as the case may be, in trust for the benefit of, and shall be paid forthwith over and delivered to, the holders of Senior Indebtedness (pro rata as to each of such holders on the basis of the respective amounts of Senior Indebtedness held by them) or their representatives or the trustee under the indenture or other agreement (if any) pursuant to which any instruments evidencing any Senior Indebtedness may have been issued, as their respective interests may appear, for

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application to the payment of all Senior Indebtedness remaining unpaid to the extent necessary to pay all Senior Indebtedness in full in accordance with the terms of such Senior Indebtedness, after giving effect to any concurrent payment or distribution to or for the holders of Senior Indebtedness. The Company shall give prompt written notice to the Trustee of any default under any Senior Indebtedness or under any agreement pursuant to which Senior Indebtedness may have been issued.

Section 1203. SECURITIES SUBORDINATED TO PRIOR PAYMENTS OF ALL SENIOR INDEBTEDNESS ON DISSOLUTION, LIQUIDATION OR REORGANIZATION OF THE COMPANY. Upon any distribution of assets of the Company upon any dissolution, winding up, liquidation or reorganization of the Company (whether in bankruptcy, insolvency or receivership proceedings or upon an assignment for the benefit of creditors or otherwise):

(a) the holders of all Senior Indebtedness shall first be entitled

to receive payment in full of the principal thereof, premium, if any, and interest due thereon before the Holders of the Securities are entitled to receive any payment on account of the principal of, premium, if any, or interest on the Securities;

(b) any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the Holders of the Securities or the Trustees would be entitled except for the provisions of this Article Twelve, shall be paid by the liquidating trustee or agent or other person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or other trustee or agent, directly to the holders of Senior Indebtedness or their representative or representatives, or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Indebtedness may have been issued, to the extent necessary to make payment in full of all Senior Indebtedness remaining unpaid, after giving effect to any concurrent payment or distribution or provision therefor to the holders of such Senior Indebtedness;

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(c) in the event that notwithstanding the foregoing provisions of this Section 1203, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, shall be received by the Trustee or the Holders of the Securities on account of principal, or premium, if any, or interest on the Securities before all Senior Indebtedness is paid in full, or effective provisions made for its payment, such payment or distribution (subject to the provisions of Sections 1206 and 1207) shall be received and held in trust for and shall be paid over to the holders of the Senior Indebtedness remaining unpaid or unprovided for or their representative or representatives, or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Indebtedness may have been issued, for application to the payment of such Senior Indebtedness until all such Senior Indebtedness shall have been paid in full, after giving effect to any concurrent payment or distribution or provision therefor to the holders of such Senior Indebtedness.

Section 1204. SECURITYHOLDERS TO BE SUBROGATED TO RIGHT OF HOLDERS OF SENIOR INDEBTEDNESS. Subject to the payment in full of all Senior Indebtedness, the Holders of the Securities shall be subrogated to the rights of the holders of Senior Indebtedness to receive payments or distributions of assets of the Company applicable to the Senior Indebtedness until all amounts owing on the Securities shall be paid in full, and for the purpose of such subrogation no payments or distributions to the holders of the Senior Indebtedness by or on behalf of the Company or by or on behalf of the Holders of the Securities by virtue of this Article which otherwise would have been made to the Holders of the Securities, be deemed to be payment by the Company to or on account of the Senior Indebtedness, it being understood that the provisions of this Article Twelve are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities, on the one hand, and the holders of the Senior Indebtedness, on the

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other hand.

Section 1205. OBLIGATION OF THE COMPANY UNCONDITIONAL. Nothing contained in this Article Twelve or elsewhere in this Indenture or in the Securities is intended to or shall impair as between the Company and the Holders of the Securities, the obligations of the Company, which is absolute and unconditional, to pay to the Holders of the Securities the principal of, premium, if any, and interest on the Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the Holders of the Securities and creditors of the Company other than the holders of the Senior Indebtedness, nor shall anything herein or therein prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article Twelve of the holders of Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of any such remedy. Upon any distribution of assets of the Company referred to in this Article Twelve, the Trustee, subject to the provisions of Section 601, and the Holders of the Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which such dissolution, winding up, liquidation or reorganization proceedings are pending, or a certificate of the liquidating trustee or agent or other person making any distribution to the Trustee or to the Holders of the Securities, for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article Twelve.

Section 1206. TRUSTEE ENTITLED TO ASSUME PAYMENTS NOT PROHIBITED IN ABSENCE OF NOTICE. The Trustee shall not at any time be charged with knowledge of the existence of any facts which would prohibit the making of any payment of monies to or by the Trustee, unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the Company or from one or more holders of Senior Indebtedness or from any trustee therefor; and, prior to the receipt of any such written notice, the Trustee,

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subject to the provisions of Section 601, shall be entitled to assume conclusively that no such facts exist.

Section 1207. APPLICATION BY TRUSTEE OF MONIES DEPOSITED WITH IT.

Anything in this Indenture to the contrary notwithstanding, any deposit of monies by the Company with the Trustee or any paying agent (whether or not in trust) for the payment of the principal of or premium, if any, or interest on any Securities shall be subject to the provisions of Sections 1201, 1202, 1203 and 1204 except that, if prior to the date on which by the terms of this Indenture any such monies may become payable for any purpose (including, without limitation, the payment of either the principal of or interest or premium, if any, on any Security) a Responsible Officer of the Trustee shall not have received with respect to such monies the notice provided for in Section 1206, then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such monies and to apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it on or after such date.

Section 1208. SUBORDINATION RIGHTS NOT IMPAIRED BY ACTS OR OMISSIONS OF COMPANY OR HOLDERS OF SENIOR INDEBTEDNESS. No right of any present or future holders of any Senior Indebtedness to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof which any such holder may have or be otherwise charged with.

Section 1209. SECURITYHOLDERS AUTHORIZE TRUSTEE TO EFFECTUATE SUBORDINATION OF SECURITIES. Each Holder of the Securities by his or her acceptance thereof authorizes and expressly directs the Trustee on his or her behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article Twelve and appoints the Trustee his/her attorney-in-fact for such

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purpose, including, in the event of any dissolution, winding up, liquidation or reorganization of the Company (whether in bankruptcy, insolvency or receivership proceedings or upon an assignment for the benefit of creditors or otherwise) tending towards liquidation of the business and assets of the Company, the immediate filing of a claim for the unpaid balance of its or his or her Securities in the form required in said proceedings and cause said claim to be approved. If the trustee does not file a proper claim or proof of debt in the form required in such proceeding prior to 30 days before the expiration of the time to file such claim or claims, then the holder or holders of the Senior Indebtedness are hereby authorized to and have the right to file an appropriate claim for and on behalf of the holders of said Securities.

Section 1210. RIGHT OF TRUSTEE TO HOLD SENIOR INDEBTEDNESS. The Trustee shall be entitled to all of the rights set forth in this Article Twelve in respect of any Senior Indebtedness at any time held by it to the same extent as any other holder of Senior Indebtedness, and nothing in Section 613 or elsewhere in this Indenture shall be construed to deprive the Trustee of any of its rights as such holder.

Section 1211. ARTICLE TWELVE NOT TO PREVENT EVENTS OF DEFAULT. The failure to make a payment on account of principal, interest or sinking fund by reason of any provision of this Article Twelve shall not be construed as preventing the occurrence of an Event of Default under Section 501.

ARTICLE THIRTEEN

GUARANTEE OF SECURITIES

SECTION 1301. GUARANTEE. The Guarantor hereby fully and unconditionally guarantees to each Holder of a Security of each series issued by the Company, authenticated and delivered by the Trustee, the due and punctual payment of the principal (including any amount due in respect of any Original Issue Discount Security) of and any premium and interest on such Security, and the due and punctual payment of any sinking fund payments provided for pursuant to the

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terms of such Security, when and as the same shall become due and payable, whether at the Stated Maturity, by declaration of acceleration, call for redemption, early repayment or otherwise, in accordance with the terms of such Security and 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 Security of any series or this Indenture, any failure to enforce the provisions of any Security of any series or this Indenture, any waiver, modification or indulgence granted to the Company with respect thereto by the Holder of any Security of any series 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 Security 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 the Company, any right to require a proceeding first against the Company, the benefit of discussion, protest or notice with respect to any Security or the indebtedness evidenced thereby or with respect to any sinking fund payment required pursuant to the terms of such Security issued under this Indenture and all demands whatsoever, and covenants that this Guarantee will not be discharged with respect to such Security except by payment in full of the principal thereof and any premium and interest thereon or as provided in Article Four or Section 802. If any Holder or the Trustee is required by any court or otherwise to return to the Company, the Guarantor, or any custodian, trustee, liquidator or other similar official acting in relation to the Company or the Guarantor any amount paid by the Company 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

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other hand, the Maturity of the obligations guaranteed hereby may be accelerated as provided in Article Five 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 also 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 waives any right of set off which the Guarantor may have against the Holder of any Security in respect of any amounts which are or may become payable by such Holder to the Company.

The Guarantor shall be subrogated to all rights of the Holders of any series of Securities and the Trustee against the Company in respect of any amounts paid to such Holders and the Trustee by the Guarantor pursuant to the provisions of the Guarantee; 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, if any, on all of the 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 1301 by reason of his, her or its status as such stockholder, officer, director, employee or incorporator.

The Guarantee set forth in this Section 1301 shall not be valid or become obligatory for any purpose with respect to any Security until the certificate of authentication on such Security shall have been signed by or on behalf of the Trustee.

#### SECTION 1302. SUBORDINATION OF GUARANTEE. The

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obligation of the Guarantor under the Guarantee pursuant to this Article 13 shall be junior and subordinated to Senior Indebtedness of the Guarantor on the same basis as the Securities are junior and subordinated to Senior Indebtedness of the Company. For purposes of the foregoing sentence, the Trustee and the Holders shall have the right to receive and/or retain payments by the Guarantor only at such times as they may receive and/or retain payments in respect of the Securities pursuant to this Indenture, including Article 12 hereof. The Guarantee made by the Guarantor hereunder and evidenced by any notation of Guarantee endorsed on any Security is subject to the provisions of Article 12 hereof.

SECTION 1303. EXECUTION OF NOTATIONS OF GUARANTEE. To evidence its Guarantee to the Holders specified in Section 1301, the Guarantor hereby agrees to execute the notation of the Guarantee in substantially the form set forth in Section 205 to be endorsed on each Security authenticated and delivered by the Trustee. The Guarantor hereby agrees that its Guarantee set forth in Section 1301 shall remain in full force and effect notwithstanding any failure to endorse on any Security a notation of such Guarantee. Each such notation of Guarantee shall be signed on behalf of the Guarantor by any proper officer of the Guarantor prior to the authentication of the Security on which it is endorsed, and the delivery of such 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 proper officer of the Guarantor and may be imprinted or otherwise reproduced below the notation of the Guarantee, and in case any such proper officer of the Guarantor who shall have signed the notation of the Guarantee shall cease to be such officer before the Security on which such notation is endorsed shall have been authenticated and delivered by the Trustee or disposed of by the Company, such Security nevertheless may be authenticated and delivered or disposed of as though the person who signed the notation of the Guarantee had not ceased to be such officer of the Guarantor.

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

WHITE MOUNTAINS INSURANCE  
GROUP, LTD.

by

Name:  
Title:

FUND AMERICAN COMPANIES, INC.,

by

Name:  
Title:

[ ],

by

Name:  
Title:

CORRECTED  
CERTIFICATE OF TRUST OF  
FUND AMERICAN TRUST I

THIS Corrected Certificate of Trust of Fund American Trust I (the "Trust"), is being duly executed and filed by the undersigned, as trustees, to correct the Certificate of Trust of the Trust which was filed on October 30, 2001 with the Secretary of State of the State of Delaware under the Delaware Business Trust Act (12 DEL. C. ss. 3801 ET SEQ.) (the "Certificate of Trust").

1. The introduction paragraph of the Certificate of Trust incorrectly stated the trustee as a Delaware banking corporation.

2. The Certificate of Trust is hereby corrected to read in its entirety as follows:

CERTIFICATE OF TRUST  
OF  
FUND AMERICAN TRUST I

THIS Certificate of Trust of Fund American Trust I (the "Trust"), dated October 30, 2001, is being duly executed and filed by Reid T. Campbell and Dennis R. Smith, and Bank One Delaware, Inc., a Delaware corporation, as trustees, to form a business trust under the Delaware Business Trust Act (12 Del. C. Section 3801 et seq.) (the "Act").

1. Name. The name of the business trust formed hereby is Fund American Trust I.

2. Delaware Trustee. The name and business address of the trustee of the Trust in the State of Delaware is Bank One Delaware, Inc., 3 Christina Center, 201 North Walnut Street, Wilmington, Delaware 19801.

3. Effective Date. This Certificate of Trust shall be effective upon filing with the Secretary of State.

IN WITNESS WHEREOF, the undersigned, being all of the trustees of the Trust, have executed this Certificate of Trust in accordance with Section 3811(a) of the Act.

Bank One Delaware, Inc., as Trustee

By: /s/ Melissa G. Weisman  
-----  
Name: Melissa G. Weisman  
Title: Vice President

/s/ Reid T. Campbell as Trustee  
-----  
Name: Reid T. Campbell

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/s/ Dennis R. Smith as Trustee  
-----  
Name: Dennis R. Smith

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CORRECTED  
CERTIFICATE OF TRUST OF  
FUND AMERICAN TRUST II

THIS Corrected Certificate of Trust of Fund American Trust II (the "Trust"), is being duly executed and filed by the undersigned, as trustees, to correct the Certificate of Trust of the Trust which was filed on October 30, 2001 with the Secretary of State of the State of Delaware under the Delaware Business Trust Act (12 DEL. C. ss. 3801 ET SEQ.) (the "Certificate of Trust").

1. The introduction paragraph of the Certificate of Trust incorrectly stated the trustee as a Delaware banking corporation.

2. The Certificate of Trust is hereby corrected to read in its entirety as follows:

CERTIFICATE OF TRUST  
OF  
FUND AMERICAN TRUST II

THIS Certificate of Trust of Fund American Trust II (the "Trust"), dated October 30, 2001, is being duly executed and filed by Reid T. Campbell and Dennis R. Smith, and Bank One Delaware, Inc., a Delaware corporation, as trustees, to form a business trust under the Delaware Business Trust Act (12 Del. C. Section 3801 et seq.) (the "Act").

1. Name. The name of the business trust formed hereby is Fund American Trust II.

2. Delaware Trustee. The name and business address of the trustee of the Trust in the State of Delaware is Bank One Delaware, Inc., 3 Christina Center, 201 North Walnut Street, Wilmington, Delaware 19801.

3. Effective Date. This Certificate of Trust shall be effective upon filing with the Secretary of State.

IN WITNESS WHEREOF, the undersigned, being all of the trustees of the Trust, have executed this Certificate of Trust in accordance with Section 3811(a) of the Act.

Bank One Delaware, Inc., as Trustee

By: /s/ Melissa G. Weisman  
-----  
Name: Melissa G. Weisman  
Title: Vice President

/s/ Reid T. Campbell as Trustee  
-----  
Name: Reid T. Campbell

/s/ Dennis R. Smith as Trustee  
-----  
Name: Dennis R. Smith



CORRECTED  
CERTIFICATE OF TRUST OF  
FUND AMERICAN TRUST III

THIS Corrected Certificate of Trust of Fund American Trust III (the "Trust"), is being duly executed and filed by the undersigned, as trustees, to correct the Certificate of Trust of the Trust which was filed on October 30, 2001 with the Secretary of State of the State of Delaware under the Delaware Business Trust Act (12 DEL. C. ss. 3801 ET SEQ.) (the "Certificate of Trust").

1. The introduction paragraph of the Certificate of Trust incorrectly stated the trustee as a Delaware banking corporation.

2. The Certificate of Trust is hereby corrected to read in its entirety as follows:

CERTIFICATE OF TRUST  
OF  
FUND AMERICAN TRUST III

THIS Certificate of Trust of Fund American Trust III (the "Trust"), dated October 30, 2001, is being duly executed and filed by Reid T. Campbell and Dennis R. Smith, and Bank One Delaware, Inc., a Delaware corporation, as trustees, to form a business trust under the Delaware Business Trust Act (12 Del. C. Section 3801 et seq.) (the "Act").

1. Name. The name of the business trust formed hereby is Fund American Trust III.

2. Delaware Trustee. The name and business address of the trustee of the Trust in the State of Delaware is Bank One Delaware, Inc., 3 Christina Center, 201 North Walnut Street, Wilmington, Delaware 19801.

3. Effective Date. This Certificate of Trust shall be effective upon filing with the Secretary of State.

IN WITNESS WHEREOF, the undersigned, being all of the trustees of the Trust, have executed this Certificate of Trust in accordance with Section 3811(a) of the Act.

Bank One Delaware, Inc., as Trustee

By: /s/ Melissa G. Weisman  
-----  
Name: Melissa G. Weisman  
Title: Vice President

/s/ Reid T. Campbell as Trustee  
-----  
Name: Reid T. Campbell

/s/ Dennis R. Smith as Trustee  
-----  
Name: Dennis R. Smith

## DECLARATION OF TRUST OF Fund American Trust I

THIS DECLARATION OF TRUST, dated as of October 30, 2001, among Fund American Companies, Inc., a Delaware corporation, as Depositor (the "Depositor"), Bank One Delaware, Inc., not in its individual capacity but solely as trustee (the "Delaware Trustee"), and Reid T. Campbell and Dennis R. Smith, as trustees (the "Regular Trustees" and collectively with the Delaware Trustee, the "Trustees"). The Depositor and the Trustees hereby agree as follows:

1. The trust created hereby (the "Trust") shall be known as "Fund American Trust I", in which name the Trustees, or the Depositor to the extent provided herein, may conduct the business of the Trust, make and execute contracts, and sue and be sued.

2. The Depositor hereby assigns, transfers, conveys and sets over to the Trustees the sum of \$10. The Trustees hereby acknowledge receipt of such amount in trust from the Depositor, which amount shall constitute the initial trust estate. The Trustees hereby declare that they will hold the trust estate in trust for the Depositor. It is the intention of the parties hereto that the Trust created hereby constitute a business trust under Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. Section 3801 ET SEQ. (the "Business Trust Act"), and that this document constitutes the governing instrument of the Trust. The Trustees are hereby authorized and directed to execute and file a certificate of trust with the Delaware Secretary of State in accordance with the provisions of the Business Trust Act.

3. The Depositor and Trustees will enter into an Amended and Restated Declaration of Trust, satisfactory to each such party and substantially in the form to be included as an Exhibit to the 1933 Act Registration Statement referred to below, to provide for the contemplated operation of the Trust created hereby and the issuance by such Trust of the Preferred Securities and common securities referred to therein. Prior to the execution and delivery of such Amended and Restated Declaration of Trust, the Trustees shall not have any duty or obligation hereunder or with respect to the trust estate, except as otherwise required by applicable law or as may be necessary to obtain prior to such execution and delivery any licenses, consents or approvals required by applicable law or otherwise.

4. The Depositor and the Trustees hereby authorize and direct the Depositor, as the sponsor of the Trust, (i) to prepare, execute and file with the Securities and Exchange Commission (the "Commission"), in each case on behalf of the Trust, (a) the Registration Statement on Form S-3 (the "1933 Act Registration Statement"), including any pre-effective or post-effective amendments to such 1933 Act Registration Statement, relating to the registration under the Securities Act of 1933, as amended, of the Preferred Securities of the Trust and certain other securities and (b) a Registration Statement on Form 8-A (the "1934 Act Registration Statement") (including all pre-effective and post-effective amendments thereto) relating to the registration of the Preferred Securities of the Trust under Section 12(b) of the Securities Exchange Act of 1934, as amended; (ii) to prepare, execute and file with the New York Stock Exchange (the "Exchange") and execute on behalf of the Trust a listing application and all other applications, statements, certificates, agreements and other instruments as shall be necessary or desirable to cause the Preferred Securities to be listed on the Exchange; (iii) to prepare, execute and file on behalf of the Trust such applications, reports, surety bonds, irrevocable consents, appointments of attorney for service of process and other papers and documents as shall be necessary or desirable to register the Preferred Securities under the securities or blue sky laws of such jurisdictions as the Depositor, on behalf of the Trust, may deem necessary or desirable and (iv) to execute on behalf of the Trust that certain Underwriting Agreement relating to the Preferred Securities, among the Trust, the Depositor and the several Underwriters named therein, substantially in the form to be included as an Exhibit to the 1933 Act Registration Statement. In the event that any filing referred to in clauses (i) through (iii) above is required by the rules and regulations of the Commission, the Exchange or any other national stock exchange or state securities or blue sky laws, to be executed on behalf of the Trust by the Trustees, any Regular Trustee, in his capacity as Trustee of the Trust, is hereby authorized and directed to join in any such filing and to execute on behalf of the Trust any and all of the foregoing, it being understood that Bank One Delaware, Inc., in its capacity as Trustee of the Trust, shall not be required to join in any such filing or execute on behalf of the Trust any such document unless required by the rules and regulations of the Commission, the Exchange or any other national stock exchange or state securities or blue sky laws. In connection with all of the foregoing, the Depositor hereby constitutes and appoints Reid T. Campbell and Dennis R. Smith, and each of them, as its true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for the Depositor or in the Depositor's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to the 1933 Act Registration Statement and the 1934 Act Registration Statement and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as the Depositor might or could do in person, thereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their respective substitute or substitutes, shall do or cause to be done by virtue hereof.

5. This Declaration of Trust may be executed in one or more counterparts.

6. The number of Trustees initially shall be three and thereafter the number of Trustees shall be such number as shall be fixed from time to time by a written instrument signed by the Depositor which may increase or decrease the number of Trustees; provided, however, that to the extent required by the Business Trust Act, one Trustee shall either be a natural person who is a resident of the State of Delaware or, if not a natural person, an entity which has its principal place of business in the State of Delaware and otherwise meets the requirements of applicable Delaware law. Subject to the foregoing, the Depositor is entitled to appoint or remove without cause any Trustee at any time. Any Trustee may resign upon 30 days' prior written notice to the Depositor.

7. The Delaware Trustee shall be a Trustee hereunder for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Business Trust Act.

8. This Declaration of Trust shall be governed by and construed in accordance with, the laws of the State of Delaware (without regard to conflict of laws principles).

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

FUND AMERICAN COMPANIES, INC.,  
as Depositor

By: /s/ Jim Ritchie  
-----  
Name: Jim Ritchie  
Title: Managing Director and  
Chief Financial Officer

Bank One Delaware, Inc.,  
as Delaware Trustee

By: /s/ Melissa G. Weisman  
-----  
Name: Melissa G. Weisman  
Title:

/s/ Reid T. Campbell  
-----  
as Regular Trustee  
Name: Reid T. Campbell  
Title:

/s/ Dennis R. Smith  
-----  
as Regular Trustee  
Name: Dennis R. Smith  
Title:

## DECLARATION OF TRUST OF Fund American Trust II

THIS DECLARATION OF TRUST, dated as of October 30, 2001, among Fund American Companies, Inc., a Delaware corporation, as Depositor (the "Depositor"), Bank One Delaware, Inc., not in its individual capacity but solely as trustee (the "Delaware Trustee"), and Reid T. Campbell and Dennis R. Smith, as trustees (the "Regular Trustees" and collectively with the Delaware Trustee, the "Trustees"). The Depositor and the Trustees hereby agree as follows:

1. The trust created hereby (the "Trust") shall be known as "Fund American Trust II", in which name the Trustees, or the Depositor to the extent provided herein, may conduct the business of the Trust, make and execute contracts, and sue and be sued.

2. The Depositor hereby assigns, transfers, conveys and sets over to the Trustees the sum of \$10. The Trustees hereby acknowledge receipt of such amount in trust from the Depositor, which amount shall constitute the initial trust estate. The Trustees hereby declare that they will hold the trust estate in trust for the Depositor. It is the intention of the parties hereto that the Trust created hereby constitute a business trust under Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. Section 3801 ET SEQ. (the "Business Trust Act"), and that this document constitutes the governing instrument of the Trust. The Trustees are hereby authorized and directed to execute and file a certificate of trust with the Delaware Secretary of State in accordance with the provisions of the Business Trust Act.

3. The Depositor and Trustees will enter into an Amended and Restated Declaration of Trust, satisfactory to each such party and substantially in the form to be included as an Exhibit to the 1933 Act Registration Statement referred to below, to provide for the contemplated operation of the Trust created hereby and the issuance by such Trust of the Preferred Securities and common securities referred to therein. Prior to the execution and delivery of such Amended and Restated Declaration of Trust, the Trustees shall not have any duty or obligation hereunder or with respect to the trust estate, except as otherwise required by

applicable law or as may be necessary to obtain prior to such execution and delivery any licenses, consents or approvals required by applicable law or otherwise.

4. The Depositor and the Trustees hereby authorize and direct the Depositor, as the sponsor of the Trust, (i) to file with the Securities and Exchange Commission (the "Commission") and execute, in each case on behalf of the Trust, (a) the Registration Statement on Form S-3 (the "1933 Act Registration Statement"), including any pre-effective or post-effective amendments to such 1933 Act Registration Statement, relating to the registration under the Securities Act of 1933, as amended, of the Preferred Securities of the Trust and certain other securities and (b) a Registration Statement on Form 8-A (the "1934 Act Registration Statement") (including all pre-effective and post-effective amendments thereto) relating to the registration of the Preferred Securities of the Trust under Section 12(b) of the Securities Exchange Act of 1934, as amended; (ii) to file with the New York Stock Exchange (the "Exchange") and execute on behalf of the Trust a listing application and all other applications, statements, certificates, agreements and other instruments as shall be necessary or desirable to cause the Preferred Securities to be listed on the Exchange; (iii) to file and execute on behalf of the Trust such applications, reports, surety bonds, irrevocable consents, appointments of attorney for service of process and other papers and documents as shall be necessary or desirable to register the Preferred Securities under the securities or blue sky laws of such jurisdictions as the Depositor, on behalf of the Trust, may deem necessary or desirable and (iv) to execute on behalf of the Trust that certain Underwriting Agreement relating to the Preferred Securities, among the Trust, the Depositor and the several Underwriters named therein, substantially in the form to be included as an Exhibit to the 1933 Act Registration Statement. In the event that any filing referred to in clauses (i) through (iii) above is required by the rules and regulations of the Commission, the Exchange or any other national stock exchange or state securities or blue sky laws, to be executed on behalf of the Trust by the Trustees, any Regular Trustee, in his capacity as Trustee of the Trust, is hereby authorized and directed to join in any such filing and to execute on behalf of the Trust any and all of the foregoing, it being understood that Bank One Delaware, Inc., in its capacity as Trustee of the Trust, shall not be required to join in any such filing or execute on behalf of the Trust any such document unless required by the rules and regulations of the Commission, the Exchange or any other national stock exchange or state securities or blue sky laws. In connection with all of the foregoing, the Depositor hereby constitutes and appoints Reid T. Campbell and Dennis R. Smith, and each of them, as its true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for the Depositor or in the Depositor's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to the 1933 Act Registration Statement and the 1934 Act Registration Statement and to file the same,

with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents full power and

authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as the Depositor might or could do in person, thereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their respective substitute or substitutes, shall do or cause to be done by virtue hereof.

5. This Declaration of Trust may be executed in one or more counterparts.

6. The number of Trustees initially shall be three and thereafter the number of Trustees shall be such number as shall be fixed from time to time by a written instrument signed by the Depositor which may increase or decrease the number of Trustees; provided, however, that to the extent required by the Business Trust Act, one Trustee shall either be a natural person who is a resident of the State of Delaware or, if not a natural person, an entity which has its principal place of business in the State of Delaware and otherwise meets the requirements of applicable Delaware law. Subject to the foregoing, the Depositor is entitled to appoint or remove without cause any Trustee at any time. Any Trustee may resign upon 30 days' prior written notice to the Depositor.

7. The Delaware Trustee shall be a Trustee hereunder for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Business Trust Act.

8. This Declaration of Trust shall be governed by and construed in accordance with, the laws of the State of Delaware (without regard to conflict of laws principles).

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

FUND AMERICAN COMPANIES, INC.,  
as Depositor

By: /s/ Jim Ritchie  
-----  
Name: Jim Ritchie  
Title: Managing Director and  
Chief Financial Officer

Bank One Delaware, Inc.,  
as Delaware Trustee

By: /s/ Melissa G. Weisman  
-----  
Name: Melissa G. Weisman  
Title:

/s/ Reid T. Campbell  
-----  
as Regular Trustee  
Name: Reid T. Campbell  
Title:

/s/ Dennis R. Smith  
-----  
as Regular Trustee  
Name: Dennis R. Smith  
Title:

## DECLARATION OF TRUST OF Fund American Trust III

THIS DECLARATION OF TRUST, dated as of October 30, 2001, among Fund American Companies, Inc., as Depositor (the "Depositor"), Bank One Delaware, Inc., not in its individual capacity but solely as trustee (the "Delaware Trustee"), and Reid T. Campbell and Dennis R. Smith, as trustees (the "Regular Trustees" and collectively with the Delaware Trustee, the "Trustees"). The Depositor and the Trustees hereby agree as follows:

1. The trust created hereby (the "Trust") shall be known as "Fund American Trust III", in which name the Trustees, or the Depositor to the extent provided herein, may conduct the business of the Trust, make and execute contracts, and sue and be sued.

2. The Depositor hereby assigns, transfers, conveys and sets over to the Trustees the sum of \$10. The Trustees hereby acknowledge receipt of such amount in trust from the Depositor, which amount shall constitute the initial trust estate. The Trustees hereby declare that they will hold the trust estate in trust for the Depositor. It is the intention of the parties hereto that the Trust created hereby constitute a business trust under Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. Section 3801 ET SEQ. (the "Business Trust Act"), and that this document constitutes the governing instrument of the Trust. The Trustees are hereby authorized and directed to execute and file a certificate of trust with the Delaware Secretary of State in accordance with the provisions of the Business Trust Act.

3. The Depositor and Trustees will enter into an Amended and Restated Declaration of Trust, satisfactory to each such party and substantially in the form to be included as an Exhibit to the 1933 Act Registration Statement referred to below, to provide for the contemplated operation of the Trust created hereby and the issuance by such Trust of the Preferred Securities and common securities referred to therein. Prior to the execution and delivery of such Amended and Restated Declaration of Trust, the Trustees shall not have any duty or obligation hereunder or with respect to the trust estate, except as otherwise required by applicable law or as may be necessary to obtain prior to such execution and delivery any licenses, consents or approvals required by applicable law or otherwise.

4. The Depositor and the Trustees hereby authorize and direct the Depositor, as the sponsor of the Trust, (i) to file with the Securities and Exchange Commission (the "Commission") and execute, in each case on behalf of the Trust, (a) the Registration Statement on Form S-3 (the "1933 Act Registration Statement"), including any pre-effective or post-effective amendments to such 1933 Act Registration Statement, relating to the registration under the Securities Act of 1933, as amended, of the Preferred Securities of the Trust and certain other securities and (b) a Registration Statement on Form 8-A (the "1934 Act Registration Statement") (including all pre-effective and post-effective amendments thereto) relating to the registration of the Preferred Securities of the Trust under Section 12(b) of the Securities Exchange Act of 1934, as amended; (ii) to file with the New York Stock Exchange (the "Exchange") and execute on behalf of the Trust a listing application and all other applications, statements, certificates, agreements and other instruments as shall be necessary or desirable to cause the Preferred Securities to be listed on the Exchange; (iii) to file and execute on behalf of the Trust such applications, reports, surety bonds, irrevocable consents, appointments of attorney for service of process and other papers and documents as shall be necessary or desirable to register the Preferred Securities under the securities or blue sky laws of such jurisdictions as the Depositor, on behalf of the Trust, may deem necessary or desirable and (iv) to execute on behalf of the Trust that certain Underwriting Agreement relating to the Preferred Securities, among the Trust, the Depositor and the several Underwriters named therein, substantially in the form to be included as an Exhibit to the 1933 Act Registration Statement. In the event that any filing referred to in clauses (i) through (iii) above is required by the rules and regulations of the Commission, the Exchange or any other national stock exchange or state securities or blue sky laws, to be executed on behalf of the Trust by the Trustees, any Regular Trustee, in his capacity as Trustee of the Trust, is hereby authorized and directed to join in any such filing and to execute on behalf of the Trust any and all of the foregoing, it being understood that Bank One Delaware, Inc., in its capacity as Trustee of the Trust, shall not be required to join in any such filing or execute on behalf of the Trust any such document unless required by the rules and regulations of the Commission, the Exchange or any other national stock exchange or state securities or blue sky laws. In connection with all of the foregoing, the Depositor hereby constitutes and appoints Reid T. Campbell and Dennis R. Smith, and each of them, as its true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for the Depositor or in the Depositor's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to the 1933 Act Registration Statement and the 1934 Act Registration Statement and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as the Depositor might or could do in person, thereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their respective substitute or substitutes, shall do or cause to be done by virtue hereof.

5. This Declaration of Trust may be executed in one or more counterparts.

6. The number of Trustees initially shall be three and thereafter the number of Trustees shall be such number as shall be fixed from time to time by a written instrument signed by the Depositor which may increase or decrease the number of Trustees; provided, however, that to the extent required by the Business Trust Act, one Trustee shall either be a natural person who is a resident of the State of Delaware or, if not a natural person, an entity which has its principal place of business in the State of Delaware and otherwise meets the requirements of applicable Delaware law. Subject to the foregoing, the Depositor is entitled to appoint or remove without cause any Trustee at any time. Any Trustee may resign upon 30 days' prior written notice to the Depositor.

7. The Delaware Trustee shall be a Trustee hereunder for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Business Trust Act.

8. This Declaration of Trust shall be governed by and construed in accordance with, the laws of the State of Delaware (without regard to conflict of laws principles).

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

FUND AMERICAN COMPANIES, INC.,  
as Depositor

By: /s/ Jim Ritchie

-----  
Name: Jim Ritchie  
Title: Managing Director and  
Chief Financial Officer

Bank One Delaware, Inc.,  
as Delaware Trustee

By: /s/ Melissa G. Weisman

-----  
Name: Melissa G. Weisman  
Title:

/s/ Reid T. Campbell

-----  
as Regular Trustee  
Name: Reid T. Campbell  
Title:

/s/ Dennis R. Smith

-----  
as Regular Trustee  
Name: Dennis R. Smith  
Title:

[Form of Amended and Restated Declaration of Trust]

AMENDED AND RESTATED DECLARATION OF TRUST

OF

Fund American Trust I

-----

Dated as of [       ]

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[FORM OF]  
AMENDED AND RESTATED  
DECLARATION OF TRUST  
OF  
Fund American Trust I

[ ]

AMENDED AND RESTATED DECLARATION OF TRUST ("Declaration"), dated and effective as of [ ], by the undersigned trustees (together with all other Persons from time to time duly appointed and serving as trustees in accordance with the provisions of this Declaration, the "Trustees"), Fund American Companies, Inc., a Delaware corporation, as trust sponsor (the "Sponsor"), and the holders, from time to time, of undivided beneficial interests in the assets of the Fund American Trust I to be issued pursuant to this Declaration.

WHEREAS the Sponsor and the original trustees entered into a Declaration of Trust dated as of [ ], 2001 (the "Original Declaration") in order to establish Fund American Trust I, a business trust (the "Trust") under the Business Trust Act (as defined herein);

WHEREAS the Certificate of Trust (the "Certificate of Trust") of the Trust was filed with the office of the Secretary of State of the State of Delaware on [ ], 2001;

WHEREAS the Trustees and the Sponsor desire to continue the Trust pursuant to the Business Trust Act for the purpose of, as described more fully in Sections 3.03, 3.04 and 3.05 hereof, (i) issuing and selling Preferred Securities (as defined herein) representing preferred undivided beneficial interests in the assets of the Trust for cash and investing the proceeds thereof in Debentures (as defined herein) of the Sponsor issued under the Indenture (as defined herein) to be held as assets of the Trust, (ii) issuing and selling Common Securities (as defined herein) representing common undivided beneficial interests in the assets of the Trust to the Sponsor for cash and investing the proceeds thereof in additional Debentures

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issued under the Indenture to be held as assets of the Trust and (iii) engaging in such other activities as are necessary, convenient or incidental thereto;

NOW, THEREFORE, it being the intention of the parties hereto that the Trust constitute a business trust under the Business Trust Act, that the Original Declaration be amended and restated in its entirety as provided herein and that this Declaration constitute the governing instrument of such business trust, the Trustees declare that all assets referred to in clauses (i) and (ii) of the previous whereas clause purchased by the Trust will be held in trust for the benefit of the Holders (as defined herein) from time to time of the Certificates (as defined herein) representing undivided beneficial interests in the assets of the Trust issued hereunder, subject to the provisions of this Declaration.

ARTICLE I

DEFINITIONS

SECTION 1.01. DEFINITIONS. (a) Capitalized terms used in this Declaration but not defined in the preamble above have the respective meanings assigned to them in this Section 1.01; (b) a term defined anywhere in this Declaration has the same meaning throughout; (c) all references to "the Declaration" or "this Declaration" are to this Amended and Restated Declaration of Trust (including Exhibits A, B and C hereto (the "Exhibits")) as modified, supplemented or amended from time to time; (d) all references in this Declaration to Articles and Sections and Exhibits are to Articles and Sections of and Exhibits to this Declaration unless otherwise specified; (e) a term defined in the Trust Indenture Act has the same meaning when used in this Declaration unless otherwise defined in this Declaration or unless the context otherwise requires; and (f) a reference to the singular includes the plural and vice versa.

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"AFFILIATE" has the same meaning as given to that term in Rule 405 under the Securities Act or any successor rule thereunder.

"BOOK ENTRY INTEREST" means a beneficial interest in a Global Certificate registered in the name of a Clearing Agency or a nominee thereof, ownership and transfers of which shall be maintained and made through book entries by such Clearing Agency as described in Section 9.04.

"BUSINESS DAY" means any day other than a Saturday, Sunday or any other day on which banking institutions in New York, New York or Wilmington, Delaware are authorized or required by law to close.

"BUSINESS TRUST ACT" means Chapter 38 of Title 12 of the Delaware Code, 12 Del. Code Section 3801 ET SEQ., as it may be amended from time to time.

"CERTIFICATE" means a Common Security Certificate or a Preferred Security Certificate.

"CERTIFICATE OF TRUST" has the meaning set forth in the second Whereas clause above.

"CLEARING AGENCY" means an organization registered as a "clearing agency" pursuant to Section 17A of the Exchange Act that is acting as depository for the Preferred Securities and in whose name, or in the name of a nominee of that organization, shall be registered a Global Certificate and which shall undertake to effect book entry transfers and pledges of the Preferred Securities.

"CLEARING AGENCY PARTICIPANT" means a broker, dealer, bank, other financial institution or other Person for whom from time to time the Clearing Agency effects book entry transfers and pledges of securities deposited with the Clearing Agency.

"CLOSING DATE" means the Closing Date as specified in the Underwriting Agreement, which date is also the date of execution and delivery of this Declaration.

"CODE" means the Internal Revenue Code of 1986, as amended from time to time, or any successor legislation. A reference to a specific section of the Code refers not only

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to such specific section but also to any corresponding provision of any Federal tax statute enacted after the date of this Declaration, as such specific section or corresponding provision is in effect on the date of application of the provisions of this Declaration containing such reference.

"COMMISSION" means the Securities and Exchange Commission.

"COMMON SECURITIES" has the meaning specified in Section 7.01(b).

"COMMON SECURITY CERTIFICATE" means a definitive certificate in fully registered form representing a Common Security substantially in the form of Annex I to Exhibit C.

"COVERED PERSON" means (i) any officer, director, shareholder, partner, member, representative, employee or agent of the Trust or its Affiliates, (ii) any officer, director, shareholder, employee, representative or agent of the Sponsor or any of its Affiliates and (iii) the Holders from time to time of the Securities.

"DEBENTURE TRUSTEE" means[ ], as trustee under the Indenture, until a successor, if any, is appointed thereunder and thereafter means such successor trustee.

"DEBENTURES" means the series of Junior Subordinated Debentures issued by the Sponsor under the Indenture to the Property Trustee and entitled the "[ ] Junior Subordinated Debentures due [ ]".

"DEFINITIVE PREFERRED SECURITY CERTIFICATES" has the meaning set forth in Section 9.04.

"DELAWARE TRUSTEE" has the meaning set forth in Section 5.01(a)(3).

"DEPOSITARY AGREEMENT" means the agreement among the Trust, the Property Trustee and DTC dated as of the Closing Date, as the same may be amended or supplemented from time to time.

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"DISTRIBUTION" means a distribution payable to Holders of Securities in accordance with Section 6.01.

"DTC" means The Depository Trust Company, the initial Clearing Agency.

"EVENT OF DEFAULT" in respect of the Securities means an Indenture Event of Default has occurred and is continuing in respect of the Debentures.

"EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended from time to time, or any successor legislation.

"FISCAL YEAR" has the meaning specified in Section 11.01.

"GLOBAL CERTIFICATE" has the meaning set forth in Section 9.04.

"HOLDER" means a Person in whose name a Certificate representing a Security is registered, such Person being a beneficial owner within the meaning

of the Business Trust Act.

"INDEMNIFIED PERSON" means any Trustee in its individual capacity and as a Trustee, any Affiliate of any Trustee, any officer, director, shareholder, member, partner, employee, representative or agent of any Trustee, or any employee or agent of the Trust or any of its Affiliates.

"INDENTURE" means the Junior Subordinated Indenture dated as of [ ], among White Mountains, the Sponsor and the Debenture Trustee, as amended or supplemented from time to time.

"INDENTURE EVENT OF DEFAULT" means an event or condition defined as an "Event of Default" with respect to the Debentures under Section 6.01(a) of the Indenture has occurred and is continuing.

"INVESTMENT COMPANY" means an investment company as defined in the Investment Company Act.

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"INVESTMENT COMPANY ACT" means the Investment Company Act of 1940, as amended from time to time, or any successor legislation.

"LEGAL ACTION" has the meaning specified in Section 3.08(g).

"LIQUIDATION DISTRIBUTION" has the meaning set forth in the terms of the Securities as set forth in Exhibits B and C hereto.

"MAJORITY IN LIQUIDATION AMOUNT OF THE SECURITIES" means, except as otherwise required by the Trust Indenture Act and except as provided in the penultimate paragraph of paragraph 5 of Exhibit B hereto, Holder(s) of outstanding Securities voting together as a single class or, as the context may require, Holder(s) of outstanding Preferred Securities or Common Securities voting separately as a class, who are the record owners of a relevant class of Securities whose liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) represents more than 50% of the liquidation amount of all outstanding Securities of such class.

"MINISTERIAL ACTION" has the meaning set forth in Section 4(c) of the terms of the Securities as set forth in Exhibits B and C hereto.

"OPTION CLOSING DATE" means the Option Closing Date as specified in the Underwriting Agreement.

"ORIGINAL DECLARATION" has the meaning set forth in the first Whereas clause above.

"PAYING AGENT" has the meaning specified in Section 3.10(i).

"PERSON" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company,

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trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

"PREFERRED GUARANTEE" means the Guarantee Agreement dated as of [ ], of White Mountains in respect of the Preferred Securities.

"PREFERRED SECURITIES" has the meaning specified in Section 7.01(b).

"PREFERRED SECURITY BENEFICIAL OWNER" means, with respect to a Book Entry Interest, a Person who is the beneficial owner of such Book Entry Interest, as reflected on the books of the Clearing Agency, or on the books of a Person maintaining an account with such Clearing Agency (directly as a Clearing Agency Participant or as an indirect participant, in each case in accordance with the rules of such Clearing Agency).

"PREFERRED SECURITY CERTIFICATE" means a definitive certificate in fully registered form representing a Preferred Security substantially in the form of Annex I to Exhibit B.

"PROPERTY TRUSTEE" means the Trustee meeting the eligibility requirements set forth in Section 5.01(c) and having the duties set forth for the Property Trustee herein.

"PROPERTY ACCOUNT" has the meaning specified in Section 3.10(c)(i).

"QUORUM" means a majority of the Regular Trustees or, if there are only two Regular Trustees, both such Regular Trustees.

"REGULAR TRUSTEE" means any Trustee other than the Property Trustee or the Delaware Trustee.

"RELATED PARTY" means any direct or indirect wholly owned subsidiary of the Sponsor or any Person which owns, directly or indirectly, 100% of the outstanding voting

securities of the Sponsor.

"RESIGNATION REQUEST" has the meaning specified in Section 5.02(d).

"RESPONSIBLE OFFICER" means, with respect to the Property Trustee, any officer of the Property Trustee with responsibility for the administration of this Declaration and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer's knowledge of, and familiarity with, the particular subject.

"RULE 3A-7" means Rule 3a-7 under the Investment Company Act or any successor rule thereunder.

"SECURITIES" means the Common Securities and the Preferred Securities.

"SECURITIES ACT" means the Securities Act of 1933, as amended from time to time, or any successor legislation.

"66-2/3% IN LIQUIDATION AMOUNT OF THE SECURITIES" means, except as otherwise required by the Trust Indenture Act and except as provided in the penultimate paragraph of paragraph 5 of Exhibit B hereto, Holder(s) of outstanding Securities voting together as a single class or, as the context may require, Holder(s) of outstanding Preferred Securities or Common Securities, voting separately as a class, who are the record owners of a relevant class of Securities whose liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) represents 66-2/3% or more of the liquidation amount of all outstanding Securities of such class.

"SPECIAL EVENT" has the meaning set forth in Section 4(c) of the terms of the Securities as set forth in Exhibits B and C hereto.

"SPONSOR" means Fund American Companies, Inc., a Delaware corporation, or any successor entity in a merger, consolidation or other business combination transaction in its capacity as sponsor of the Trust.

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"SUCCESSOR DELAWARE TRUSTEE" has the meaning specified in Section 5.02(b)(ii).

"SUCCESSOR PROPERTY TRUSTEE" means a successor Trustee possessing the qualifications to act as Property Trustee under Section 5.01(c).

"10% IN LIQUIDATION AMOUNT OF THE SECURITIES" means, except as otherwise required by the Trust Indenture Act and except as provided in the penultimate paragraph of paragraph 5 of Exhibit B hereto, Holder(s) of outstanding Securities voting together as a single class or, as the context may require, Holder(s) of outstanding Preferred Securities or Common Securities, voting separately as a class, who are the record owners of a relevant class of Securities whose liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) represents 10% or more of the liquidation amount of all outstanding Securities of such class.

"TREASURY REGULATIONS" means the income tax regulations, including temporary and proposed regulations, promulgated under the Code by the United States Treasury, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"TRUSTEE" or "TRUSTEES" means each Person who has signed this Declaration as a trustee, so long as such Person shall continue in office in accordance with the terms hereof, and all other Persons who may from time to time be duly appointed, qualified and serving as a Trustee in accordance with the provisions hereof, and references herein to a Trustee or the Trustees shall refer to such Person or Persons solely in their capacity as trustees hereunder.

"TRUST INDENTURE ACT" means the Trust Indenture Act of 1939, as amended from time to time, or any successor legislation.

"UNDERWRITING AGREEMENT" means the Underwriting

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Agreement dated [ ], among the Trust, the Sponsor and [ ], as representative of the several underwriters named therein.

"WHITE MOUNTAINS" means White Mountains Insurance Group, Ltd., a company existing under the laws of Bermuda.

## ARTICLE II

### TRUST INDENTURE ACT

SECTION 2.01. TRUST INDENTURE ACT; APPLICATION. (a) This Declaration is subject to the provisions of the Trust Indenture Act that are required to be part of this Declaration and shall, to the extent applicable, be governed by such provisions; (b) if and to the extent that any provision of this Declaration limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control; (c) the Property Trustee, to the extent permitted by applicable law and/or the rules and regulations of the Commission, shall be the only Trustee which is a trustee for the purposes of the Trust Indenture Act; and (d) the application of the Trust Indenture Act to this Declaration shall not affect the nature of the Securities as equity securities representing undivided beneficial interests in the assets of the Trust.

SECTION 2.02. LISTS OF HOLDERS OF PREFERRED SECURITIES. (a) Each of the Sponsor and the Regular Trustees on behalf of the Trust shall provide the Property Trustee with such information as is required under Section 312(a) of the Trust Indenture Act at the times and in the manner provided in Section 312(a); and (b) the Property Trustee shall comply with its obligations under Sections 310(b), 311 and 312(b) of the Trust Indenture Act.

SECTION 2.03. REPORTS BY THE PROPERTY TRUSTEE. Within 60 days after May 15 of each year, the Property Trustee shall provide to the Holders of the Securities such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form, in the manner and at the times provided by Section 313 of the Trust Indenture Act. The Property Trustee shall also comply with the requirements

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of Section 313(d) of the Trust Indenture Act.

SECTION 2.04. PERIODIC REPORTS TO PROPERTY TRUSTEE. Each of the Sponsor and the Regular Trustees on behalf of the Trust shall provide to the Property Trustee, the Commission and the Holders of the Securities, as applicable, such documents, reports and information as required by Section 314(a)(1)-(3) (if any) of the Trust Indenture Act and the compliance certificates required by Section 314(a)(4) and (c) of the Trust Indenture Act, any such certificates to be provided in the form, in the manner and at the times required by Section 314(a)(4) and (c) of the Trust Indenture Act (PROVIDED that any certificate to be provided pursuant to Section 314(a)(4) of the Trust Indenture Act shall be provided within 120 days of the end of each Fiscal Year).

SECTION 2.05. EVIDENCE OF COMPLIANCE WITH CONDITIONS PRECEDENT. Each of the Sponsor and the Regular Trustees on behalf of the Trust shall provide to the Property Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Declaration which relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given pursuant to Section 314(c) of the Trust Indenture Act shall comply with Section 314(e) of the Trust Indenture Act.

SECTION 2.06. EVENTS OF DEFAULT; WAIVER. (a) Subject to Section 2.06(c), Holders of Preferred Securities may, by vote of at least a Majority in liquidation amount of the Preferred Securities, (A) in accordance with the terms of the Preferred Securities, direct the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon the Property Trustee, or (B) on behalf of the Holders of all Preferred Securities, waive any past Event of Default in respect of the Preferred Securities and its consequences; PROVIDED that, if the Event of Default arises out of an Indenture Event of Default:

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(i) which is not waivable under the Indenture, the Event of Default under this Declaration shall also be not waivable; or

(ii) which requires the consent or vote of (1) holders of Debentures representing a specified percentage greater than a majority in principal amount of the Debentures affected thereby, or (2) each holder of Debentures, the Event of Default under this Declaration may only be waived by, in the case of clause (1) above, the vote of Holders of Preferred Securities representing such specified percentage of the aggregate liquidation amount of the Preferred Securities or, in the case of clause (2) above, each Holder of Preferred Securities affected thereby.

Upon such waiver, any such default shall cease to exist, and any Event of Default with respect to the Preferred Securities arising therefrom shall be deemed to have been cured for every purpose of this Declaration, but no such waiver shall extend to any subsequent or other default or Event of Default with respect to the Preferred Securities or impair any right consequent thereto.

(b) Subject to Section 2.06(c), Holders of Common Securities may, by vote of at least a Majority in liquidation amount of the Common Securities, (A) in accordance with the terms of the Common Securities, direct the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon the Property Trustee, or (B) on behalf of the Holders of all of the Common Securities, waive any past Event of Default with respect to the Common Securities and its consequences; PROVIDED that if the Event of Default arises out of an Indenture Event of Default:

(i) which is not waivable under the Indenture, except where the

Holders of the Common Securities are deemed to have waived such Event of Default under the Declaration as provided below, the Event of Default under this Declaration shall also not be waivable; or

(ii) which requires the consent or vote of (1) holders of Debentures representing a specified percentage

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greater than a majority in principal amount of the Debentures or (2) each holder of Debentures affected thereby, except where the holders of the Common Securities are deemed to have waived such Event of Default under this Declaration as provided below, the Event of Default under this Declaration may only be waived by, in the case of clause (1) above, the vote of Holders of Common Securities representing such specified percentage of the aggregate liquidation amount of the Common Securities or, in the case of clause (2) above, each holder of Common Securities affected thereby; and

PROVIDED FURTHER that each Holder of Common Securities will be deemed to have waived any Event of Default with respect to the Common Securities and its consequences until all Events of Default with respect to the Preferred Securities have been cured or waived by the Holders of Preferred Securities as provided in this Declaration or otherwise eliminated and until all Events of Default with respect to the Preferred Securities have been so cured, waived or otherwise eliminated, the Property Trustee will be deemed to be acting solely on behalf of the Holders of the Preferred Securities and only the Holders of the Preferred Securities will have the right to direct the Property Trustee in accordance with the terms of this Declaration or the Securities. In the event that an Event of Default with respect to the Preferred Securities is waived by the Holders of Preferred Securities as provided in this Declaration, the Holders of Common Securities agree that such waiver shall also constitute the waiver of such Event of Default with respect to the Common Securities for all purposes under this Declaration without any further act, vote or consent of the Holders of the Common Securities. Subject to the foregoing provisions of this Section 2.06(b), upon such waiver, any such default shall cease to exist and any Event of Default with respect to the Common Securities arising therefrom shall be deemed to have been cured for every purpose of this Declaration, but no such waiver shall extend to any subsequent or other default or Event of Default with respect to the Common Securities or impair any right consequent thereon.

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(c) The right of any Holder of Securities to receive payment of Distributions on the Securities in accordance with this Declaration and the terms of the Securities set forth in Exhibits B and C on or after the respective payment dates therefor, or to institute suit for the enforcement of any such payment on or after such payment dates, shall not be impaired without the consent of such Holder.

(d) As provided in the terms of the Securities set forth in Exhibits B and C hereto, a waiver of an Indenture Event of Default by the Property Trustee at the written direction of the Holders of the Preferred Securities constitutes a waiver of the corresponding Event of Default under this Declaration in respect of the Securities.

SECTION 2.07. DISCLOSURE OF INFORMATION. The disclosure of information as to the names and addresses of the Holders of the Securities in accordance with Section 312 of the Trust Indenture Act, regardless of the source from which such information was derived, shall not be deemed to be a violation of any existing law or any law hereafter enacted which does not specifically refer to Section 312 of the Trust Indenture Act, nor shall the Property Trustee be held accountable by reason of mailing any material pursuant to a request made under Section 312(b) of the Trust Indenture Act.

### ARTICLE III

#### ORGANIZATION

SECTION 3.01. NAME. The Trust continued by this Declaration is named "Fund American Trust I" as such name may be modified from time to time by the Regular Trustees following written notice to the Holders, the Property Trustee and the Delaware Trustee. The Trust's activities may be conducted under the name of the Trust or any other name deemed advisable by the Regular Trustees.

SECTION 3.02. OFFICE. The address of the principal office of the Trust is c/o Fund American Companies, Inc., One Beacon Street, Boston, Massachusetts

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02108-3100. Upon ten days' written notice to the Holders (a copy of such notice to be sent to the Property Trustee and the Delaware Trustee), the Regular Trustees may change the location of the Trust's principal office. The name of the registered agent and office of the Trust in the State of [DE Trustee address]. At any time, the Regular Trustees may designate another registered agent and/or registered office.

SECTION 3.03. ISSUANCE OF THE TRUST SECURITIES. On [ ], the Sponsor, on behalf of the Trust and pursuant to the Original Declaration,



executed and delivered the Underwriting Agreement. On the Closing Date and contemporaneously with the execution and delivery of this Declaration, the Regular Trustees, on behalf of the Trust, shall execute and deliver (i) to the underwriters named in the Underwriting Agreement, a Global Certificate, registered in the name of the nominee of the initial Clearing Agency as specified in Section 9.04, in an aggregate amount of [ ] Preferred Securities having an aggregate liquidation amount of \$[ ], against receipt of the aggregate purchase price of such Preferred Securities of \$[ ], and (ii) to the Sponsor, Common Securities Certificates, registered in the name of the Sponsor, in an aggregate amount of [ ] Common Securities having an aggregate liquidation amount of \$[ ], against receipt of the aggregate purchase price of such Common Securities of \$[ ].

SECTION 3.04. PURCHASE OF DEBENTURES. On the Closing Date and contemporaneously with the execution and delivery of this Declaration, the Regular Trustees, on behalf of the Trust, shall purchase from the Sponsor with the proceeds received by the Trust from the sale of the Securities on such date pursuant to Section 3.03, at a purchase price of 100% of the principal amount thereof, Debentures, registered in the name of the Property Trustee and having an aggregate principal amount equal to \$[ ], and, in satisfaction of the purchase price for such Debentures, the Regular Trustees, on behalf of the Trust, shall deliver or cause to be delivered to the Sponsor the sum of \$[ ]. In the event the over-allotment option granted by the Trust with respect to the Preferred Securities pursuant to the Underwriting Agreement is exercised by the underwriters named therein, on the Option Closing Date the Regular Trustees, on behalf of the Trust,

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shall purchase from the Sponsor with the proceeds received by the Trust from the sale of the Securities on such date pursuant to Section 3.03, at a purchase price of 100% of the principal amount thereof, additional Debentures, registered in the name of the Property Trustee and having an aggregate principal amount of up to \$[ ], and, in satisfaction of the purchase price for such Debentures, the Regular Trustees, on behalf of the Trust, shall deliver or cause to be delivered to the Sponsor an amount equal to the aggregate principal amount of the Debentures being purchased.

SECTION 3.05. PURPOSE. The exclusive purposes and functions of the Trust are: (a)(i) to issue and sell Preferred Securities for cash and use the proceeds of such sales to purchase as trust assets Debentures issued under the Indenture having an aggregate principal amount equal to the aggregate liquidation amount of the Preferred Securities so issued and sold; (ii) to enter into such agreements and arrangements as may be necessary in connection with the sale of Preferred Securities to the initial purchasers thereof (including the Underwriting Agreement) and to take all actions and exercise such discretion as may be necessary or desirable in connection therewith and to file such registration statements or make such other filings under the Securities Act, the Exchange Act or state securities or "Blue Sky" laws as may be necessary or desirable in connection therewith and the issuance of the Preferred Securities; and (iii) to issue and sell Common Securities to the Sponsor for cash and use the proceeds of such sale to purchase as trust assets an equal aggregate principal amount of Debentures issued under the Indenture; and (b) except as otherwise limited herein, to engage in such other activities as are necessary, convenient or incidental thereto. The Trust shall not borrow money, issue debt or reinvest proceeds derived from investments, pledge any of its assets or, at any time while the Securities are outstanding, otherwise undertake (or permit to be undertaken) an activity that would result in or cause the Trust to be treated as anything other than a grantor trust for United States Federal income tax purposes.

SECTION 3.06. AUTHORITY. Subject to the

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limitations provided in this Declaration and to the specific duties of the Property Trustee, the Regular Trustees shall have exclusive and complete authority to carry out the purposes of the Trust. An action taken by one or more of the Regular Trustees in accordance with their powers shall constitute the act of and serve to bind the Trust and an action taken by the Property Trustee in accordance with its powers shall constitute the act of and serve to bind the Trust. In dealing with the Trustees acting on behalf of the Trust, no Person shall be required to inquire into the authority of the Trustees to bind the Trust. Persons dealing with the Trust are entitled to rely conclusively on the power and authority of the Trustees as set forth in this Declaration.

SECTION 3.07. TITLE TO PROPERTY OF THE TRUST. Except as provided in Section 3.10 with respect to the Debentures and the Property Account or unless otherwise provided in this Declaration, legal title to all assets of the Trust shall be vested in the Trust. The Holders shall not have legal title to any part of the assets of the Trust, but shall have an individual undivided beneficial interest in the assets of the Trust.

SECTION 3.08. POWERS AND DUTIES OF THE REGULAR TRUSTEES. The Regular Trustees acting individually or together shall have the exclusive power, authority and duty to cause the Trust, and shall cause the Trust, to engage in the following activities:

(a) to issue Preferred Securities and Common Securities, in each case in accordance with this Declaration; PROVIDED, HOWEVER, that the Trust may issue no more than one series of Preferred Securities and no

more than one series of Common Securities; and PROVIDED FURTHER that there shall be no interests in the Trust other than the Securities and the issuance of Securities shall be limited to (x) a one-time, simultaneous issuance of both Preferred Securities and Common Securities on the Closing Date and (y) any subsequent issuance of both Preferred Securities and Common Securities on the Option Closing Date pursuant to an exercise of the over-allotment option granted to the underwriters in the Underwriting Agreement;

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(b) in connection with the issuance of the Preferred Securities, at the direction of the Sponsor, to effect or cause to be effected the filings, and to execute or cause to be executed the documents, set forth in Section 3.13 and to execute, deliver and perform on behalf of the Trust the Depositary Agreement;

(c) to acquire as trust assets Debentures with the proceeds of the sale of the Preferred Securities and Common Securities; PROVIDED, HOWEVER, that the Regular Trustees shall cause all the Debentures to be held of record in the name of the Property Trustee for the benefit of the Holders of the Preferred Securities and the Common Securities;

(d) to cause the Trust to enter into such agreements and arrangements as may be necessary or desirable in connection with the sale of Preferred Securities to the initial purchasers thereof and the consummation thereof, and to take all action, and exercise all discretion, as may be necessary or desirable in connection with the consummation thereof;

(e) to give the Sponsor and the Property Trustee prompt written notice of the occurrence of a Special Event; PROVIDED that the Regular Trustees shall consult with the Sponsor and the Property Trustee before taking or refraining to take any Ministerial Action in relation to a Special Event;

(f) to establish a record date with respect to all actions to be taken hereunder that require a record date be established, including for the purposes of Section 316(c) of the Trust Indenture Act and with respect to Distributions, voting rights, redemptions and exchanges, and to issue relevant notices to Holders of the Preferred Securities and the Common Securities as to such actions and applicable record dates;

(g) to bring or defend, pay, collect, compromise, arbitrate, resort to legal action or otherwise adjust

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claims or demands of or against the Trust ("Legal Action"), unless, pursuant to Section 3.10(e), the Property Trustee has the exclusive power to bring such Legal Action;

(h) to employ or otherwise engage employees and agents (who may be designated as officers with titles) and managers, contractors, advisors and consultants and pay reasonable compensation for such services;

(i) to cause the Trust to comply with the Trust's obligations under the Trust Indenture Act;

(j) to give the certificate to the Property Trustee required by Section 314(a)(4) of the Trust Indenture Act, which certificate may be executed by any Regular Trustee;

(k) to incur expenses which are necessary or incidental to carrying out any of the purposes of the Trust;

(l) to act as, or appoint another Person to act as, registrar and transfer agent for the Securities, the Regular Trustees hereby initially appointing the Property Trustee for such purposes;

(m) to take all actions and perform such duties as may be required of the Regular Trustees pursuant to the terms of the Securities set forth in Exhibits B and C hereto;

(n) to execute all documents or instruments including, but not limited to, the Declaration of Trust and the Certificate of Trust, perform all duties and powers and do all things for and on behalf of the Trust in all matters necessary, convenient or incidental to the foregoing;

(o) to take all action which may be necessary or appropriate for the preservation and the continuation of the Trust's valid existence, rights, franchises and privileges as a business trust under the laws of the State of Delaware and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Holders of the Securities or

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to enable the Trust to effect the purposes for which the Trust has been

created;

(p) to take all action, not inconsistent with this Declaration or with applicable law, which the Regular Trustees determine in their discretion to be reasonable and necessary or desirable in carrying out the activities of the Trust as set out in this Section 3.08, in order that:

(i) the Trust will not be deemed to be an Investment Company required to be registered under the Investment Company Act;

(ii) the Trust will not be classified for United States Federal income tax purposes as an association taxable as a corporation or a partnership and will be treated as a grantor trust for United States Federal income tax purposes; and

(iii) the Trust will comply with any requirements imposed by any taxing authority on holders of instruments treated as indebtedness for United States Federal income tax purposes;

PROVIDED that such action does not adversely affect the interests of Holders;

(q) to take all action necessary to cause all applicable tax returns and tax information reports that are required to be filed with respect to the Trust to be duly prepared and filed by the Regular Trustees, on behalf of the Trust; and

(r) subject to the requirements of Rule 3a-7 and Section 317(b) of the Trust Indenture Act, to appoint one or more Paying Agents in addition to the Property Trustee.

The Regular Trustees must exercise the powers set forth in this Section 3.08 in a manner which is consistent with the purposes and functions of the Trust set out in

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Section 3.05 and the Regular Trustees shall not take any action which is inconsistent with the purposes and functions of the Trust set forth in Section 3.05.

Subject to this Section 3.08, the Regular Trustees shall have none of the powers nor any of the authority of the Property Trustee set forth in Section 3.10.

**SECTION 3.09. PROHIBITION OF ACTIONS BY TRUST AND TRUSTEES.** The Trust shall not, and no Trustee (including the Property Trustee) shall cause the Trust to, engage in any activity other than as required or authorized by this Declaration. In particular, the Trust shall not, and no Trustee (including the Property Trustee) shall cause the Trust to:

(a) invest any proceeds received by the Trust from holding the Debentures, but shall promptly distribute all such proceeds to Holders of Securities pursuant to the terms of this Declaration and of the Securities;

(b) acquire any assets other than as expressly provided herein;

(c) possess Trust property for other than a Trust purpose;

(d) make any loans, other than loans represented by the Debentures;

(e) possess any power or otherwise act in such a way as to vary the Trust assets or the terms of the Securities in any way whatsoever;

(f) issue any securities or other evidences of beneficial ownership of, or beneficial interests in, the Trust other than the Securities;

(g) incur any indebtedness for borrowed money; or

(h)(i) direct the time, method and place of exercising any trust or power conferred upon the Debenture Trustee with respect to the Debentures, (ii) waive any past default that is waivable under Section 6.06 of the Indenture, (iii) exercise any right to rescind or annul any declaration that the principal

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of all of the Debentures shall be due and payable or (iv) consent to any amendment, modification or termination of the Indenture or the Debentures, where such consent shall be required, unless in the case of this clause (h) the Property Trustee shall have received an unqualified opinion of nationally recognized independent tax counsel recognized as expert in such matters to the effect that such action will not cause the Trust to be classified for United States Federal income tax purposes as an association taxable as a corporation or partnership and that the Trust will continue to be classified as a grantor trust for United States Federal income tax purposes.

**SECTION 3.10. POWERS AND DUTIES OF THE PROPERTY TRUSTEE.** (a) The

Debentures shall be held of record in the name of the Property Trustee in trust for the benefit of the Holders. The right, title and interest of the Property Trustee to the Debentures shall vest automatically in each Person who may hereafter be appointed as Property Trustee in accordance with Article V. Such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered.

(b) The Property Trustee shall not transfer its right, title and interest in the Debentures to the Regular Trustees or, if the Property Trustee does not also act as the Delaware Trustee, the Delaware Trustee.

(c) The Property Trustee shall:

(i) establish and maintain a segregated non-interest bearing bank account (the "Property Account") in the name of and under the exclusive control of the Property Trustee on behalf of the Holders of the Securities and on the receipt of payments of funds made in respect of the Debentures held by the Property Trustee, deposit such funds into the Property Account and, without any further acts of the Property Trustee or the Regular Trustees, promptly make payments to the Holders of the Preferred Securities and Common Securities from the Property Account in accordance with

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Section 6.01. Funds in the Property Account shall be held uninvested, and without liability for interest thereon, until disbursed in accordance with this Declaration. The Property Account shall be an account which is maintained with a banking institution whose long term unsecured indebtedness is rated by a "nationally recognized statistical rating organization", as such term is defined for purposes of Rule 436(g)(2) under the Securities Act, at least equal to (but in no event less than "A" or the equivalent) the rating assigned to the Preferred Securities by a nationally recognized statistical rating organization;

(ii) engage in such ministerial activities as shall be necessary or appropriate to effect promptly the redemption of the Securities to the extent the Debentures are redeemed or mature;

(iii) upon written notice of distribution issued by the Regular Trustees in accordance with the terms of the Preferred Securities and the Common Securities, engage in such ministerial activities as shall be necessary or appropriate to effect promptly, pursuant to the terms of the Securities, the distribution of Debentures to Holders of Securities upon the occurrence of a Special Event; and

(iv) have the legal power to exercise all of the rights, powers and privileges of a holder of the Debentures under the Indenture and, if an Event of Default occurs and is continuing, the Property Trustee, subject to Section 2.06(b), shall, for the benefit of the Holders of the Securities, enforce its rights as holder of the Debentures under the Indenture, subject to the rights of the Holders of the Preferred Securities pursuant to the terms of this Declaration, the Business Trust Act and the Trust Indenture Act.

(d) The Property Trustee shall take all actions and perform such duties as may be specifically required of the Property Trustee pursuant to the terms of this Declaration and the Securities set forth in Exhibits B and C

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hereto.

(e) The Property Trustee shall take any Legal Action which arises out of or in connection with an Event of Default of which a Responsible Officer has actual knowledge or the Property Trustee's duties and obligations under this Declaration, the Business Trust Act or the Trust Indenture Act.

(f) All moneys deposited in the Property Account, and all Debentures held by the Property Trustee for the benefit of the Holders of the Securities, will not be subject to any right, charge, security interest, lien or claim of any kind in favor of, or for the benefit of, the Property Trustee or its agents or their creditors.

(g) The Property Trustee shall, within 90 days after the occurrence of a default with respect to the Securities, transmit by mail, first class postage prepaid, to the Holders of the Securities, as their names and addresses appear upon the register, notice of all defaults with respect to the Securities known to the Property Trustee, unless such defaults shall have been cured before the giving of such notice (the term "defaults" for the purposes of this Section 3.10(g) being hereby defined to be an Indenture Event of Default, not including any periods of grace provided for in the Indenture and irrespective of the giving of any notice provided therein); PROVIDED that, except in the case of default in the payment of the principal of (or premium, if any) or interest on any of the Debentures, the Property Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Property Trustee in good faith determines that the withholding of such notice is in the interests of the Holders. The Property Trustee shall not be deemed to have knowledge of any default, except (i) a default in the payment of principal of

(or premium, if any) or interest on the Debentures or (ii) any default as to which the Property Trustee shall have received written notice or a Responsible Officer charged with the administration of this Declaration shall have obtained written notice.

(h) The Property Trustee shall not resign as a

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Trustee unless either:

(i) the Trust has been completely liquidated and the proceeds thereof distributed to the Holders of Securities pursuant to the terms of the Securities; or

(ii) a Successor Property Trustee has been appointed and accepted that appointment in accordance with Article V.

(i) The Property Trustee shall act as paying agent in respect of the Common Securities and the Preferred Securities and, subject to Section 3.08(r), may authorize one or more Persons (each, a "Paying Agent") to pay Distributions, redemption payments or liquidation payments on behalf of the Trust with respect to the Preferred Securities. Any such Paying Agent shall comply with Section 317(b) of the Trust Indenture Act. Any Paying Agent may be removed by the Property Trustee, after consultation with the Regular Trustees, at any time and a successor Paying Agent or additional Paying Agents may be appointed at any time by the Property Trustee, subject to Section 3.08(r).

(j) The Property Trustee shall give prompt written notice to the Holders of the Securities of any notice received by it from the Sponsor of its election to defer payments of interest on the Debentures by extending the interest payment period with respect thereto.

(k) Subject to this Section 3.10, the Property Trustee shall have none of the powers or the authority of the Regular Trustees set forth in Section 3.08.

(1) The Property Trustee shall exercise the powers, duties and rights set forth in this Section 3.10 and Section 3.12 in a manner which is consistent with the purposes and functions of the Trust set out in Section 3.05, and the Property Trustee shall not take any action which is inconsistent with the purposes and functions of the Trust set forth in Section 3.05.

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SECTION 3.11. DELAWARE TRUSTEE. Notwithstanding any other provision of this Declaration other than Section 5.01(a)(3), the Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities of the Regular Trustees or the Property Trustee described in this Declaration. Except as set forth in Section 5.01(a)(3), the Delaware Trustee shall be a Trustee for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Business Trust Act. In the event the Delaware Trustee shall at any time be required to take any action or perform any duty hereunder, the Delaware Trustee shall be entitled to the benefits of Section 3.12(b)(ii), (iii) and (iv) and Section 3.12(c). No implied covenants or obligations shall be read into this Declaration against the Delaware Trustee.

SECTION 3.12. CERTAIN RIGHTS AND DUTIES OF THE PROPERTY TRUSTEE. (a) The Property Trustee, before the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Declaration, and no implied covenants shall be read into this Declaration against the Property Trustee. In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.06), the Property Trustee shall exercise such of the rights and powers vested in it by this Declaration, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

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

(i) prior to the occurrence of an Event of Default and after the curing or waiving of all such Events of Default that may have occurred:

(A) the duties and obligations of the Property Trustee shall be determined solely by the express provisions of this Declaration, and the Property Trustee shall not be liable except for the performance of such duties and obligations as

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are specifically set forth in this Declaration, and no implied covenants or obligations shall be read into this Declaration against the Property Trustee; and

(B) in the absence of bad faith on the part of the Property

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

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

(iii) the Property Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders as provided herein relating to the time, method and place of conducting any proceeding for any remedy available to the Property Trustee hereunder or under the Indenture, or exercising any trust or power conferred upon the Property Trustee under this Declaration; and

(iv) no provision of this Declaration shall require the Property Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if it shall have reasonable ground for believing that the repayment of

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such funds or liability is not reasonably assured to it under the terms of this Declaration or adequate indemnity against such risk or liability is not reasonably assured to it.

(c) Subject to the provisions of Section 3.12(a) and (b):

(i) whenever in the administration of this Declaration, the Property Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Property Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part and, if the Trust is excluded from the definition of Investment Company solely by means of Rule 3a-7, subject to the requirements of Rule 3a-7, request and rely upon a certificate, which shall comply with the provisions of Section 314(e) of the Trust Indenture Act, signed by any two of the Regular Trustees or by an authorized officer of the Sponsor, as the case may be;

(ii) the Property Trustee (A) may consult with counsel (which may be counsel to the Sponsor or any of its Affiliates and may include any of its employees) selected by it in good faith and with due care and the written advice or opinion of such counsel with respect to legal matters shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon and in accordance with such advice and opinion and (B) shall have the right at any time to seek instructions concerning the administration of this Declaration from any court of competent jurisdiction;

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

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(iv) the Property Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Declaration at the request or direction of any Holders, unless such Holders shall have offered to the Property Trustee reasonable security and indemnity against the costs, expenses (including attorneys' fees and expenses) and liabilities that might be incurred by it in complying with such request or direction; PROVIDED that nothing contained in this clause (iv) shall relieve the Property Trustee of the obligation, upon the occurrence of an Event of Default (which has not been cured or waived) to exercise such of the rights and powers vested in it by this Declaration, and to use the same degree of care and skill in such exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs;

(v) any action taken by the Property Trustee or its agents hereunder shall bind the Trust and the Holders of the Securities and the signature of the Property Trustee or its agents alone shall be sufficient and effective to perform any such action; and no third party shall be required to inquire as to the authority of the Property Trustee to so act, or as to its compliance with any of the terms and provisions of this Declaration, both of which shall be conclusively evidenced by the Property Trustee's or its agent's taking such action;

(vi) the Property Trustee may rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate,

statement, instrument, opinion, report, notice, request, consent, order, approval, bond, security or other paper or document believed by it to be genuine and to have been signed, sent or presented by the proper party or parties; and

(vii) the Property Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order,

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approval, bond, security or other paper or document, but the Property Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.

SECTION 3.13. REGISTRATION STATEMENT AND RELATED MATTERS. In accordance with the Original Declaration, the Sponsor and the Trustees have authorized and directed, and hereby confirm the authorization of, the Sponsor, as the Sponsor of the Trust, (i) to file with the Commission and execute, in each case on behalf of the Trust, (a) the Registration Statement on Form S-3 (File Nos. [ ] (the "1933 Act Registration Statement") including any amendments thereto and any further pre-effective or post-effective amendments to such Registration Statement, relating to the registration under the Securities Act of, among other things, the Preferred Securities of the Trust and the related guarantees of such Preferred Securities by the Sponsor and (b) a Registration Statement on Form 8-A or other appropriate form (the "1934 Act Registration Statement") (including all pre-effective and post-effective amendments thereto) relating to the registration of the Preferred Securities of the Trust and the related guarantees of such Preferred Securities by the Sponsor under Section 12(b) of the Exchange Act; (ii) to file with the New York Stock Exchange and execute on behalf of the Trust a listing application and all other applications, statements, certificates, agreements and other instruments as shall be necessary or desirable to cause the Preferred Securities to be listed on the New York Stock Exchange; (iii) to file and execute on behalf of the Trust such applications, reports, surety bonds, irrevocable consents, appointments of attorney for service of process and other papers and documents as shall be necessary or desirable to register the Preferred Securities under the securities or "Blue Sky" laws of such jurisdictions as the Sponsor, on behalf of the Trust, may deem necessary or desirable and (iv) to negotiate and execute on behalf of the Trust the Underwriting Agreement. In the event that any filing referred to in clauses (i)-(iii) above is required by the rules and regulations of the Commission, the New York Stock Exchange or state securities or blue sky laws, to be executed on

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behalf of the Trust by the Trustees, the Regular Trustees, in their capacities as Trustees of the Trust, are hereby authorized and directed to join in any such filing and to execute on behalf of the Trust any and all of the foregoing, it being understood that the Property Trustee and the Delaware Trustee, in their capacities as Trustees of the Trust, shall not be required to join in any such filing or execute on behalf of the Trust any such document unless required by the rules and regulations of the Commission, the New York Stock Exchange or state securities or blue sky laws. In connection with all of the foregoing, the Sponsor and each Trustee, solely in its capacity as a Trustee of the Trust, have constituted and appointed, and hereby confirm the appointment of Reid T. Campbell and Dennis R. Smith and each of them, as his, her or its, as the case may be, true and lawful attorneys-in-fact, and agents, with full power of substitution and resubstitution, for the Sponsor or such Trustee or in the Sponsor's or such Trustee's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to the 1933 Act Registration Statement and the 1934 Act Registration Statement and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as the Sponsor or such Trustee might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or his or her substitute or substitutes, shall do or cause to be done by virtue hereof.

SECTION 3.14. FILING OF AMENDMENTS TO CERTIFICATE OF TRUST. The Certificate of Trust as filed with the Secretary of State of the State of Delaware on November 2, 2001 is attached hereto as Exhibit A. The Trustees are hereby authorized to cause the filing with the Secretary of State of the State of Delaware of such amendments to the Certificate of Trust as the Trustees shall deem necessary or desirable and as required by the Business Trust Act.

SECTION 3.15. EXECUTION OF DOCUMENTS BY REGULAR TRUSTEES. Unless otherwise determined by the Regular Trustees and except as otherwise required by the Business

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Trust Act with respect to the Certificate of Trust or otherwise, a majority of, or if there are only two, both of, the Regular Trustees are authorized to execute and deliver on behalf of the Trust any documents which the Regular

Trustees have the power and authority to execute or deliver pursuant to this Declaration.

SECTION 3.16. TRUSTEES NOT RESPONSIBLE FOR RECITALS OR ISSUANCE OF SECURITIES. The recitals contained in this Declaration and the Securities shall be taken as the statements of the Sponsor and the Trustees do not assume any responsibility for their correctness. The Trustees make no representations as to the value or condition of the property of the Trust or any part thereof. The Trustees make no representations as to the validity or sufficiency of this Declaration or the Securities.

SECTION 3.17. DURATION OF TRUST. The Trust, absent termination pursuant to the provisions of Article VIII hereof, shall have existence until [ ], 20[ ].

#### ARTICLE IV

##### SPONSOR

SECTION 4.01. PURCHASE OF COMMON SECURITIES BY SPONSOR. On the Closing Date, the Sponsor will purchase all of the Common Securities issued by the Trust at the same time as the Preferred Securities to be issued on such date are issued, such purchase to be in an amount equal to 3% of the total capital of the Trust. On the Option Closing Date, the Sponsor shall purchase all of the Common Securities issued by the Trust at the same time as the Preferred Securities to be issued on such date are issued, such purchase to be in such amount so that the Common Securities continue to represent 3% of the total capital of the Trust.

SECTION 4.02. EXPENSES. (a) In connection with the purchase of the Debentures by the Trust, the Sponsor, in its capacity as Sponsor and not as a Holder, shall be responsible for and shall pay for all debts and obligations (other than with respect to the Securities) and all costs and expenses of the Trust (including, but not limited to,

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costs and expenses relating to the organization of the Trust, the issuance of the Preferred Securities to initial purchasers thereof, the fees and expenses (including reasonable counsel fees and expenses and the expenses of the Trustee's agents, nominees or custodians) of the Trustees (including any amounts payable under Article X), the costs and expenses relating to the operation of the Trust, including without limitation, costs and expenses of accountants, attorneys, statistical or bookkeeping services, expenses for printing and engraving and computing or accounting equipment, Paying Agent(s), registrars, transfer agent(s), duplicating, travel and telephone and other telecommunications expenses and costs and expenses incurred in connection with the disposition of Trust assets).

(b) In connection with the purchase of the Debentures by the Trust, the Sponsor, in its capacity as Sponsor and not as a Holder, will pay any and all taxes (other than United States withholding taxes attributable to the Trust or its assets) and all liabilities, costs and expenses with respect to such taxes of the Trust.

(c) The Sponsor's obligations under this Section 4.02 shall be for the benefit of, and shall be enforceable by, any Person to whom any such debts, obligations, costs, expenses and taxes are owed (a "Creditor") whether or not such Creditor has received notice hereof. Any such Creditor may enforce the Sponsor's obligations under this Section 4.02 directly against the Sponsor and the Sponsor irrevocably waives any right or remedy to require that any such Creditor take any action against the Trust or any other Person before proceeding against the Sponsor. The Sponsor agrees to execute such additional agreements as may be necessary or desirable in order to give full effect to the provisions of this Section 4.02.

#### ARTICLE V

##### TRUSTEES

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SECTION 5.01. NUMBER OF TRUSTEES; QUALIFICATIONS. (a) Except as provided in (1) below, the number of Trustees initially shall be four. At any time (i) before the issuance of the Securities, the Sponsor may, by written instrument, increase or decrease the number of, and appoint, remove and replace the, Trustees, and (ii) after the issuance of the Securities the number of Trustees may be increased or decreased solely by, and Trustees may be appointed, removed or replaced solely by, vote of Holders of Common Securities representing a Majority in liquidation amount of the Common Securities voting as a class; PROVIDED that in any case:

(1) the number of Trustees shall be at least four (4) unless the Trustee that acts as the Property Trustee also acts as the Delaware Trustee, in which case the number of Trustees shall be at least three;

(2) at least a majority of the Trustees shall at all times be officers or employees of the Sponsor;

(3) if required by the Business Trust Act, one Trustee (the "Delaware Trustee") shall be either a natural person who is a resident of



the State of Delaware or, if not a natural person, an entity which has its principal place of business in the State of Delaware and otherwise is permitted to act as a Trustee hereunder under the laws of the State of Delaware, except that if the Property Trustee has its principal place of business in the State of Delaware and otherwise is permitted to act as a Trustee hereunder under the laws of the State of Delaware, then the Property Trustee shall also be the Delaware Trustee and Section [3.11] shall have no application; and

(4) there shall at all times be a Property Trustee hereunder which shall satisfy the requirements of Section 5.01(c).

Each Trustee shall be either a natural person at least 21 years of age or a legal entity which shall act through one or more duly appointed representatives.

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(b) The initial Regular Trustees shall be:

Reid T. Campbell  
Dennis R. Smith

In care of Fund American Companies, Inc.  
One Beacon Street  
Boston, Massachusetts 02108-3100

(c) There shall at all times be one Trustee which shall act as Property Trustee. In order to act as Property Trustee hereunder, such Trustee shall:

(i) not be an Affiliate of the Sponsor;

(ii) be a corporation organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or Person permitted by the Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by Federal, State, Territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then for the purposes of this Section 5.01(c)(ii), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published; and

(iii) if the Trust is excluded from the definition of an Investment Company solely by reason of Rule 3a-7 and to the extent Rule 3a-7 requires a trustee having certain qualifications to hold title to the "eligible assets" (as defined in Rule 3a-7) of the Trust, the Property Trustee shall possess those qualifications.

If at any time the Property Trustee shall cease to satisfy the requirements of clauses (i)-(iii) above, the Property Trustee shall immediately resign in the manner and

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with the effect set out in Section 5.02(d). If the Property Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Property Trustee and the Holders of the Common Securities (as if such Holders were the obligor referred to in Section 310(b) of the Trust Indenture Act) shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act. The Preferred Guarantee shall be deemed to be specifically described in this Declaration for the purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

The initial Trustee which shall serve as the Property Trustee is Bank One, National Association, whose address is as set forth in Section 14.01(b).

(d) The initial Trustee which shall serve as the Delaware Trustee is Bank One Delaware, Inc., a Delaware banking corporation, whose address is as set forth in Section 14.01(c).

(e) Any action taken by Holders of Common Securities pursuant to this Article V shall be taken at a meeting of Holders of Common Securities convened for such purpose or by written consent as provided in Section 12.02.

(f) No amendment may be made to this Section 5.01 which would change any rights with respect to the number, existence or appointment and removal of Trustees, except with the consent of each Holder of Common Securities.

SECTION 5.02. APPOINTMENT, REMOVAL AND RESIGNATION OF TRUSTEES. (a) Subject to Section 5.02(b), Trustees may be appointed or removed without cause at any time:

(i) until the issuance of the Securities, by written instrument executed by the Sponsor; and

(ii) after the issuance of the Securities by vote of the Holders of a Majority in liquidation amount of the Common Securities voting as a class.

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(b)(i) The Trustee that acts as Property Trustee shall not be removed in accordance with Section 5.02(a) until a Successor Property Trustee possessing the qualifications to act as Property Trustee under Section 5.01(c) has been appointed and has accepted such appointment by written instrument executed by such Successor Property Trustee and delivered to the Regular Trustees, the Delaware Trustee the Sponsor and the Property Trustee being removed; and

(ii) the Trustee that acts as Delaware Trustee shall not be removed in accordance with Section 5.02(a) until a successor Trustee possessing the qualifications to act as Delaware Trustee under Section 5.01(a)(3) (a "Successor Delaware Trustee") has been appointed and has accepted such appointment by written instrument executed by such Successor Delaware Trustee and delivered to the Regular Trustees, the Property Trustee the Sponsor and the Delaware Trustee being removed.

(c) A Trustee appointed to office shall hold office until his successor shall have been appointed or until his death, removal or resignation.

(d) Any Trustee may resign from office (without need for prior or subsequent accounting) by an instrument (a "Resignation Request") in writing signed by the Trustee and delivered to the Sponsor, the other Trustees and the Trust, which resignation shall take effect upon such delivery or upon such later date as is specified therein; PROVIDED, HOWEVER, that:

(i) no such resignation of the Trustee that acts as the Property Trustee shall be effective until:

(A) a Successor Property Trustee possessing the qualifications to act as Property Trustee under Section 5.01(c) has been appointed and has accepted such appointment by instrument executed by such Successor Property Trustee and delivered to the Trust, the Delaware Trustee the Sponsor and the resigning Property Trustee; or

(B) if the Trust is excluded from the

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definition of an Investment Company solely by reason of Rule 3a-7, until the assets of the Trust have been completely liquidated and the proceeds thereof distributed to the Holders of the Securities; and

(ii) no such resignation of the Trustee that acts as the Delaware Trustee shall be effective until a Successor Delaware Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Delaware Trustee and delivered to the Trust, the Sponsor and the resigning Delaware Trustee.

(e) If no Successor Property Trustee or Successor Delaware Trustee shall have been appointed and accepted appointment as provided in this Section 5.02 within 60 days after delivery to the Sponsor and the Trust of a Resignation Request, the resigning Property Trustee or Delaware Trustee may petition any court of competent jurisdiction for appointment of a Successor Property Trustee or Successor Delaware Trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a Successor Property Trustee or Successor Delaware Trustee, as the case may be.

(f) The Sponsor shall provide notice to the Property Trustee of any resignation or removal of a Regular Trustee.

SECTION 5.03. VACANCIES AMONG TRUSTEES. If a Trustee ceases to hold office for any reason and the number of Trustees is not reduced pursuant to Section 5.01 or if the number of Trustees is increased pursuant to Section 5.01, a vacancy shall occur. A resolution certifying the existence of such vacancy by a majority of the Regular Trustees shall be conclusive evidence of the existence of such vacancy. The vacancy shall be filled with a Trustee appointed in accordance with the requirements of this Article V.

SECTION 5.04. EFFECT OF VACANCIES. The death, resignation, retirement, removal, bankruptcy, dissolution,

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liquidation, incompetence or incapacity to perform the duties of a Trustee, or any one of them, shall not operate to annul the Trust. Whenever a vacancy in the number of Regular Trustees shall occur until such vacancy is filled as provided in this Article V, the Regular Trustees in office, regardless of their number, shall have all the powers granted to the Regular Trustees and shall discharge all the duties imposed upon the Regular Trustees by this Declaration.

SECTION 5.05. MEETINGS. Meetings of the Regular Trustees shall be held from time to time upon the call of any Regular Trustee. Regular meetings of

the Regular Trustees may be held at a time and place fixed by resolution of the Regular Trustees. Notice of any in-person meeting of the Regular Trustees shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 48 hours before such meeting. Notice of any telephonic meeting of the Regular Trustees or any committee thereof shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 24 hours before such meeting. Notices shall contain a brief statement of the time, place and anticipated purposes of the meeting. The presence (whether in person or by telephone) of a Regular Trustee at a meeting shall constitute a waiver of notice of such meeting except where a Regular Trustee attends a meeting for the express purpose of objecting to the transaction of any activity on the ground that the meeting has not been lawfully called or convened. Unless provided otherwise in this Declaration, any action of the Regular Trustees may be taken at a meeting by vote of a majority of the Regular Trustees present (whether in person or by telephone) and eligible to vote with respect to such matter; PROVIDED that a Quorum is present, or without a meeting by the unanimous written consent of the Regular Trustees.

SECTION 5.06. DELEGATION OF POWER. (a) Any Regular Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purpose of executing any registration statement or amendment thereto or other document or schedule filed with the Commission or making any other governmental filing (including, without limitation the

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filings referred to in Section 3.13).

(b) The Regular Trustees shall have the power to delegate from time to time to such of their number or to officers of the Trust or to officers of the Sponsor the doing of such things and the execution of such instruments either in the name of the Trust or the names of the Regular Trustees or otherwise as the Regular Trustees may deem expedient, to the extent such delegation is not prohibited by applicable law or contrary to the provisions of the Trust, as set forth herein.

#### ARTICLE VI

#### DISTRIBUTIONS

SECTION 6.01. DISTRIBUTIONS. Holders shall receive periodic distributions, redemption payments and liquidation distributions in accordance with the applicable terms of the relevant Holder's Securities ("Distributions"). Distributions shall be made to the Holders of Preferred Securities and Common Securities in accordance with the terms of the Securities as set forth in Exhibits B and C hereto. If and to the extent that the Sponsor makes a payment of interest (including Compounded Interest (as defined in the Indenture)), premium or principal on the Debentures held by the Property Trustee (the amount of any such payment being a "Payment Amount"), the Property Trustee shall and is directed to promptly make a Distribution of the Payment Amount to Holders in accordance with the terms of the Securities as set forth in Exhibits B and C hereto.

#### ARTICLE VII

#### ISSUANCE OF SECURITIES

SECTION 7.01. GENERAL PROVISIONS REGARDING SECURITIES. (a) The Regular Trustees shall issue on behalf of the Trust Securities in fully registered form representing undivided beneficial interests in the assets of the Trust in accordance with Section 7.01(b) and for the

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consideration specified in Section 3.03.

(b) The Regular Trustees shall issue on behalf of the Trust one class of Preferred Securities representing preferred undivided beneficial interests in the assets of the Trust having such terms as are set forth in Exhibit B (the "Preferred Securities") which terms are incorporated by reference in, and made a part of, this Declaration as if specifically set forth herein, and one class of common securities representing common undivided beneficial interests in the assets of the Trust having such terms as are set forth in Exhibit C (the "Common Securities") which terms are incorporated by reference in, and made a part of, this Declaration as if specifically set forth herein. The Trust shall have no securities or other interests in the assets of the Trust other than the Preferred Securities and the Common Securities.

(c) The Certificates shall be signed on behalf of the Trust by the Regular Trustees (or if there are more than two Regular Trustees by any two of the Regular Trustees). Such signatures may be the manual or facsimile signatures of the present or any future Regular Trustee. Typographical and other minor errors or defects in any such reproduction of any such signature shall not affect the validity of any Certificate. In case any Regular Trustee of the Trust who shall have signed any of the Certificates shall cease to be such Regular Trustee before the Certificate so signed shall be delivered by the Trust, such Certificate nevertheless may be delivered as though the person who signed such Certificate had not ceased to be such Regular Trustee; and any Certificate may

be signed on behalf of the Trust by such persons as, at the actual date of the execution of such Certificate, shall be the Regular Trustees of the Trust, although at the date of the execution and delivery of the Declaration any such person was not such a Regular Trustee. Certificates shall be printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Regular Trustees, as evidenced by their execution thereof, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements as the Regular Trustees may deem

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appropriate, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Securities may be listed, or to conform to usage. Pending the preparation of definitive Certificates, the Regular Trustees on behalf of the Trust may execute temporary Certificates (printed, lithographed or typewritten), in substantially the form of the definitive Certificates in lieu of which they are issued, but with such omissions, insertions and variations as may be appropriate for temporary Certificates, all as may be determined by the Regular Trustees. Each temporary Certificate shall be executed by the Regular Trustees on behalf of the Trust upon the same conditions and in substantially the same manner, and with like effect, as definitive Certificates. Without unnecessary delay, the Regular Trustees on behalf of the Trust will execute and furnish definitive Certificates and thereupon any or all temporary Certificates may be surrendered to the transfer agent and registrar in exchange therefor (without charge to the Holders). Each Certificate whether in temporary or definitive form shall be countersigned by the manual or facsimile signature of an authorized signatory of the Person acting as registrar and transfer agent for the Securities, which shall initially be the Property Trustee.

(d) The consideration received by the Trust for the issuance of the Securities shall constitute a contribution to the capital of the Trust and shall not constitute a loan to the Trust.

(e) Upon issuance of the Securities as provided in this Declaration, the Securities so issued shall be deemed to be validly issued, fully paid and non-assessable.

(f) Every Person, by virtue of having become a Holder or a Preferred Security Beneficial Owner in accordance with the terms of this Declaration, shall be deemed to have expressly assented and agreed to the terms of, and shall be bound by, this Declaration.

(g) Upon issuance of the Securities as provided in this Declaration, the Regular Trustees on behalf of the Trust shall return to the Sponsor the \$10 constituting initial trust assets as set forth in the Original

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Declaration.

#### ARTICLE VIII

##### TERMINATION OF TRUST

SECTION 8.01. TERMINATION OF TRUST. The Trust shall dissolve when:

(i) all of the Securities shall have been called for redemption and the amounts necessary for redemption thereof shall have been paid to the Holders of Securities in accordance with the terms of the Securities; or

(ii) all of the Debentures shall have been distributed to the Holders of Securities in exchange for all of the Securities in accordance with the terms of the Securities; or

(iii) upon the expiration of the term of the Trust as set forth in Section 3.17,

and thereafter the Trustees shall, after satisfaction of all obligations of the trust, file a certificate of cancellation with the Secretary of State of the State of Delaware and the Trust shall terminate. The Trustees shall so file such a certificate as soon as practicable after the occurrence of an event referred to in this Section 8.01.

The provisions of Sections 3.12 and 4.02 and Article X shall survive the termination of the Trust.

#### ARTICLE IX

##### TRANSFER OF INTERESTS

SECTION 9.01. TRANSFER OF SECURITIES. (a) Securities may only be transferred, in whole or in part, in accordance with the terms and conditions set forth in this Declaration. Any transfer or purported transfer of any Security not made in accordance with this Declaration shall be null and void.

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(b) Subject to this Article IX, Preferred Securities shall be freely

transferable.

(c) Subject to this Article IX, the Sponsor and any Related Party may only transfer Common Securities to the Sponsor or a Related Party; PROVIDED that any such transfer shall be subject to the condition that the transferor shall have obtained (1) either a ruling from the Internal Revenue Service or an unqualified written opinion addressed to the Trust and delivered to the Trustees of nationally recognized independent tax counsel experienced in such matters to the effect that such transfer will not (i) cause the Trust to be treated as issuing a class of interests in the Trust differing from the class of interests represented by the Common Securities originally issued to the Sponsor, (ii) result in the Trust acquiring or disposing of, or being deemed to have acquired or disposed of, an asset, or (iii) result in or cause the Trust to be treated as anything other than a grantor trust for United States Federal income tax purposes and (2) an unqualified written opinion addressed to the Trust and delivered to the Trustees of a nationally recognized independent counsel experienced in such matters that such transfer will not cause the Trust to be an Investment Company or controlled by an Investment Company.

SECTION 9.02. TRANSFER OF CERTIFICATES. The Regular Trustees shall cause to be kept at an office or agency to be maintained by the Trust a register in which, subject to such reasonable regulations as it may prescribe, the Trust shall provide for the registration of Certificates and of transfers of Certificates, which will be effected without charge but only upon payment (with such indemnity as the Trust or the Registrar (as defined below) may require) in respect of any tax or other government charges which may be imposed in relation to it. The Property Trustee will be the initial registrar and transfer agent (the "Registrar") for the purpose of registering Certificates and transfers of Certificates as provided herein.

Upon surrender for registration of transfer of any

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Certificate at the office or agency of the Registrar, the Regular Trustees shall execute and the Registrar shall countersign in accordance with section 7.01(c) one or more new Certificates of any authorized denominations and of a like aggregate liquidation amount to be issued in the name of the designated transferee or transferees. Every Certificate surrendered for registration of transfer shall be accompanied by a written instrument of transfer in form satisfactory to the Trust duly executed by the Holder or such Holder's attorney duly authorized in writing. Each Certificate surrendered for registration of transfer shall be canceled by the Regular Trustees. A transferee of a Certificate shall be entitled to the rights and subject to the obligations of a Holder hereunder upon the receipt by such transferee of a Certificate. By acceptance of a Certificate, each transferee shall be deemed to have agreed to be bound by this Declaration.

SECTION 9.03. DEEMED SECURITY HOLDERS. The Trustees may treat the Person in whose name any Certificate shall be registered on the books and records of the Trust as the sole holder of such Certificate and of the Securities represented by such Certificate for purposes of receiving Distributions and for all other purposes whatsoever and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Certificate or in the Securities represented by such Certificate on the part of any Person, whether or not the Trustees shall have actual or other notice thereof.

SECTION 9.04. BOOK ENTRY INTERESTS. Unless otherwise specified in the terms of the Preferred Securities, the Preferred Securities Certificates, on original issuance (including Preferred Securities, if any, issued on the Option Closing Date pursuant to the exercise of the over-allotment option set forth in the Underwriting Agreement), will be issued in the form of one or more, fully registered, global Preferred Security Certificates (each a "Global Certificate"), to be delivered to DTC, the initial Clearing Agency, by, or on behalf of, the Trust. Such Global Certificates shall initially be registered on the books and records of the Trust in the name of Cede & Co.,

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the nominee of DTC, and no Preferred Security Beneficial Owner will receive a definitive Preferred Security Certificate representing such Preferred Security Beneficial Owner's interests in such Global Certificates, except as provided in Section 9.07. Unless and until definitive, fully registered Preferred Security Certificates (the "Definitive Preferred Security Certificates") have been issued to the Preferred Security Beneficial Owners pursuant to Section 9.07:

(i) the provisions of this Section 9.04 shall be in full force and effect;

(ii) the Trust and the Trustees shall be entitled to deal with the Clearing Agency for all purposes of this Declaration (including the payment of Distributions on the Global Certificates and receiving approvals, votes or consents hereunder) as the Holder of the Preferred Securities and the sole holder of the Global Certificates and shall have no obligation to the Preferred Security Beneficial Owners;

(iii) to the extent that the provisions of this Section 9.04 conflict with any other provisions of this Declaration, the provisions of this Section 9.04 shall control; and

(iv) the rights of the Preferred Security Beneficial Owners shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreements between such Preferred Security Beneficial Owners and the Clearing Agency and/or the Clearing Agency Participants. DTC will make book entry transfers among the Clearing Agency Participants and receive and transmit payments of Distributions on the Global Certificates to such Clearing Agency Participants.

SECTION 9.05. NOTICES TO HOLDERS OF CERTIFICATES. Whenever a notice or other communication to the Holders is required to be given under this Declaration, unless and until Definitive Preferred Security Certificates shall have been issued pursuant to Section 9.07, the relevant Trustees shall give all such notices and communications, specified herein to be given to Preferred Securities Holders, to the

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Clearing Agency and, with respect to any Preferred Security Certificate registered in the name of a Clearing Agency or the nominee of a Clearing Agency, the Trustees shall, except as set forth herein, have no notice obligations to the Preferred Security Beneficial Owners.

SECTION 9.06. APPOINTMENT OF SUCCESSOR CLEARING AGENCY. If any Clearing Agency elects to discontinue its services as securities depository with respect to the Preferred Securities, the Regular Trustees may, in their sole discretion, appoint a successor Clearing Agency with respect to the Preferred Securities.

SECTION 9.07. DEFINITIVE PREFERRED SECURITIES CERTIFICATES. If (i) a Clearing Agency elects to discontinue its services as securities depository with respect to the Preferred Securities and a successor Clearing Agency is not appointed within 90 days after such discontinuance pursuant to Section 9.06 or (ii) the Regular Trustees elect after consultation with the Sponsor to terminate the book entry system through the Clearing Agency with respect to the Preferred Securities, then (x) Definitive Preferred Security Certificates shall be prepared by the Regular Trustees on behalf of the Trust with respect to such Preferred Securities and (y) upon surrender of the Global Certificates by the Clearing Agency, accompanied by registration instructions, the Regular Trustees shall cause definitive Preferred Security Certificates to be delivered to Preferred Security Beneficial Owners in accordance with the instructions of the Clearing Agency. Neither the Trustees nor the Trust shall be liable for any delay in delivery of such instructions and each of them may conclusively rely on, and shall be protected in relying on, such instructions.

SECTION 9.08. MUTILATED, DESTROYED, LOST OR STOLEN CERTIFICATES. If (a) any mutilated Certificates should be surrendered to the Registrar, or if the Registrar shall receive evidence to its satisfaction of the destruction, loss or theft of any Certificate and (b) there shall be delivered to the Trustees such security or indemnity as may be required by them to keep each of them

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harmless, then in the absence of notice that such Certificate shall have been acquired by a bona fide purchaser, any two Regular Trustees on behalf of the Trust shall execute and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Certificate, a new Certificate of like denomination. In connection with the issuance of any new Certificate under this Section 9.08, the Regular Trustees may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith. Any duplicate Certificate issued pursuant to this Section shall constitute conclusive evidence of an ownership interest in the relevant Securities, as if originally issued, whether or not the lost, stolen or destroyed Certificate shall be found at any time.

## ARTICLE X

### LIMITATION OF LIABILITY; INDEMNIFICATION

SECTION 10.01 EXCULPATION. (a) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Trust or any Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Declaration or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's gross negligence (or, in the case of the Property Trustee, negligence) or willful misconduct with respect to such acts or omissions.

(b) An Indemnified Person shall be fully protected in relying in good faith upon the records of the Trust and upon such information, opinions, reports or statements presented to the Trust by any Person as to matters the Indemnified Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Trust, including information, opinions, reports or statements as to the value and amount of assets,

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liabilities, profits, losses or any other facts pertinent to the existence and amount of assets from which Distributions to Holders of Securities might properly be paid.

(c) Pursuant to Section 3803(a) of the Business Trust Act, the Holders of Securities, in their capacities as Holders, shall be entitled to the same limitation of liability that is extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

SECTION 10.02. INDEMNIFICATION AND COMPENSATION. (a) To the fullest extent permitted by applicable law, the Sponsor shall indemnify and hold harmless each Indemnified Person from and against any loss, damage or claim incurred by such Indemnified Person by reason of any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of authority conferred on such Indemnified Person by this Declaration, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Indemnified Person by reason of gross negligence (or, in the case of the Property Trustee, negligence) or willful misconduct with respect to such acts or omissions.

(b) To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by an Indemnified Person in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Sponsor prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Sponsor of an undertaking by or on behalf of the Indemnified Person to repay such amount if it shall be determined that the Indemnified Person is not entitled to be indemnified as authorized in Section 10.02(a).

(c) The Sponsor agrees to pay the Property Trustee and the Delaware Trustee from time to time such compensation for all services rendered by the Property Trustee and the Delaware Trustee hereunder as may be

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mutually agreed upon in writing by the Sponsor and the Property Trustee or the Delaware Trustee, as the case may be, and, except as otherwise expressly provided herein, to reimburse the Property Trustee and the Delaware Trustee upon its or their request for all reasonable expenses, disbursements and advances incurred or made by the Property Trustee or the Delaware Trustee, as the case may be, in accordance with the provisions of this Declaration, except any such expense, disbursement or advance as may be attributable to its or their negligence (or in the case of the Delaware Trustee, its gross negligence) or bad faith.

SECTION 10.03. OUTSIDE BUSINESSES. Any Covered Person, the Sponsor, the Delaware Trustee and the Property Trustee may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Trust, and the Trust and the Holders of Securities shall have no rights by virtue of this Declaration in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Trust, shall not be deemed wrongful or improper. None of the Covered Persons, the Sponsor, the Delaware Trustee or the Property Trustee shall be obligated to present any particular investment or other opportunity to the Trust even if such opportunity is of a character that, if presented to the Trust, could be taken by the Trust, and any Covered Person, the Sponsor, the Delaware Trustee and the Property Trustee shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment or other opportunity. Any Covered Person, the Delaware Trustee and the Property Trustee may engage or be interested in any financial or other transaction with the Sponsor or any Affiliate of the Sponsor, or may act as depository for, trustee or agent for, or act on any committee or body of holders of, securities or other obligations of the Sponsor or its Affiliates.

ARTICLE XI

ACCOUNTING

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SECTION 11.01. FISCAL YEAR. The fiscal year ("Fiscal Year") of the Trust shall be the calendar year, or such other year as is required by the Code.

SECTION 11.02. CERTAIN ACCOUNTING MATTERS. (a) At all times during the existence of the Trust, the Regular Trustees shall keep, or cause to be kept, full books of account, records and supporting documents, which shall reflect in reasonable detail each transaction of the Trust. The books of account shall be maintained on the accrual method of accounting, in accordance with generally accepted accounting principles consistently applied. The Trust shall use the accrual method of accounting for United States Federal income tax purposes. The books and records of the Trust, together with a copy of this Declaration and a certified copy of the Certificate of Trust, or any amendment thereto, shall at all times be maintained at the principal office of the Trust and shall be open for inspection by any Holder or its duly authorized representative for any purpose reasonably related to its interest in the Trust

during normal business hours.

(b) The Regular Trustees shall, as soon as available after the end of each Fiscal Year of the Trust, cause to be prepared and mailed to each Holder of Securities unaudited financial statements of the Trust for such Fiscal Year, prepared in accordance with generally accepted accounting principles; PROVIDED that if the Trust is required to comply with the periodic reporting requirements of Sections 13(a) or 15(d) of the Exchange Act, such financial statements for such Fiscal Year shall be examined and reported on by a firm of independent certified public accountants selected by the Regular Trustees (which firm may be the firm used by the Sponsor).

(c) The Regular Trustees shall cause to be prepared and mailed to each Holder of Securities an annual United States Federal income tax information statement, on such form as is required by the Code, containing such information with regard to the Securities held by each Holder as is required by the Code and the Treasury Regulations. Notwithstanding any right under the Code to

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deliver any such statement at a later date, the Regular Trustees shall endeavor to deliver all such statements within 30 days after the end of each Fiscal Year of the Trust.

(d) The Regular Trustees shall cause to be prepared and filed with the appropriate taxing authority an annual United States Federal income tax return, on such form as is required by the Code, and any other annual income tax returns required to be filed by the Regular Trustees on behalf of the Trust with any state or local taxing authority, such returns to be filed as soon as practicable after the end of each Fiscal Year of the Trust.

SECTION 11.03. BANKING. The Regular Trustees shall maintain one or more bank accounts in the name and for the sole benefit of the Trust; PROVIDED, HOWEVER, that all payments of funds in respect of the Debentures held by the Property Trustee shall be made directly to the Property Account and no other funds from the Trust shall be deposited in the Property Account. The sole signatories for such accounts shall be designated by the Regular Trustees; PROVIDED, HOWEVER, that the Property Trustee shall designate the sole signatories for the Property Account.

SECTION 11.04. WITHHOLDING. The Trust and the Trustees shall comply with all withholding requirements under United States Federal, state and local law. The Trust shall request, and the Holders shall provide to the Trust, such forms or certificates as are necessary to establish an exemption from withholding with respect to each Holder, and any representations and forms as shall reasonably be requested by the Trust to assist it in determining the extent of, and in fulfilling, its withholding obligations. The [Property] Trustee shall file required forms with applicable jurisdictions and, unless an exemption from withholding is properly established by a Holder, the Property Trustee shall remit amounts withheld with respect to the Holder to applicable jurisdictions. To the extent that the Trust is required to withhold and pay over any amounts to any authority with respect to distributions or allocations to any Holder, the amount withheld shall be deemed to be a distribution in the amount of the withholding to the Holder. In the event of any claimed overwithholding, Holders shall be limited to an action against the applicable

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jurisdiction. If the amount to be withheld was not withheld from a Distribution, the Property Trustee may reduce subsequent Distributions by the amount of such withholding.

## ARTICLE XII

### AMENDMENTS AND MEETINGS

SECTION 12.01. AMENDMENTS. (a) Except as otherwise provided in this Declaration or by any applicable terms of the Securities, this Declaration may be amended by, and only by, a written instrument executed by a majority of the Regular Trustees (or, if there are only two Regular Trustees, both Regular Trustees); PROVIDED, HOWEVER, that (i) no amendment to this Declaration shall be made unless the Regular Trustees shall have obtained (A) either a ruling from the Internal Revenue Service or a written unqualified opinion of nationally recognized independent tax counsel experienced in such matters to the effect that such amendment will not cause the Trust to be classified for United States Federal income tax purposes as an association taxable as a corporation or a partnership and to the effect that the Trust will continue to be treated as a grantor trust for purposes of United States Federal income taxation and (B) a written unqualified opinion of nationally recognized independent counsel experienced in such matters to the effect that such amendment will not cause the Trust to be an Investment Company which is required to be registered under the Investment Company Act, (ii) if Securities are outstanding, any amendment which would adversely affect the rights, privileges or preferences of any Holder of Securities may be effected only after satisfaction of such additional requirements as may be set forth in the terms of such Securities, (iii) Section 4.02, Section 9.01(c) and this Section 12.01 shall not be amended without the consent of all Holders of the Securities, (iv) no amendment which adversely affects the rights, powers and privileges of the Property Trustee or the Delaware Trustee shall be made without the consent of the Property Trustee or the Delaware Trustee, as the case may be, (v) Article IV shall not be amended



the Sponsor, and (vi) the rights of Holders of Common Securities under Article V to increase or decrease the number of, and to appoint, replace or remove, Trustees shall not be amended without the consent of each Holder of Common Securities.

(b) Notwithstanding Section 12.02(a)(ii), this Declaration may be amended without the consent of the Holders of the Securities to (i) cure any ambiguity, (ii) correct or supplement any provision in this Declaration that may be defective or inconsistent with any other provision of this Declaration, (iii) to add to the covenants, restrictions or obligations of the Sponsor, and (iv) to conform to any changes in Rule 3a-7 or any change in interpretation or application of Rule 3a-7 by the Commission, which amendment does not adversely affect the rights, preferences or privileges of the Holders.

(c) The Regular Trustees shall promptly furnish to each of the Property Trustee and the Delaware Trustee a copy of each amendment to this Declaration.

SECTION 12.02. MEETINGS OF THE HOLDERS OF SECURITIES; ACTION BY WRITTEN CONSENT. (a) Meetings of the Holders of Preferred Securities and/or Common Securities may be called at any time by the Regular Trustees (or as provided in the terms of the Securities) to consider and act on any matter on which Holders of such class of Securities are entitled to act under the terms of this Declaration, the terms of the Securities or the rules of any stock exchange on which the Preferred Securities are listed or admitted for trading. The Regular Trustees shall call a meeting of Holders of Preferred Securities or Common Securities if directed to do so by Holders of at least 10% in liquidation amount of such class of Securities. Such direction shall be given by delivering to the Regular Trustees one or more notices in writing stating that the signing Holders of Securities wish to call a meeting and indicating the general or specific purpose for which the meeting is to be called. Any Holders of Securities calling a meeting shall specify in writing the Certificates held by the Holders of Securities exercising the right to call a meeting and only those

specified Certificates shall be counted for purposes of determining whether the required percentage set forth in the second sentence of this paragraph has been met.

(b) Except to the extent otherwise provided in the terms of the Securities, the following provision shall apply to meetings of Holders of Securities:

(i) Notice of any such meeting shall be given by mail to each Trustee and all the Holders of Securities having a right to vote thereat not less than seven days nor more than 60 days prior to the date of such meeting. Whenever a vote, consent or approval of the Holders of Securities is permitted or required under this Declaration or the rules of any stock exchange on which the Preferred Securities are listed or admitted for trading, such vote, consent or approval may be given at a meeting of the Holders of Securities. Any action that may be taken at a meeting of the Holders of Securities may be taken without a meeting if a consent in writing setting forth the action so taken is signed by Holders of Securities owning not less than the minimum aggregate liquidation amount of Securities that would be necessary to authorize or take such action at a meeting at which all Holders of Securities having a right to vote thereon were present and voting. Prompt notice of the taking of action without a meeting shall be given to the Holders of Securities entitled to vote who have not consented in writing. The Regular Trustees may specify that any written ballot submitted to the Holders of Securities for the purpose of taking any action without a meeting shall be returned to the Trust within the time specified by the Regular Trustees.

(ii) Each Holder of a Security may authorize any Person to act for it by proxy on all matters in which a Holder of a Security is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Holder of Security executing it. Except as otherwise provided herein or in the terms of the Securities, all matters

relating to the giving, voting or validity of proxies shall be governed by the General Corporation Law of the State of Delaware relating to proxies and judicial interpretations thereunder as if the Trust were a Delaware corporation and the Holders of the Securities were stockholders of a Delaware corporation.

(iii) Each meeting of the Holders of the Securities shall be conducted by the Regular Trustees or by such other Person that the Regular Trustees may designate.

(iv) Unless otherwise provided in the Business Trust Act, this Declaration or the rules of any stock exchange on which the Preferred Securities are then listed or admitted for trading, the Regular Trustees, in their sole discretion, shall establish all other provisions relating to meetings of Holders of Securities, including notice of the time, place or purpose of any meeting at which any matter is to be voted on by any Holders of Securities, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy or any other matter with respect to the exercise of any such right to vote.

#### ARTICLE XIII

##### REPRESENTATIONS OF PROPERTY TRUSTEE AND DELAWARE TRUSTEE

###### SECTION 13.01. REPRESENTATIONS AND WARRANTIES OF PROPERTY TRUSTEE.

(a) The Trustee which acts as initial Property Trustee represents and warrants to the Trust and to the Sponsor at the date of this Declaration, and each Successor Property Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Property Trustee's acceptance of its appointment as Property Trustee that:

(i) The Property Trustee is a banking corporation with trust powers, duly organized, validly existing and

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in good standing under the laws of the State of its incorporation, with trust power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Declaration.

(ii) The execution, delivery and performance by the Property Trustee of this Declaration has been duly authorized by all necessary corporate action on the part of the Property Trustee. The Declaration has been duly executed and delivered by the Property Trustee, and constitutes a legal, valid and binding obligation of the Property Trustee, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency, and other similar laws affecting creditors' rights generally and to general principles of equity and the discretion of the court (regardless of whether the enforcement of such remedies is considered in a proceeding in equity or at law).

(iii) The execution, delivery and performance of this Declaration by the Property Trustee does not conflict with or constitute a breach of the charter or By-laws of the Property Trustee.

(iv) No consent, approval or authorization of, or registration with or notice to, any banking authority which supervises or regulates the Property Trustee is required for the execution, delivery or performance by the Property Trustee of this Declaration.

(v) The Property Trustee satisfies the qualifications set forth in Section 5.01(c).

(b) The Trustee which acts as initial Delaware Trustee represents and warrants to the Trust and the Sponsor at the date of this Declaration, and each Successor Delaware Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Delaware Trustee's acceptance of its appointment as Delaware Trustee, that it satisfies the qualifications set forth in Section 5.01(a)(3).

#### ARTICLE XIV

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##### MISCELLANEOUS

SECTION 14.01. NOTICES. All notices provided for in this Declaration shall be in writing, duly signed by the party giving such notice, and shall be delivered, telecopied or mailed by first class mail, as follows:

(a) if given to the Trust, in care of the Regular Trustees at the Trust's mailing address set forth below (or such other address as the Regular Trustees on behalf of the Trust may give notice of to the Property Trustee, the Delaware Trustee and the Holders of the Securities):

Fund American Trust I  
In care of Fund American Companies, Inc.  
One Beacon Street  
Boston, Massachusetts 02108-3100  
Attention: [                    ]  
                  [                    ],  
                  Trustees  
Facsimile No: [ (    )                    ]

(b) if given to the Property Trustee, at the mailing address of the Property Trustee set forth below (or such other address as the Property Trustee may give notice of to the Trust and the Holders of the Securities):

[ ]  
[ ]  
[ ]  
[ ]  
Attention: [ ]  
Facsimile No: [( ) ]

(c) if given to the Delaware Trustee, at the mailing address of the Delaware Trustee set forth below (or such other address as the Delaware Trustee may give notice of to the Trust and the Holders of the Securities):

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[ ]  
[ ]  
[ ]  
Attention: [ ]  
Facsimile No: [( ) ]

with a copy to:

[ ]  
[ ]  
[ ]  
[ ]  
Attention: [ ]  
Facsimile No: [( ) ]

(d) if given to the Holder of the Common Securities, at the mailing address of the Sponsor set forth below (or such other address as the Holder of the Common Securities may give notice to the Property Trustee, the Delaware Trustee and the Trust):

Fund American Companies, Inc.  
One Beacon Street  
Boston, Massachusetts 02108-3100  
Attention: [ ]  
Facsimile No: [( ) ]

(e) if given to any other Holder, at the address set forth on the books and records of the Trust.

A copy of any notice to the Property Trustee or the Delaware Trustee shall also be sent to the Trust. All notices shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

SECTION 14.02. UNDERTAKING FOR COSTS. All parties to this Declaration agree, and each Holder of any Securities by his or her acceptance thereof shall be deemed to have agreed, that any court may in its discretion

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require, in any suit for the enforcement of any right or remedy under this Declaration, or in any suit against the Property Trustee for any action taken or omitted by it as Property Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 14.02 shall not apply to any suit instituted by the Property Trustee, to any suit instituted by any Holder of Preferred Securities, or group of Holders of Preferred Securities, holding more than 10% in aggregate liquidation amount of the outstanding Preferred Securities, or to any suit instituted by any Holder of Preferred Securities for the enforcement of the payment of the principal of (or premium, if any) or interest on the Debentures, on or after the respective due dates expressed in such Debentures.

SECTION 14.03. GOVERNING LAW. This declaration and the Rights of the Parties hereunder shall be governed by and interpreted in accordance with the laws of the state of Delaware and all rights and remedies shall be governed by such laws without regard to the principles of conflict of laws of the state of Delaware or any other jurisdiction that would call for the application of the law of any jurisdiction other than the state of Delaware; PROVIDED, HOWEVER, that there shall not be applicable to the parties hereunder or this declaration any provision of the laws (statutory or common) of the state of Delaware pertaining to trusts that relate to or regulate, in a manner inconsistent with the terms hereof (A) the filing with any court or governmental body or agency of trustee accounts or schedules of trustee fees and charges, (B) affirmative requirements to post bonds for trustees, officers, agents or employees of a trust, (C) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property (D) fees or other sums payable to trustees, officers, agents or employees of a trust, (E) the allocation of receipts and expenditures to income or principal, (F) restrictions or limitations on the

permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding or investing trust storage or (G) the establishment of fiduciary or other standards of responsibility or limitations on the acts or powers of trustees that are inconsistent with the limitations or liabilities or authorities and powers of the trustees hereunder as set forth or referenced in this declaration. Section 3540 of title 12 of the Delaware code shall not apply to the Trust.

SECTION 14.04. HEADINGS. Headings contained in this Declaration are inserted for convenience of reference only and do not affect the interpretation of this Declaration or any provision hereof.

SECTION 14.05. PARTIAL ENFORCEABILITY. If any provision of this Declaration, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this Declaration, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

SECTION 14.06. COUNTERPARTS. This Declaration may contain more than one counterpart of the signature pages and this Declaration may be executed by the affixing of the signature of the Sponsor and each of the Trustees to one of such counterpart signature pages. All of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

SECTION 14.07. INTENTION OF THE PARTIES. It is the intention of the parties hereto that the Trust not be classified for United States Federal income tax purposes as an association taxable as a corporation or partnership but that the Trust be treated as a grantor trust for United States Federal income tax purposes. The provisions of this Declaration shall be interpreted to further this intention of the parties.

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SECTION 14.08. SUCCESSORS AND ASSIGNS. Whenever in this Declaration any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included, and all covenants and agreements in this Declaration by the Sponsor and the Trustees shall bind and inure to the benefit of their respective successors and assigns, whether so expressed.

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IN WITNESS WHEREOF, the undersigned have caused these presents to be executed as of the day and year first above written.

FUND AMERICAN COMPANIES, INC.,  
as Sponsor,

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

REGULAR TRUSTEES:

\_\_\_\_\_  
as Regular Trustee

\_\_\_\_\_  
as Regular Trustee

BANK ONE, NATIONAL ASSOCIATION  
as Property Trustee,

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

BANK ONE, DELAWARE, INC.  
as Delaware Trustee,

by \_\_\_\_\_  
Name:

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Title:

CERTIFICATE OF TRUST OF FUND AMERICAN TRUST I

THIS Certificate of Trust of Fund American Trust I (the "Trust"), dated October 30, 2001, is being duly executed and filed by Reid T. Campbell and Dennis R. Smith, and Bank One Delaware, Inc., a Delaware corporation, as trustees, to form a business trust under the Delaware Business Trust Act (12 Del. C. Section 3801 ET SEQ.)(the "Act").

- 1. NAME. The name of the business trust formed hereby is Fund American Trust I.
- 2. DELAWARE TRUSTEE. The name and business address of the trustee of the Trust in the State of Delaware is Bank One Delaware, Inc., 3 Christiana Center, 201 North Walnut Street, Wilmington, Delaware 19801.
- 3. EFFECTIVE DATE. This Certificate of Trust shall be effective upon filing with the Secretary of State.

IN WITNESS WHEREOF, the undersigned, being all of the trustees of the Trust, have executed this Certificate of Trust in accordance with Section 3811(a) of the Act.

Bank One Delaware, Inc.,  
as Trustee

By:  
-----  
Name: Melissa G. Weisman  
Title: Vice President

-----  
as Trustee  
Name: Reid T. Campbell

-----  
as Trustee  
Name: Dennis R. Smith

TERMS OF THE  
Preferred Securities

Pursuant to Section 7.01 of the Amended and Restated Declaration of Trust of Fund American Trust I dated as of [ ] (as amended from time to time, the "Declaration"), the designations, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Securities are set forth below (each capitalized term used but not defined herein having the meaning set forth in the Declaration):

1. DESIGNATION AND NUMBER. Preferred Securities of the Trust with an aggregate liquidation amount in the assets of the Trust of up to [ ] Dollars (\$[ ]) (including up to [ ] Dollars (\$[ ]) issuable upon exercise of the overallotment option set forth in the Underwriting Agreement) and a liquidation amount in the assets of the Trust of \$[ ] per Preferred Security are hereby designated as "[ ]% Preferred Trust Securities". The Preferred Security Certificates evidencing the Preferred Securities shall be substantially in the form attached hereto as Annex I, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice or to conform to the rules of any stock exchange on which the Preferred Securities are listed. In connection with the issuance and sale of the Preferred Securities and the Common Securities, the Trust will purchase, as trust assets, Debentures of the Sponsor having an aggregate principal amount equal to the aggregate liquidation amount of the Preferred Securities and the Common Securities so issued and

bearing interest at an annual rate equal to the annual Distribution rate on the Preferred Securities and the Common Securities and having payment and redemption provisions which correspond to the payment and redemption provisions of the Preferred Securities and the Common Securities.

2. DISTRIBUTIONS. (a) Distributions payable on each Preferred Security will be payable [at a fixed rate per annum of [ ]%] [floating rate] (the "Coupon Rate") of the stated liquidation amount of \$[ ] per Preferred Security. Distributions in arrears for more than one month will bear interest at the Coupon Rate (to the extent permitted by law), compounded monthly. The term "Distributions" as used in these terms means such periodic cash distributions and any such interest payable unless otherwise stated. A Distribution will be made by the Property Trustee only to the extent that interest payments are made in respect of the Debentures held by the Property Trustee. The amount of Distributions payable for any period will be computed on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a 30-day period for which Distributions are computed, Distributions will be computed on the basis of the actual number of days elapsed.

(b) Distributions on the Preferred Securities will be cumulative, will accrue from [ ], and will be payable [monthly] [quarterly] [semi-annually] in arrears, on the first day of each period commencing on [ ], except as otherwise described below, but only if and to the extent that interest payments are made in respect of the Debentures held by the Property Trustee. So long as the Sponsor is not in default in the payment of interest on the Debentures, the Sponsor shall have the right under the Indenture for the Debentures to defer payments of interest by extending the interest payment period from time to time on the Debentures for a period not to exceed [60] [20] [10] consecutive [monthly] [quarterly] [semi-annually] interest periods (an "Extension Period"), PROVIDED, HOWEVER, that an Extension Period may not extend beyond the maturity of the Debentures. During any such Extension Period, monthly Distributions will continue to accrue with interest thereon (to the extent permitted by applicable law) at the Coupon Rate, compounded [monthly] [quarterly] [semi-annually]. Prior to the termination of any such Extension Period, the Sponsor may further extend such Extension Period; PROVIDED

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that such Extension Period together with all such previous and further extensions thereof may not exceed 60 consecutive monthly interest periods. Upon the termination of any Extension Period and the payment of all amounts then due, the Sponsor may commence a new Extension Period, subject to the above requirements. Payments of accrued Distributions will be payable to Holders of Preferred Securities as they appear on the books and records of the Trust on the record date for the first interest payment date occurring at or after the end of the Extension Period.

(c) Distributions on the Preferred Securities will be payable promptly by the Property Trustee (or other Paying Agent) upon receipt of immediately available funds to the Holders thereof as they appear on the books and records of the Trust on the relevant record dates. While the Preferred Securities remain in book-entry only form, the relevant record dates shall be one Business Day prior to the relevant Distribution date, and if the Preferred Securities are no longer in book-entry only form, the relevant record dates will be the fifteenth (15th) day of the month immediately preceding the month in which the relevant Distribution date occurs, which record and payment dates correspond to the record and interest payment dates for the Debentures. Distributions payable on any Preferred Securities that are not punctually paid on any Distribution payment date as a result of the Sponsor having failed to make the corresponding interest payment on the Debentures will forthwith cease to be payable to the Person in whose name such Preferred Security is registered on the relevant record date, and such defaulted Distribution will instead be payable to the Person in whose name such Preferred Security is registered on the special record date established by the Regular Trustees, which record date shall correspond to the special record date or other specified date determined in accordance with the Indenture; PROVIDED, HOWEVER, that Distributions shall not be considered payable on any Distribution payment date falling within an Extension Period unless the Sponsor has elected to make a full or partial payment of interest accrued on the Debentures on such Distribution payment date. Subject to any applicable laws and regulations and the provisions of the Declaration, each

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payment in respect of the Preferred Securities will be made as described in paragraph 9 hereof. If any date on which Distributions are payable on the Preferred Securities is not a Business Day, then payment of the Distribution payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date.

(d) All Distributions paid with respect to the Preferred Securities and the Common Securities will be paid pro rata to the Holders thereof entitled thereto. If an Event of Default has occurred and is continuing, the Preferred Securities shall have a priority over the Common Securities with respect to Distributions.

(e) In the event that there is any money or other property held by or for the Trust that is not accounted for under the Declaration, such money or property shall be distributed pro rata among the Holders of the Preferred Securities and the Common Securities.

3. LIQUIDATION DISTRIBUTION UPON DISSOLUTION. In the event of any voluntary or involuntary dissolution, winding-up or termination of the Trust, the Holders of the Preferred Securities and the Common Securities at the date of the dissolution, winding-up or termination, as the case may be, will be entitled to receive pro rata solely out of the assets of the Trust available for distribution to Holders of Preferred Securities and Common Securities, after satisfaction of liabilities to creditors, an amount equal to the aggregate of the stated liquidation amount of \$[ ] per Preferred Security and Common Security plus accrued and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"), unless, in connection with such dissolution, winding-up or termination after satisfaction of liabilities to creditors, Debentures in an aggregate principal amount equal to the aggregate stated liquidation amount of such Preferred Securities and Common Securities, and bearing accrued and unpaid interest in an amount equal to the accrued and

Securities and Common Securities in exchange for such Securities.

If, upon any such dissolution, the Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then the amounts payable directly by the Trust on the Preferred Securities and the Common Securities shall be paid, subject to the next paragraph, on a pro rata basis.

Holders of Common Securities will be entitled to receive Liquidation Distributions upon any such dissolution pro rata with Holders of Preferred Securities, except that, if an Event of Default has occurred and is continuing, the Preferred Securities shall have a priority over the Common Securities with respect to such Liquidation Distribution.

4. REDEMPTION AND DISTRIBUTION OF DEBENTURES. The Preferred Securities and the Common Securities may only be redeemed if Debentures having an aggregate principal amount equal to the aggregate liquidation amount of the Preferred Securities and the Common Securities are repaid, redeemed or distributed as set forth below:

[(a) Upon the repayment of the Debentures, in whole or in part, whether at maturity or upon redemption at any time or from time to time on or after [ ], the proceeds of such repayment will be promptly applied to redeem pro rata Preferred Securities and Common Securities having an aggregate liquidation amount equal to the aggregate principal amount of the Debentures so repaid, upon not less than 30 nor more than 60 days notice, at a redemption price of \$[ ] per Preferred Security and Common Security plus an amount equal to accrued and unpaid Distributions thereon to the date of redemption, payable in cash (the "Redemption Price"). The date of any such repayment of Preferred Securities and Common Securities shall be established to coincide with the repayment date of the Debentures.] [Additional Redemption provisions to be provided.]

(b) If fewer than all the outstanding Preferred Securities and Common Securities are to be so redeemed, the Preferred Securities and the Common Securities will be redeemed pro rata, it being understood that Preferred Securities held of record by a Clearing Agency or nominee will be redeemed as described in paragraph 4(f)(ii) below. If a partial redemption would result in the delisting of the Preferred Securities by any national securities exchange or other organization on which the Preferred Securities are then listed, the Sponsor, pursuant to the Indenture, will only redeem Debentures in whole and the Trust will only redeem the Preferred Securities in whole.

(c) If, at any time, a Tax Event or an Investment Company Event (each as hereinafter defined, and each a "Special Event") shall occur and be continuing, the Regular Trustees shall, unless the Debentures are redeemed in the limited circumstances described below, dissolve the Trust and, after satisfaction of creditors, cause Debentures held by the Property Trustee having an aggregate principal amount equal to the aggregate stated liquidation amount of, and bearing accrued and unpaid interest equal to accrued and unpaid Distributions on, and having the same record date for payment as, the Preferred Securities and the Common Securities, to be distributed to the Holders of the Preferred Securities and the Common Securities on a pro rata basis in liquidation of such Holders' interests in the Trust, within 90 days following the occurrence of such Special Event (the "90 Day Period"); PROVIDED, HOWEVER, that in the case of the occurrence of a Tax Event, as a condition of such dissolution and distribution, the Regular Trustees shall have received an opinion of a nationally recognized independent tax counsel experienced in such matters (a "No Recognition Opinion"), which opinion may rely on any then applicable published revenue rulings of the Internal Revenue Service, to the effect that the Holders of the Preferred Securities will not recognize any gain or loss for United States Federal income tax purposes as a result of the dissolution of the Trust and distribution of Debentures; and PROVIDED FURTHER that, if at the time there is available to the Sponsor or the Regular Trustees, on behalf of the Trust, the opportunity to eliminate, within the 90 Day Period, the Special Event by taking some ministerial action, such as filing a form or making an election, or pursuing some other similar reasonable measure that has no adverse effect on the

Trust, the Sponsor or the Holders of the Preferred Securities (a "Ministerial Action"), the Sponsor or the Regular Trustees, on behalf of the Trust, will pursue such Ministerial Action in lieu of dissolution.

If in the case of the occurrence of a Tax Event, (i) the Regular Trustees have received an opinion (a "Redemption Tax Opinion") of nationally recognized independent tax counsel experienced in such matters that, as a result of a Tax Event, there is more than an insubstantial risk that the Sponsor would be precluded from deducting the interest on the Debentures for United States Federal income tax purposes even if the Debentures were distributed to the Holders of Preferred Securities and Common Securities in liquidation of such

Holder's interest in the Trust as described in this paragraph 4(c) or (ii) the Regular Trustees shall have been informed by such tax counsel that a No Recognition Opinion cannot be delivered to the Trust, the Sponsor shall have the right at any time, upon not less than 30 nor more than 60 days notice, to redeem the Debentures in whole or in part for cash at the Redemption Price within 90 days following the occurrence of such Tax Event, and, promptly following such redemption, Preferred Securities and Common Securities with an aggregate liquidation amount equal to the aggregate principal amount of the Debentures so redeemed will be redeemed by the Trust at the Redemption Price on a pro rata basis; PROVIDED, HOWEVER, that, if at the time there is available to the Sponsor or the Regular Trustees, on behalf of the Trust, the opportunity to eliminate, within such 90 day period, the Tax Event by taking some Ministerial Action, the Sponsor, or, the Regular Trustees, on behalf of the Trust, will pursue such measure in lieu of redemption; and PROVIDED FURTHER that the Sponsor shall have no right to redeem the Debentures while the Regular Trustees, on behalf of the Trust, are pursuing such Ministerial Action. The Common Securities will be redeemed pro rata with the Preferred Securities, except that if an Event of Default under the Indenture has occurred and is continuing, the Preferred Securities will have a priority over the Common Securities with respect to payment of the Redemption Price.

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"Tax Event" means that the Regular Trustees shall have obtained an opinion of nationally recognized independent tax counsel experienced in such matters (a "Dissolution Tax Opinion") to the effect that[, on or after [ ],] as a result of (a) any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein, (b) any amendment to, or change in, an interpretation or application of any such laws or regulations by any legislative body, court, governmental agency or regulatory authority (including the enactment of any legislation and the publication of any judicial decision or regulatory determination), (c) any interpretation or pronouncement that provides for a position with respect to such laws or regulations that differs from the theretofore generally accepted position or (d) any action taken by any governmental agency or regulatory authority, which amendment or change is enacted, promulgated, issued or effective or which interpretation or pronouncement is issued or adopted or which action is taken, in each case after [ ], (collectively, a "Change in Tax Law") there is more than an insubstantial risk that (i) the Trust is, or will be within 90 days of the date thereof, subject to United States Federal income tax with respect to income accrued or received on the Debentures, (ii) the Trust is, or will be within 90 days of the date thereof, subject to more than a DE MINIMIS amount of other taxes, duties or other governmental charges or (iii) interest payable by the Sponsor to the Trust on the Debentures is not, or within 90 days of the date thereof will not be, deductible by the Sponsor for United States Federal income tax purposes (determined without regard to the use made by the Company of the proceeds of the Debentures). Notwithstanding anything in the previous sentence to the contrary, a Tax Event shall not include any Change in Tax Law that requires the Company for Federal income tax purposes to defer taking a deduction for any OID that accrues with respect to the Debentures until the interest payment related to such OID is paid by the Company in money; PROVIDED that such Change in Tax Law does not create more than an insubstantial risk that the Company will be prevented from taking a deduction for OID accruing with respect to the Debentures at a date that is no later than the date the interest payment related to such OID is actually paid by the Company in money.

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"Investment Company Event" means that the Regular Trustees shall have received an opinion of nationally recognized independent counsel experienced in practice under the Investment Company Act that, as a result of the occurrence of a change in law or regulation or a change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority (a "Change in 1940 Act Law"), there is more than an insubstantial risk that the Trust is or will be considered an "investment company" which is required to be registered under the Investment Company Act, which Change in 1940 Act Law becomes effective on or after [ ].

On the date fixed for any distribution of Debentures, upon dissolution of the Trust, (i) the Preferred Securities will no longer be deemed to be outstanding, and (ii) certificates representing Preferred Securities will be deemed to represent beneficial interests in the Debentures having an aggregate principal amount equal to the stated liquidation amount of, and bearing accrued and unpaid interest equal to accrued and unpaid Distributions on, such Preferred Securities until such certificates are presented to the Sponsor or its agent for transfer or reissuance.

(d) The Trust may not redeem fewer than all the outstanding Preferred Securities unless all accrued and unpaid Distributions have been paid on all Preferred Securities for all monthly Distribution periods terminating on or prior to the date of redemption.

(e) If Debentures are distributed to Holders of the Preferred Securities, the Sponsor, pursuant to the terms of the Indenture, will use its best efforts to have the Debentures listed on the New York Stock Exchange or on such other exchange as the Preferred Securities were listed immediately prior to the distribution of the Debentures.

(f)(i) Notice of any redemption of, or notice of distribution of Debentures in exchange for, the Preferred Securities and the Common Securities (a "Redemption/Distribution Notice") will be given by the Regular Trustees on



prior to the date fixed for redemption or exchange thereof. For purposes of the calculation of the date of redemption or exchange and the dates on which notices are given pursuant to this paragraph (f)(i), a Redemption/Distribution Notice shall be deemed to be given on the day such notice is first mailed by first class mail, postage prepaid, to Holders of Preferred Securities and Common Securities. Each Redemption/ Distribution Notice shall be addressed to the Holders of Preferred Securities and Common Securities at the address of each such Holder appearing in the books and records of the Trust. No defect in the Redemption/Distribution Notice or in the mailing of either thereof with respect to any Holder shall affect the validity of the redemption or exchange proceedings with respect to any other Holder.

(ii) In the event that fewer than all the outstanding Preferred Securities are to be redeemed, the Preferred Securities to be redeemed will be redeemed pro rata from each Holder of Preferred Securities, it being understood that, in respect of Preferred Securities registered in the name of and held of record by DTC (or a successor Clearing Agency) or any other nominee, the Preferred Securities will be redeemed from, and the distribution of the proceeds of such redemption will be made to, each Clearing Agency Participant (or person on whose behalf such nominee holds such securities) in accordance with the procedures applied by such agency or nominee.

(iii) Subject to paragraph 9 hereof, if the Trust gives a Redemption/Distribution Notice in respect of a redemption of Preferred Securities as provided in this paragraph 4 (which notice will be irrevocable) then (A) while the Preferred Securities are in book-entry only form, by 12:00 noon, New York City time, on the redemption date, provided that the Sponsor has paid the Property Trustee in immediately available funds a sufficient amount of cash in connection with the related redemption or maturity of the Debentures, the Property Trustee will deposit irrevocably with DTC (or any successor Clearing Agency) funds sufficient to pay the applicable Redemption Price with respect to the Preferred Securities and will give DTC (or any successor Clearing Agency) irrevocable instructions and authority to pay the Redemption Price to the Holders of the Preferred Securities and (B) if the

Preferred Securities are issued in definitive form, and provided that the Sponsor has paid the Property Trustee in immediately available funds a sufficient amount of cash in connection with the related redemption or maturity of the Debentures, the Property Trustee will pay the relevant Redemption Price to the Holders of such Preferred Securities by check mailed to the address of the relevant Holder appearing on the books and records of the Trust on the redemption date. If a Redemption/Distribution Notice shall have been given and funds deposited as required, if applicable, then immediately prior to the close of business on the redemption date, Distributions will cease to accrue on the Preferred Securities called for redemption, such Preferred Securities will no longer be deemed to be outstanding and all rights of Holders of such Preferred Securities so called for redemption will cease, except the right of the Holders of such Preferred Securities to receive the Redemption Price, but without interest on such Redemption Price. Neither the Trustees nor the Trust shall be required to register or cause to be registered the transfer of any Preferred Securities which have been so called for redemption. If any date fixed for redemption of Preferred Securities is not a Business Day, then payment of the Redemption Price payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day falls in the next calendar year, such payment will be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date fixed for redemption. If the Sponsor fails to repay Debentures on maturity or on the date fixed for redemption or if payment of the Redemption Price in respect of Preferred Securities is improperly withheld or refused and not paid either by the Property Trustee or, pursuant to the Preferred Securities Guarantee, by White Mountains, Distributions on such Preferred Securities will continue to accrue, from the original redemption date to the date of payment, in which case the actual payment date will be considered the date fixed for redemption for purposes of calculating the Redemption Price.

(iv) Redemption/Distribution Notices shall be sent by

the Regular Trustees on behalf of the Trust to DTC or its nominee (or any successor Clearing Agency or its nominee) if the Global Certificates have been issued or, if Definitive Preferred Security Certificates have been issued, to the Holders of the Preferred Securities.

(v) Upon the date of dissolution of the Trust and distribution of Debentures as a result of the occurrence of a Special Event, Preferred Security Certificates shall be deemed to represent beneficial interests in the Debentures so distributed, and the Preferred Securities will no longer be deemed outstanding and may be canceled by the Regular Trustees. The Debentures so distributed shall have an aggregate principal amount equal to the aggregate

liquidation amount of the Preferred Securities so distributed.

(vi) If a partial redemption of the Preferred Securities would result in the delisting of the Preferred Securities by any national securities exchange or other organization on which the Preferred Securities are then listed, the Company pursuant to the Indenture will only redeem Debentures in whole and, as a result, the Trust would only redeem the Preferred Securities in whole.

(vii) Subject to the foregoing and applicable law (including, without limitation, United States Federal and state securities laws), the Sponsor or any of its subsidiaries may at any time and from time to time purchase outstanding Preferred Securities by tender, in the open market or by private agreement.

5. VOTING RIGHTS. (a) Except as provided under paragraph 5(b) below and as otherwise required by law and the Declaration, the Holders of the Preferred Securities will have no voting rights.

(b) If any proposed amendment to the Declaration provides for, or the Regular Trustees otherwise propose to effect, (i) any action that would adversely affect the powers, preferences or special rights of the Securities, whether by way of amendment to the Declaration or otherwise, or (ii) the dissolution, winding-up or termination of the Trust, other than in connection with the distribution of Debentures held by the Property Trustee, upon the occurrence

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of a Special Event or in connection with the redemption of Preferred Securities as a consequence of a redemption of Debentures, then the Holders of outstanding Securities will be entitled to vote on such amendment or proposal as a class and such amendment or proposal shall not be effective except with the approval of the Holders of Securities representing 66-2/3% in liquidation amount of such Securities; PROVIDED, HOWEVER, that (A) if any amendment or proposal referred to in clause (i) above would adversely affect only the Preferred Securities or the Common Securities, then only the affected class will be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of 66-2/3% in liquidation amount of such class of Securities and (B) amendments to the Declaration shall be subject to such further requirements as are set forth in Sections 12.01 and 12.02 of the Declaration.

In the event the consent of the Property Trustee, as the holder of the Debentures, is required under the Indenture with respect to any amendment, modification or termination of the Indenture or the Debentures, the Property Trustee shall request the written direction of the Holders of the Securities with respect to such amendment, modification or termination. The Property Trustee shall vote with respect to such amendment, modification or termination as directed by a Majority in liquidation amount of the Securities voting together as a single class; PROVIDED that where such amendment, modification or termination of the Indenture requires the consent or vote of (1) holders of Debentures representing a specified percentage greater than a majority in principal amount of the Debentures or (2) each holder of Debentures affected thereby, the Property Trustee may only vote with respect to that amendment, modification or termination as directed by, in the case of clause (1) above, the vote of Holders of Securities representing such specified percentage of the aggregate liquidation amount of the Securities, or, in the case of clause (2) above, each Holder of Securities affected thereby; and PROVIDED FURTHER that the Property Trustee shall be under no obligation to take any action in accordance with the directions of the Holders of Securities

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unless the Property Trustee shall have received, at the expense of the Sponsor, an opinion of nationally recognized independent tax counsel recognized as expert in such matters to the effect that the Trust will not be classified for United States Federal income tax purposes as an association taxable as a corporation or a partnership on account of such action and will be treated as a grantor trust for United States Federal income tax purposes following such action.

Subject to Section 2.06 of the Declaration, and the provisions of this and the next succeeding paragraph, the Holders of a Majority in liquidation amount of the Preferred Securities, voting separately as a class, shall have the right to (A) on behalf of all Holders of Preferred Securities, waive any past default that is waivable under the Declaration (subject to, and in accordance with, the Declaration) and (B) direct the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon the Property Trustee under the Declaration, including the right to direct the Property Trustee, as the holder of the Debentures, to (i) direct the time, method and place of conducting any proceeding for any remedy available to the Debenture Trustee, or exercising any trust or power conferred on the Debenture Trustee with respect to the Debentures, (ii) waive any past default that is waivable under Section 6.06 of the Indenture, or (iii) exercise any right to rescind or annul a declaration that the principal of all the Debentures shall be due and payable; PROVIDED that where the taking of any action under the Indenture requires the consent or vote of (1) holders of Debentures representing a specified percentage greater than a majority in principal amount of the Debentures or (2) each holder of Debentures affected thereby, the Property Trustee may only take such action if directed by,

in the case of clause (1) above, the vote of Holders of Preferred Securities representing such specified percentage of the aggregate liquidation amount of the Preferred Securities, or, in the case of clause (2) above, each Holder of Preferred Securities affected thereby. The Property Trustee shall not revoke any action previously authorized or approved by a vote of the Holders of the Preferred Securities. Other than

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with respect to directing the time, method and place of conducting any proceeding for any remedy available to the Property Trustee or the Debenture Trustee as set forth above, the Property Trustee shall be under no obligation to take any of the foregoing actions at the direction of the Holders of Preferred Securities unless the Property Trustee shall have received, at the expense of the Sponsor, an opinion of nationally recognized independent tax counsel recognized as expert in such matters to the effect that the Trust will not be classified for United States Federal income tax purposes as an association taxable as a corporation or a partnership on account of such action and will be treated as a grantor trust for United States Federal income tax purposes following such action. If the Property Trustee fails to enforce its rights under the Declaration (including, without limitation, its rights, powers and privileges as a holder of the Debentures under the Indenture), any Holder of Preferred Securities may, to the extent permitted by law, after a period of 30 days has elapsed from such Holder's written request to the Property Trustee to enforce such rights, institute a legal proceeding directed against the Sponsor to enforce the Property Trustee's rights under the Declaration, without first instituting a legal proceeding against the Property Trustee or any other Person. Notwithstanding the foregoing, if an Event of Default has occurred and is continuing and such event is attributable to the failure of the Sponsor to pay interest or principal on the Debentures on the date such interest or principal is otherwise payable (or in the case of redemption, the redemption date), then a Holder of Preferred Securities may directly institute suit against the Sponsor for enforcement of payment to such Holder of the principal of or interest on Debentures having a principal amount equal to the aggregate liquidation amount of the Preferred Securities held by such Holder on or after the respective due date specified in the Debentures. The Holders of Preferred Securities will not be able to exercise directly against the Sponsor any other remedy available to the Holders of the Debentures unless the Property Trustee first fails to do so.

A waiver of an Indenture Event of Default by the Property Trustee at the direction of the Holders of the Preferred Securities will constitute a waiver of the corresponding Event of Default under the Declaration in respect of the Securities.

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Any required approval or direction of Holders of Preferred Securities may be given at a separate meeting of Holders of Preferred Securities convened for such purpose, at a meeting of all of the Holders of Securities of the Trust or pursuant to written consent. The Regular Trustees will cause a notice of any meeting at which Holders of Preferred Securities are entitled to vote, or of any matter upon which action by written consent of such Holders is to be taken, to be mailed to each Holder of record of Preferred Securities. Each such notice will include a statement setting forth (i) the date of such meeting or the date by which such action is to be taken, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote or of such matter upon which written consent is sought and (iii) instructions for the delivery of proxies or consents.

No vote or consent of the Holders of Preferred Securities will be required for the Trust to redeem and cancel Preferred Securities in accordance with the Declaration.

Notwithstanding that Holders of Preferred Securities are entitled to vote or consent under any of the circumstances described above, any of the Preferred Securities at such time that are owned by the Sponsor or by any entity directly or indirectly controlling or controlled by or under direct or indirect common control with the Sponsor shall not be entitled to vote or consent and shall, for purposes of such vote or consent, be treated as if they were not outstanding.

Holders of the Preferred Securities will have no rights to increase or decrease the number of Trustees or to appoint, remove or replace a Trustee, which voting rights are vested exclusively in the Holders of the Common Securities.

[6. CONVERSION RIGHTS. To be provided if applicable.]

7. PRO RATA TREATMENT. A reference in these terms of the Preferred Securities to any payment, distribution or treatment as being "pro rata" shall mean pro

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rata to each Holder of Securities according to the aggregate liquidation amount of the Securities held by the relevant Holder in relation to the aggregate liquidation amount of all Securities outstanding unless, in relation to a payment, an Event of Default has occurred and is continuing, in which case any funds available to make such payment shall be paid first to each Holder of the

Preferred Securities pro rata according to the aggregate liquidation amount of Preferred Securities held by the relevant Holder relative to the aggregate liquidation amount of all Preferred Securities outstanding, and only after satisfaction of all amounts owed to the Holders of the Preferred Securities, to each Holder of Common Securities pro rata according to the aggregate liquidation amount of Common Securities held by the relevant Holder relative to the aggregate liquidation amount of all Common Securities outstanding.

8. RANKING. The Preferred Securities rank pari passu and payment thereon will be made pro rata with the Common Securities except that where an Event of Default occurs and is continuing, the rights of Holders of Preferred Securities to payment in respect of Distributions and payments upon liquidation, redemption or otherwise rank in priority to the rights of Holders of the Common Securities.

9. MERGERS, CONSOLIDATIONS OR AMALGAMATIONS. The Trust may not consolidate, amalgamate, merge with or into, or be replaced by, or sell, transfer or lease all or substantially all its properties and assets to, any Person.

10. TRANSFER, EXCHANGE, METHOD OF PAYMENTS. Payment of Distributions and payments on redemption of the Preferred Securities will be payable, the transfer of the Preferred Securities will be registrable, and Preferred Securities will be exchangeable for Preferred Securities of other denominations of a like aggregate liquidation amount, at the principal corporate trust office of the Property Trustee in The City of New York; PROVIDED that payment of Distributions may be made at the option of the Regular Trustees on behalf of the Trust by check mailed to the address of the Persons entitled thereto and that the payment on redemption of any Preferred Security will be made only

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upon surrender of such Preferred Security to the Property Trustee.

11. ACCEPTANCE OF INDENTURE AND PREFERRED GUARANTEE. Each Holder of Preferred Securities, by the acceptance thereof, agrees to the provisions of (i) the Preferred Guarantee, including the subordination provisions thereof and (ii) the Junior Subordinated Indenture and the Debentures, including the subordination provisions of the Indenture.

12. NO PREEMPTIVE RIGHTS. The Holders of Preferred Securities shall have no preemptive rights to subscribe to any additional Preferred Securities or Common Securities.

13. MISCELLANEOUS. These terms shall constitute a part of the Declaration. The Trust will provide a copy of the Declaration and the Indenture to a Holder without charge on written request to the Trust at its principal place of business.

#### ANNEX I

[IF THE PREFERRED SECURITY IS TO BE A GLOBAL CERTIFICATE  
INSERT--THIS PREFERRED SECURITY IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE DECLARATION HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY ("DTC") OR A NOMINEE OF DTC. THIS PREFERRED SECURITY IS EXCHANGEABLE FOR PREFERRED SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN DTC OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE DECLARATION AND NO TRANSFER OF THIS PREFERRED SECURITY (OTHER THAN A TRANSFER OF THIS PREFERRED SECURITY AS A WHOLE BY DTC TO A NOMINEE OF DTC OR BY A NOMINEE OF DTC TO DTC OR ANOTHER NOMINEE OF DTC) MAY BE REGISTERED EXCEPT IN SUCH LIMITED CIRCUMSTANCES.

UNLESS THIS PREFERRED SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TO THE TRUST OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY PREFERRED SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC OR ANY SUCCESSOR DEPOSITARY AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC OR ANY SUCCESSOR DEPOSITARY, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY A PERSON IS WRONGFUL, SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

Preferred Securities:

Number:

CUSIP NO.:

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CERTIFICATE EVIDENCING PREFERRED SECURITIES

OF

FUND AMERICAN TRUST I

% PREFERRED SECURITIES

(LIQUIDATION AMOUNT \$[ ] PER PREFERRED SECURITY)

Fund American Trust I, a statutory business trust created under the laws of the State of Delaware (the "Trust"), hereby certifies that [ ] (the

"Holder") is the registered owner of [ ] preferred securities of the Trust representing undivided beneficial interests in the assets of the Trust designated the [ ]% Preferred Securities (liquidation amount \$[ ] per Preferred Security) (the "Preferred Securities"). The transfer of Preferred Securities is registrable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for registration of transfer. The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Securities are set forth in, and this certificate and the Preferred Securities represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Amended and Restated Declaration of Trust of the Trust dated as of \_\_\_\_\_, 2001, as the same may be amended from time to time (the "Declaration"), including the designation of the terms of Preferred Securities as set forth in Exhibit B thereto. The Preferred Securities and the Common Securities issued by the Trust pursuant to the Declaration represent undivided beneficial interests in the assets of the Trust, including the Debentures (as defined in the Declaration) issued by Fund American Companies, Inc., a Delaware corporation (the "Sponsor"), to the Trust pursuant to the Indenture referred to in the Declaration. The Holder is entitled to the benefits of the Guarantee Agreement of White Mountains Insurance Group, Ltd., a corporation existing under the laws of Bermuda ("White Mountains"), dated as of [ ] (the "Guarantee"), to the extent provided

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therein. The Trust will furnish a copy of the Declaration, the Guarantee and the Indenture to the Holder without charge, upon written request to the Trust, at its principal place of business or registered office.

The Holder of this Certificate, by accepting this Certificate, is deemed to have (i) agreed to the terms of the Indenture and the Debentures, including that the Debentures are subordinate and junior in right of payment to all Senior Indebtedness (as defined in the Indenture) as and to the extent provided in the Indenture and (ii) agreed to the terms of the Guarantee, including that the Guarantee is subordinate and junior in right of payment to all other indebtedness, liabilities and obligations of White Mountains, including the Debentures, except those made PARI PASSU or subordinate by their terms, and senior to all capital stock now or hereafter issued by the Sponsor and to any guarantee now or hereafter entered into by the Sponsor in respect of any of its capital stock.

Upon receipt of this certificate, the Holder is bound by the Declaration and is entitled to the benefits thereunder.

IN WITNESS WHEREOF, the Trustees of the Trust have executed this certificate this day of .

Fund American Trust I,

by

Name:  
Title: Regular Trustee

by

Name:  
Title: Regular Trustee

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Dated:

Countersigned and Registered:

[ ], as  
Transfer Agent and Registrar

by

-----  
Authorized Officer

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#### ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Preferred Security to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints

agent to transfer this Preferred Security Certificate on the books of the Trust. The agent may substitute another to act for him or her.

Date: -----

Signature: -----

NOTICE: THE SIGNATURE(S) TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME(S) AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

EXHIBIT C

TERMS OF COMMON SECURITIES

Pursuant to Section 7.01 of the Amended and Restated Declaration of Trust of Fund American Trust I dated as of [ ] (as amended from time to time, the "Declaration"), the designations, rights, privileges, restrictions, preferences and other terms and provisions of the Common Securities are set forth below (each capitalized term used but not defined herein having the meaning set forth in the Declaration):

1. DESIGNATION AND NUMBER. Common Securities of the Trust with an aggregate liquidation amount in the assets of the Trust of up to [ ] Dollars (\$[ ]) (including up to [ ] Dollars (\$[ ]) issuable upon exercise of the overallocation option set forth in the Underwriting Agreement) and a liquidation amount in the assets of the Trust of \$[ ] per Common Security are hereby designated as "[ ]% Common Trust Securities". The Common Security Certificates evidencing the Common Securities shall be substantially in the form attached hereto as Annex I, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice. The Common Securities are to be issued and sold to Fund American Companies, Inc. ("the Sponsor"). In connection with the issuance and sale of the Preferred Securities and the Common Securities, the Trust will purchase, as trust assets, Debentures of the Sponsor having an aggregate principal amount equal to the aggregate liquidation amount of the Preferred Securities and the Common Securities so issued, and bearing interest at an annual rate equal to the annual Distribution rate on the Preferred Securities and the Common Securities and having payment and redemption provisions which correspond to the payment and redemption provisions of the Preferred Securities and the Common Securities.

2. DISTRIBUTIONS. (a) Distributions payable on each Common Security will be payable at a [fixed rate per annum of [ ]%] [floating rate] (the "Coupon Rate") of the stated liquidation amount of \$[ ] per Common Security. Distributions in arrears for more than one month will bear interest at the Coupon Rate (to the extent permitted by applicable law), compounded monthly. The term

"Distributions" as used in these terms means such periodic cash distributions and any such interest payable unless otherwise stated. A Distribution will be made by the Property Trustee only to the extent that interest payments are made in respect of the Debentures held by the Property Trustee. The amount of Distributions payable for any period will be computed on the basis of a 360-day year of twelve 30-day months, and for any Distribution period shorter than a 30-day period for which Distributions are computed, Distributions will be computed on the basis of the actual number of days elapsed.

(b) Distributions on the Common Securities will be cumulative, will accrue from [ ], and will be payable [monthly] [quarterly] [semi-annually] in arrears, on the first day of each period, commencing on [ ], except as otherwise described below, but only if and to the extent that interest payments are made in respect of the Debentures held by the Property Trustee. So long as the Sponsor is not in default in the payment of interest on the Debentures, the Sponsor shall have the right under the Indenture for the Debentures to defer payments of interest by extending the interest payment period from time to time on the Debentures for a period not to exceed [60] [20] [10] consecutive [monthly] [quarterly] [semi-annual] interest periods (each, an "Extension Period"), PROVIDED, HOWEVER, that an Extension Period may not extend beyond the maturity of the Debentures. During any such Extension Period, [monthly] [quarterly] [semi-annually] Distributions will continue to accrue with interest thereon (to the extent permitted by applicable law) at the Coupon Rate, compounded [monthly] [quarterly] [semi-annually]. Prior to the termination of any such Extension Period, the Sponsor may further extend such Extension Period; PROVIDED that such Extension Period, together with all such previous and further extensions thereof, may not exceed [60] [20] [10] consecutive monthly interest periods. Upon the termination of any Extension Period and the payment of all amounts then due, the Sponsor may commence a new Extension Period, subject to the above requirements. Payments of accrued Distributions will be payable to Holders of Common Securities as they appear on the books and records of the

Trust on the record date for the first interest payment date occurring at or after the end of the Extension Period.

(c) Distributions on the Common Securities will be payable promptly by the Property Trustee (or other Paying Agent) upon receipt of immediately available funds to the Holders thereof as they appear on the books and records

of the Trust on the relevant record dates which will be one Business Day prior to the relevant Distribution date unless the Preferred Securities are no longer in book-entry only form, in which event the relevant record dates will be the fifteenth (15th) day of the month immediately preceding the month in which the relevant Distribution date occurs, which record and payment dates correspond to the record and interest payment dates for the Debentures. Distributions payable on any Common Securities that are not punctually paid on any Distribution date as a result of the Sponsor having failed to make the corresponding interest payment on the Debentures will forthwith cease to be payable to the Person in whose name such Common Security is registered on the relevant record date, and such defaulted Distribution will instead be payable to the Person in whose name such Common Security is registered on the special record date established by the Regular Trustees, which record date shall correspond to the special record date or other specified date determined in accordance with the Indenture; PROVIDED, HOWEVER, that Distributions shall not be considered payable on any Distribution payment date falling within an Extension Period unless the Sponsor has elected to make a full or partial payment of interest accrued on the Debentures on such Distribution payment date. Subject to any applicable laws and regulations and the provisions of the Declaration, each payment in respect of the Common Securities will be made as described in paragraph 9 hereof. If any date on which Distributions are payable on the Common Securities is not a Business Day, then payment of the Distribution payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date.

(d) All Distributions paid with respect to the Common Securities and the Preferred Securities will be paid

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pro rata to the Holders thereof entitled thereto. If an Event of Default has occurred and is continuing, the Preferred Securities shall have a priority over the Common Securities with respect to Distributions.

(e) In the event that there is any money or other property held by or for the Trust that is not accounted for under the Declaration, such money or property shall be distributed pro rata among the Holders of the Preferred Securities and the Common Securities.

3. LIQUIDATION DISTRIBUTION UPON DISSOLUTION. In the event of any voluntary or involuntary dissolution, winding-up or termination of the Trust, the Holders of the Preferred Securities and Common Securities at the date of the dissolution, winding-up or termination, as the case may be, will be entitled to receive pro rata solely out of the assets of the Trust available for distribution to Holders of Preferred Securities and the Common Securities, after satisfaction of liabilities to creditors, an amount equal to the aggregate of the stated liquidation amount of \$[ ] per Preferred Security and Common Security plus accrued and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"), unless, in connection with such dissolution, winding-up or termination, after paying after satisfaction of liabilities to creditors, Debentures in an aggregate principal amount equal to the aggregate stated liquidation amount of such Preferred Securities and Common Securities, and bearing accrued and unpaid interest in an amount equal to the accrued and unpaid Distributions on such Preferred Securities and Common Securities, shall be distributed pro rata to the Holders of the Preferred Securities and Common Securities in exchange for such Securities.

If, upon any such dissolution, the Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then the amounts payable directly by the Trust on the Preferred Securities and the Common Securities shall be paid, subject to the next paragraph, on a pro rata basis.

Holders of Common Securities will be entitled to receive Liquidation Distributions upon any such dissolution

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pro rata with Holders of Preferred Securities, except that, if an Event of Default has occurred and is continuing, the Preferred Securities shall have a priority over the Common Securities with respect to such Liquidation Distribution.

4. REDEMPTION AND DISTRIBUTION OF DEBENTURES. The Preferred Securities and the Common Securities may only be redeemed if Debentures having an aggregate principal amount equal to the aggregate liquidation amount of the Preferred Securities and the Common Securities are repaid, redeemed or distributed as set forth below:

[(a) Upon the repayment of the Debentures, in whole or in part, whether at maturity or upon redemption at any time or from time to time on or after [ ], the proceeds of such repayment will be promptly applied to redeem pro rata Preferred Securities and Common Securities having an aggregate liquidation amount equal to the aggregate principal amount of the Debentures so repaid, upon not less than 30 nor more than 60 days notice, at a redemption price of \$[ ] per Preferred Security and Common Security plus an amount equal to accrued and unpaid Distributions thereon to the date of redemption, payable

in cash (the "Redemption Price"). The date of any such repayment of Preferred Securities and Common Securities shall be established to coincide with the repayment or redemption date of the Debentures.] [Other applicable redemption provisions, if any.]

(b) If fewer than all the outstanding Preferred Securities and Common Securities are to be so redeemed, the Preferred Securities and the Common Securities will be redeemed pro rata and, with respect to the Common Securities to be redeemed, as described in paragraph 4(e)(ii) below. If a partial redemption would result in the delisting of the Preferred Securities by any national securities exchange or other organization on which the Preferred Securities are then listed, the Sponsor, pursuant to the Indenture, will only redeem Debentures in whole and the Trust will only redeem the Common Securities in whole.

(c) If, at any time, a Tax Event or an Investment

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Company Event (each, as hereinafter defined and, each, a "Special Event") shall occur and be continuing, the Regular Trustees shall, unless the Debentures are redeemed in the limited circumstances described below, dissolve the Trust and, after satisfaction of creditors, cause Debentures held by the Property Trustee having an aggregate principal amount equal to the aggregate stated liquidation amount of, and bearing accrued and unpaid interest equal to accrued and unpaid Distributions on, and having the same record date for payment as, the Preferred Securities and the Common Securities, to be distributed to the Holders of the Preferred Securities and the Common Securities on a pro rata basis in liquidation of such Holders' interests in the Trust, within 90 days following the occurrence of such Special Event (the "90 Day Period"); PROVIDED, HOWEVER, that in the case of the occurrence of a Tax Event, as a condition of such dissolution and distribution, the Regular Trustees shall have received an opinion of a nationally recognized independent tax counsel experienced in such matters (a "No Recognition Opinion"), which opinion may rely on any then applicable published revenue rulings of the Internal Revenue Service, to the effect that the Holders of the Preferred Securities will not recognize any gain or loss for United States Federal income tax purposes as a result of the dissolution of the Trust and distribution of Debentures; and PROVIDED FURTHER that, if at the time there is available to the Sponsor or the Regular Trustees, on behalf of the Trust, the opportunity to eliminate, within such 90 Day Period, the Special Event by taking some ministerial action, such as filing a form or making an election, or pursuing some other similar reasonable measure that has no adverse effect on the Trust, the Sponsor or the Holders of the Preferred Securities (a "Ministerial Action"), the Sponsor or the Regular Trustees, on behalf of the Trust, will pursue such Ministerial Action in lieu of dissolution.

If in the case of the occurrence of a Tax Event, (i) the Regular Trustees have received an opinion (a "Redemption Tax Opinion") of nationally recognized independent tax counsel experienced in such matters that, as a result of a Tax Event, there is more than an insubstantial risk that the Sponsor would be precluded from deducting the interest on the Debentures for United States Federal income tax purposes even if the Debentures were distributed to the Holders of Preferred Securities and Common Securities in

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liquidation of such Holders' interest in the Trust as described in this paragraph 4(c) or (ii) the Regular Trustees shall have been informed by such tax counsel that a No Recognition Opinion cannot be delivered to the Trust, the Sponsor shall have the right at any time, upon not less than 30 nor more than 60 days notice, to redeem the Debentures in whole or in part for cash at the Redemption Price within 90 days following the occurrence of such Tax Event, and, promptly following such redemption, Preferred Securities and Common Securities with an aggregate liquidation amount equal to the aggregate principal amount of the Debentures so redeemed will be redeemed by the Trust at the Redemption Price on a pro rata basis; PROVIDED, HOWEVER, that, if at the time there is available to the Sponsor or the Regular Trustees on behalf of the Trust, the opportunity to eliminate, within such 90 Day Period, the Tax Event by taking some Ministerial Action, the Sponsor or the Holders of the Preferred Securities, the Sponsor or the Regular Trustees, on behalf of the Trust, will pursue such measure in lieu of redemption; and PROVIDED FURTHER, that the Sponsor shall have no right to redeem the Debentures while the Regular Trustees, on behalf of the Trust, are pursuing such Ministerial Action. The Common Securities will be redeemed pro rata with the Preferred Securities, except that if an Event of Default under the Indenture has occurred and is continuing, the Preferred Securities will have a priority over the Common Securities with respect to payment of the Redemption Price.

"Tax Event" means that the Regular Trustees shall have obtained an opinion of nationally recognized independent tax counsel experienced in such matters (a "Dissolution Tax Opinion") to the effect that, on or after [ ], as a result of (a) any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein, (b) any amendment to, or change (including any announced prospective change) in, an interpretation or application of any such laws or regulations by any legislative body, court, governmental agency or regulatory authority (including the enactment of any legislation and

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the publication of any judicial decision or regulatory determination), (c) any interpretation or pronouncement that provides for a position with respect to such laws or regulations that differs from the theretofore generally accepted position or (d) any action taken by any governmental agency or regulatory authority, which amendment or change is enacted, promulgated, issued or effective or which interpretation or pronouncement is issued or announced or which action is taken, in each case on or after [ ], there is more than an insubstantial risk that (i) the Trust is, or will be within 90 days of the date thereof, subject to United States Federal income tax with respect to income accrued or received on the Debentures, (ii) the Trust is, or will be within 90 days of the date thereof, subject to more than a DE MINIMIS amount of taxes, duties or other governmental charges or (iii) interest payable by the Sponsor to the Trust on the Debentures is not, or within 90 days of the date thereof will not be, deductible by the Sponsor for United States Federal income tax purposes.

"Investment Company Event" means that the Regular Trustees shall have received an opinion of nationally recognized independent counsel experienced in practice under the Investment Company Act that, as a result of the occurrence of a change in law or regulation or a change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority (a "Change in 1940 Act Law"), there is more than an insubstantial risk that the Trust is or will be considered an Investment Company which is required to be registered under the Investment Company Act, which Change in 1940 Act Law becomes effective on or after [ ].

On the date fixed for any distribution of Debentures, upon dissolution of the Trust, (i) the Common Securities will no longer be deemed to be outstanding and (ii) any certificates representing Common Securities will be deemed to represent beneficial interests in the Debentures having an aggregate principal amount equal to the stated liquidation amount of, and bearing accrued and unpaid interest equal to accrued and unpaid Distributions on, such Common Securities until such certificates are presented to the Sponsor or its agent for transfer or reissuance.

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(d) The Trust may not redeem fewer than all the outstanding Common Securities unless all accrued and unpaid Distributions have been paid on all Common Securities for all monthly Distribution periods terminating on or prior to the date of redemption.

(e)(i) Notice of any redemption of, or notice of distribution of Debentures in exchange for, the Preferred Securities and the Common Securities (a "Redemption/Distribution Notice") will be given by the Regular Trustees on behalf of the Trust by mail to each Holder of Preferred Securities and Common Securities to be redeemed or exchanged not less than 30 nor more than 60 days prior to the date fixed for redemption or exchange thereof. For purposes of the calculation of the date of redemption or exchange and the dates on which notices are given pursuant to this paragraph (e)(i), a Redemption/Distribution Notice shall be deemed to be given on the day such notice is first mailed by first-class mail, postage prepaid, to Holders of Preferred Securities and Common Securities. Each Redemption/Distribution Notice shall be addressed to the Holders of Preferred Securities and Common Securities at the address of each such Holder appearing in the books and records of the Trust. No defect in the Redemption/Distribution Notice or in the mailing of either thereof with respect to any Holder shall affect the validity of the redemption or exchange proceedings with respect to any other Holder.

(ii) In the event that fewer than all the outstanding Common Securities are to be redeemed, the Common Securities to be redeemed will be redeemed pro rata from each Holder of Common Securities (subject to adjustment to eliminate fractional Common Securities).

(iii) If the Trust gives a Redemption/Distribution Notice in respect of a redemption of Common Securities as provided in this paragraph 4 (which notice will be irrevocable), then immediately prior to the close of business on the redemption date, PROVIDED that the Sponsor has paid to the Property Trustee in immediately available funds a sufficient amount of cash in connection

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with the related redemption or maturity of the Debentures, Distributions will cease to accrue on the Common Securities called for redemption, such Common Securities will no longer be deemed to be outstanding and all rights of Holders of such Common Securities so called for redemption will cease, except the right of the Holders of such Common Securities to receive the Redemption Price, but without interest on such Redemption Price. Neither the Trustees nor the Trust shall be required to register or cause to be registered the transfer of any Common Securities which have been so called for redemption. If any date fixed for redemption of Common Securities is not a Business Day, then payment of the Redemption Price payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay), except that, if such Business Day falls in the next calendar year, such payment will be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date fixed for redemption. If payment of the Redemption Price in respect of Common Securities is improperly withheld or refused and not paid by the Property Trustee, Distributions on such Common Securities will continue to accrue, from the original redemption date to the date of payment, in which case the actual

payment date will be considered the date fixed for redemption for purposes of calculating the Redemption Price.

(iv) Redemption/Distribution Notices shall be sent by the Regular Trustees on behalf of the Trust to the Holders of the Common Securities.

(v) Upon the date of dissolution of the Trust and distribution of Debentures as a result of the occurrence of a Special Event, Common Security Certificates shall be deemed to represent beneficial interests in the Debentures so distributed, and the Common Securities will no longer be deemed outstanding and may be canceled by the Regular Trustees. The Debentures so distributed shall have an aggregate principal amount equal to the aggregate liquidation amount of the Common Securities so distributed.

5. VOTING RIGHTS. (a) Except as provided under paragraph 5(b) below and as otherwise required by law and the Declaration, the Holders of the Common Securities will have no voting rights.

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(b) Holders of Common Securities have the sole right under the Declaration to increase or decrease the number of Trustees, and to appoint, remove or replace a Trustee, any such increase, decrease, appointment, removal or replacement to be approved by Holders of Common Securities representing a Majority in liquidation amount of the Common Securities.

If any proposed amendment to the Declaration provides for, or the Regular Trustees otherwise propose to effect, (i) any action that would adversely affect the powers, preferences or special rights of the Securities, whether by way of amendment to the Declaration or otherwise, or (ii) the dissolution, winding-up or termination of the Trust, other than in connection with the distribution of Debentures held by the Property Trustee, upon the occurrence of a Special Event or in connection with the redemption of Common Securities as a consequence of a redemption of Debentures, then the Holders of outstanding Securities will be entitled to vote on such amendment or proposal as a class and such amendment or proposal shall not be effective except with the approval of the Holders of Securities representing 66-2/3% in liquidation amount of such Securities; PROVIDED, HOWEVER, that (A) if any amendment or proposal referred to in clause (i) above would adversely affect only the Preferred Securities or the Common Securities, then only the affected class will be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of 66-2/3% in liquidation amount of such class of Securities, (B) the rights of Holders of Common Securities under Article V of the Declaration to increase or decrease the number of, and to appoint, replace or remove, Trustees shall not be amended without the consent of each Holder of Common Securities, and (C) amendments to the Declaration shall be subject to such further requirements as are set forth in Sections 12.01 and 12.02 of the Declaration.

In the event the consent of the Property Trustee as the holder of the Debentures, is required under the Indenture with respect to any amendment, modification or

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termination of the Indenture or the Debentures, the Property Trustee shall request the written direction of the Holders of the Securities with respect to such amendment, modification or termination. The Property Trustee shall vote with respect to such amendment, modification or termination as directed by a Majority in liquidation amount of the Securities voting together as a single class; PROVIDED that where such amendment, modification or termination of the Indenture requires the consent or vote of (1) holders of Debentures representing a specified percentage greater than a majority in principal amount of the Debentures or (2) each holder of Debentures affected thereby, the Property Trustee may vote only with respect to that amendment, modification or termination as directed by, in the case of clause (1) above, the vote of Holders of Securities representing such specified percentage of the aggregate liquidation amount of the Securities, or, in the case of clause (2) above, each Holder of Securities affected thereby; and PROVIDED, FURTHER, that the Property Trustee shall be under no obligation to take any action in accordance with the directions of the Holders of the Securities unless the Property Trustee shall have received, at the expense of the Sponsor, an opinion of nationally recognized independent tax counsel recognized as an expert in such matters to the effect that the Trust will not be classified for United States Federal income tax purposes as an association taxable as a corporation or a partnership on account of such action and will be treated as a grantor trust for United States Federal income tax purposes following such action.

Subject to Section 2.06 of the Declaration and the provisions of this and the next succeeding paragraph, the Holders of a Majority in liquidation amount of the Common Securities, voting separately as a class, shall have the right to (A) on behalf of all Holders of Common Securities, waive any past default that is waivable under the Declaration (subject to, and in accordance with, the Declaration) and (B) direct the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon the Property Trustee under the Declaration, including the right to direct the Property Trustee, as holder of the Debentures, to (i) direct the time, method and place of conducting any proceeding for any remedy available to the

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Debenture Trustee, or exercising any trust or power conferred on the Debenture Trustee with respect to the Debentures, (ii) waive any past default and its consequences that is waivable under Section 6.06 of the Indenture, or (iii) exercise any right to rescind or annul a declaration that the principal of all the Debentures shall be due and payable; PROVIDED that where the taking of any action under the Indenture requires the consent or vote of (1) holders of Debentures representing a specified percentage greater than a majority in principal amount of the Debentures or (e) each holder of Debentures affected thereby, the Property Trustee may take such action only if directed by, in the case of clause (1) above, the vote of Holders of Common Securities representing such specified percentage of the aggregate liquidation amount of the Common Securities, or, in the case of clause (2) above, each Holder of Common Securities affected thereby. Pursuant to this paragraph, the Property Trustee shall not revoke, or take any action inconsistent with, any action previously authorized or approved by a vote of the Holders of the Preferred Securities, and shall not take any action in accordance with the direction of the Holders of the Common Securities under this paragraph if the action is prejudicial to the Holders of Preferred Securities. Other than with respect to directing the time, method and place of conducting any proceeding for any remedy available to the Property Trustee or the Debenture Trustee as set forth above, the Property Trustee shall be under no obligation to take any of the foregoing actions at the direction of the Holders of Common Securities unless the Property Trustee shall have received, at the expense of the Sponsor, an opinion of nationally recognized independent tax counsel recognized as expert in such matters to the effect that the Trust will not be classified for United States Federal income tax purposes as an association taxable as a corporation or a partnership on account of such action and will be treated as a grantor trust for United States income tax purposes following such action.

Notwithstanding any other provision of these terms, each Holder of Common Securities will be deemed to have waived any Event of Default with respect to the Common Securities and its consequences until all Events of Default

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with respect to the Preferred Securities have been cured, waived by the Holders of Preferred Securities as provided in the Declaration or otherwise eliminated, and until all Events of Default with respect to the Preferred Securities have been so cured, waived by the Holders of Preferred Securities or otherwise eliminated, the Property Trustee will be deemed to be acting solely on behalf of the Holders of Preferred Securities and only the Holders of the Preferred Securities will have the right to direct the Property Trustee in accordance with the terms of the Declaration or of the Securities. In the event that any Event of Default with respect to the Preferred Securities is waived by the Holders of Preferred Securities as provided in the Declaration, the Holders of Common Securities agree that such waiver shall also constitute the waiver of such Event of Default with respect to the Common Securities for all purposes under the Declaration without any further act, vote or consent of the Holders of the Common Securities.

A waiver of an Indenture Event of Default by the Property Trustee at the direction of the Holders of the Preferred Securities will constitute a waiver of the corresponding Event of Default under the Declaration in respect of the Securities.

Any required approval of Holders of Common Securities may be given at a separate meeting of Holders of Common Securities convened for such purpose, at a meeting of all of the Holders of Securities of the Trust or pursuant to written consent. The Regular Trustees will cause a notice of any meeting at which Holders of Common Securities are entitled to vote, or of any matter upon which action by written consent of such Holders is to be taken, to be mailed to each Holder of record of Common Securities. Each such notice will include a statement setting forth (i) the date of such meeting or the date by which such action is to be taken, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote or of such matter upon which written consent is sought and (iii) instructions for the delivery of proxies or consents.

No vote or consent of the Holders of Common Securities will be required for the Trust to redeem and cancel Common Securities in accordance with the Declaration.

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#### 6. CONVERSION RIGHTS. [to be provided if applicable.]

7. PRO RATA TREATMENT. A reference in these terms of the Common Securities to any payment, distribution or treatment as being "pro rata" shall mean pro rata to each Holder of Securities according to the aggregate liquidation amount of the Securities held by the relevant Holder in relation to the aggregate liquidation amount of all Securities outstanding unless, in relation to a payment, an Event of Default has occurred and is continuing, in which case any funds available to make such payment shall be paid first to each Holder of the Preferred Securities pro rata according to the aggregate liquidation amount of Preferred Securities held by the relevant Holder relative to the aggregate liquidation amount of all Preferred Securities outstanding, and only after satisfaction of all amounts owed to the Holders of the Preferred Securities, to each Holder of Common Securities pro rata according to the

aggregate liquidation amount of Common Securities held by the relevant Holder relative to the aggregate liquidation amount of all Common Securities outstanding.

8. RANKING. The Common Securities rank PARI PASSU and payment thereon will be made pro rata with the Preferred Securities except that where an Event of Default occurs and is continuing, the rights of Holders of Common Securities to payment in respect of Distributions and payments upon liquidation, redemption or otherwise are subordinate to the rights of Holders of the Preferred Securities.

9. MERGERS, CONSOLIDATIONS OR AMALGAMATIONS. The Trust may not consolidate, amalgamate, merge with or into, or be replaced by, or sell, transfer or lease all or substantially all its properties and assets to, any Person.

10. TRANSFERS, EXCHANGES, METHOD PAYMENTS. Payment of Distributions and payments on redemption of the Common Securities will be payable, the transfer of the Common Securities will be registrable, and Common Securities

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will be exchangeable for Common Securities of other denominations of a like aggregate liquidation amount, at the principal corporate trust office of the Property Trustee in The City of New York; PROVIDED that payment of Distributions may be made at the option of the Regular Trustees on behalf of the Trust by check mailed to the address of the Persons entitled thereto and that the payment on redemption of any Common Security will be made only upon surrender of such Common Security to the Property Trustee. Notwithstanding the foregoing, transfers of Common Securities are subject to conditions set forth in Section 9.01(c) of the Declaration.

11. ACCEPTANCE OF INDENTURE. Each Holder of Common Securities, by the acceptance thereof, agrees to the provisions of the Indenture and the Debentures, including the subordination provisions thereof.

12. NO PREEMPTIVE RIGHTS. The Holders of Common Securities shall have no preemptive rights to subscribe to any additional Common Securities or Preferred Securities.

13. MISCELLANEOUS. These terms shall constitute a part of the Declaration. The Trust will provide a copy of the Declaration and the Indenture to a Holder without charge on written request to the Trust at its principal place of business.

Annex I

TRANSFER OF THIS CERTIFICATE  
IS SUBJECT TO THE CONDITIONS  
SET FORTH IN THE DECLARATION  
REFERRED TO BELOW

Number: Common Securities:

CERTIFICATE EVIDENCING COMMON SECURITIES

OF

FUND AMERICAN TRUST I

[ ]% COMMON TRUST SECURITIES  
(LIQUIDATION AMOUNT \$[ ] PER COMMON SECURITY)

Fund American Trust I, a business trust formed under the laws of the State of Delaware (the "Trust"), hereby certifies that Fund American Companies, Inc. (the "Holder"), is the registered owner of [ ] common securities of the Trust representing undivided beneficial interests in the assets of the Trust designated the "[ ]% Common Trust Securities" (liquidation amount \$[ ] per Common Security) (the "Common Securities"). The transfer of Common Securities is registrable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for registration of transfer and satisfaction of the other conditions set forth in the Declaration (as defined below) including, without limitation, Section 9.01(c) thereof. The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Common Securities are set forth in, and this certificate and the Common Securities represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Amended and Restated Declaration of Trust of the Trust dated as of [ , 2001], as the same may be amended from time to time (the "Declaration"), including the designation of the terms of Common Securities as set forth in Exhibit C thereto. The Common Securities and the Preferred Securities issued by the Trust pursuant to the

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Declaration represent undivided beneficial interests in the assets of the Trust, including the Debentures (as defined in the Declaration) issued by Fund American Companies, Inc., a Delaware corporation, to the Trust pursuant to the Indenture referred to in the Declaration. The Trust will furnish a copy of the Declaration

and the Indenture to the Holder without charge upon written request to the Trust at its principal place of business or registered office.

The Holder of this Certificate, by accepting this Certificate, is deemed to have agreed to the terms of the Indenture and the Debentures, including that the Debentures are subordinate and junior in right of payment to all Senior Indebtedness (as defined in the Indenture) as and to the extent provided in the Indenture.

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Upon receipt of this certificate, the Holder is bound by the Declaration and is entitled to the benefits thereunder.

IN WITNESS WHEREOF, the Trustees of the Trust have executed this certificate this [ ] day of [ ].

Fund American Trust I,

by  
-----  
Name:  
Title: Regular Trustee

by  
-----  
Name:  
Title: Regular Trustee

Dated:

Countersigned and Registered:

[ ], as  
Transfer Agent and Registrar

by  
-----  
Authorized Officer

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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Common Security Certificate to:

-----  
-----  
-----

(Insert assignee's social security or tax identification number)

-----  
-----  
-----

(Insert address and zip code of assignee)

and irrevocably appoints

-----  
-----  
-----

agent to transfer this Common Security Certificate on the books of the Trust. The agent may substitute another to act for him or her.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

(Sign exactly as your name appears on the other side of this Common Security Certificate)

[Form of Amended and Restated Declaration of Trust]

=====

AMENDED AND RESTATED DECLARATION OF TRUST

OF

Fund American Trust II

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Dated as of [        ]

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[FORM OF]

AMENDED AND RESTATED  
DECLARATION OF TRUST  
OF  
Fund American Trust II

[ ]

AMENDED AND RESTATED DECLARATION OF TRUST  
("Declaration"), dated and effective as of [ ], by the undersigned trustees (together with all other Persons from time to time duly appointed and serving as trustees in accordance with the provisions of this Declaration, the "Trustees"), Fund American Companies, Inc., a Delaware corporation, as trust sponsor (the "Sponsor"), and the holders, from time to time, of undivided beneficial interests in the assets of the Fund American Trust II to be issued pursuant to this Declaration.

WHEREAS the Sponsor and the original trustees entered into a Declaration of Trust dated as of [ ], 2001 (the "Original Declaration") in order to establish Fund American Trust II, a business trust (the "Trust") under the Business Trust Act (as defined herein);

WHEREAS the Certificate of Trust (the "Certificate of Trust") of the Trust was filed with the office of the Secretary of State of the State of Delaware on [ ], 2001;

WHEREAS the Trustees and the Sponsor desire to continue the Trust pursuant to the Business Trust Act for the purpose of, as described more fully in Sections 3.03, 3.04 and 3.05 hereof, (i) issuing and selling Preferred Securities (as defined herein) representing preferred undivided beneficial interests in the assets of the Trust for cash and investing the proceeds thereof in Debentures (as defined herein) of the Sponsor issued under the Indenture (as defined herein) to be held as assets of the Trust, (ii) issuing and selling Common Securities (as defined herein) representing common undivided beneficial interests in the assets of the Trust to the Sponsor for cash and investing the proceeds thereof in additional

Debentures issued under the Indenture to be held as assets of the Trust and (iii) engaging in such other activities as are necessary, convenient or incidental thereto;

NOW, THEREFORE, it being the intention of the parties hereto that the Trust constitute a business trust under the Business Trust Act, that the Original Declaration be amended and restated in its entirety as provided herein and that this Declaration constitute the governing instrument of such business trust, the Trustees declare that all assets referred to in clauses (i) and (ii) of the previous Whereas clause purchased by the Trust will be held in trust for the benefit of the Holders (as defined herein) from time to time of the Certificates (as defined herein) representing undivided beneficial interests in the assets of the Trust issued hereunder, subject to the provisions of this Declaration.

ARTICLE I

DEFINITIONS

SECTION 1.01. DEFINITIONS. (a) Capitalized terms used in this Declaration but not defined in the preamble above have the respective meanings assigned to them in this Section 1.01; (b) a term defined anywhere in this Declaration has the same meaning throughout; (c) all references to "the Declaration" or "this Declaration" are to this Amended and Restated Declaration

of Trust (including Exhibits A, B and C hereto (the "Exhibits")) as modified, supplemented or amended from time to time; (d) all references in this Declaration to Articles and Sections and Exhibits are to Articles and Sections of and Exhibits to this Declaration unless otherwise specified; (e) a term defined in the Trust Indenture Act has the same meaning when used in this Declaration unless otherwise defined in this Declaration or unless the context otherwise requires; and (f) a reference to the singular includes the plural and vice versa.

"AFFILIATE" has the same meaning as given to that term in Rule 405 under the Securities Act or any successor rule thereunder.

"BOOK ENTRY INTEREST" means a beneficial interest in a Global Certificate registered in the name of a Clearing Agency or a nominee thereof, ownership and transfers of which shall be maintained and made through

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book entries by such Clearing Agency as described in Section 9.04.

"BUSINESS DAY" means any day other than a Saturday, Sunday or any other day on which banking institutions in New York, New York or Wilmington, Delaware are authorized or required by law to close.

"BUSINESS TRUST ACT" means Chapter 38 of Title 12 of the Delaware Code, 12 Del. Code Section 3801 ET SEQ., as it may be amended from time to time.

"CERTIFICATE" means a Common Security Certificate or a Preferred Security Certificate.

"CERTIFICATE OF TRUST" has the meaning set forth in the second Whereas clause above.

"CLEARING AGENCY" means an organization registered as a "clearing agency" pursuant to Section 17A of the Exchange Act that is acting as depository for the Preferred Securities and in whose name, or in the name of a nominee of that organization, shall be registered a Global Certificate and which shall undertake to effect book entry transfers and pledges of the Preferred Securities.

"CLEARING AGENCY PARTICIPANT" means a broker, dealer, bank, other financial institution or other Person for whom from time to time the Clearing Agency effects book entry transfers and pledges of securities deposited with the Clearing Agency.

"CLOSING DATE" means the Closing Date as specified in the Underwriting Agreement, which date is also the date of execution and delivery of this Declaration.

"CODE" means the Internal Revenue Code of 1986, as amended from time to time, or any successor legislation. A reference to a specific section of the Code refers not only to such specific section but also to any corresponding provision of any Federal tax statute enacted after the date of this Declaration, as such specific section or corresponding provision is in effect on the date of application of the provisions of this Declaration containing such reference.

"COMMISSION" means the Securities and Exchange Commission.

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"COMMON SECURITIES" has the meaning specified in Section 7.01(b).

"COMMON SECURITY CERTIFICATE" means a definitive certificate in fully registered form representing a Common Security substantially in the form of Annex I to Exhibit C.

"COVERED PERSON" means (i) any officer, director, shareholder, partner, member, representative, employee or agent of the Trust or its Affiliates, (ii) any officer, director, shareholder, employee, representative or agent of the Sponsor or any of its Affiliates and (iii) the Holders from time to time of the Securities.

"DEBENTURE TRUSTEE" means [ ], as trustee under the Indenture, until a successor, if any, is appointed thereunder and thereafter means such successor trustee.

"DEBENTURES" means the series of Junior Subordinated Debentures issued by the Sponsor under the Indenture to the Property Trustee and entitled the "[ ] Junior Subordinated Debentures due [ ]".

"DEFINITIVE PREFERRED SECURITY CERTIFICATES" has the meaning set forth in Section 9.04.

"DELAWARE TRUSTEE" has the meaning set forth in Section 5.01(a)(3).

"DEPOSITARY AGREEMENT" means the agreement among the Trust, the Property Trustee and DTC dated as of the Closing Date, as the same may be amended or supplemented from time to time.

"DISTRIBUTION" means a distribution payable to Holders of Securities

in accordance with Section 6.01.

"DTC" means The Depository Trust Company, the initial Clearing Agency.

"EVENT OF DEFAULT" in respect of the Securities means an Indenture Event of Default has occurred and is continuing in respect of the Debentures.

"EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended from time to time, or any successor legislation.

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"FISCAL YEAR" has the meaning specified in Section 11.01.

"GLOBAL CERTIFICATE" has the meaning set forth in Section 9.04.

"HOLDER" means a Person in whose name a Certificate representing a Security is registered, such Person being a beneficial owner within the meaning of the Business Trust Act.

"INDEMNIFIED PERSON" means any Trustee in its individual capacity and as a Trustee, any Affiliate of any Trustee, any officer, director, shareholder, member, partner, employee, representative or agent of any Trustee, or any employee or agent of the Trust or any of its Affiliates.

"INDENTURE" means the Junior Subordinated Indenture dated as of [ ], among White Mountains, the Sponsor and the Debenture Trustee, as amended or supplemented from time to time.

"INDENTURE EVENT OF DEFAULT" means an event or condition defined as an "Event of Default" with respect to the Debentures under Section 6.01(a) of the Indenture has occurred and is continuing.

"INVESTMENT COMPANY" means an investment company as defined in the Investment Company Act.

"INVESTMENT COMPANY ACT" means the Investment Company Act of 1940, as amended from time to time, or any successor legislation.

"LEGAL ACTION" has the meaning specified in Section 3.08(g).

"LIQUIDATION DISTRIBUTION" has the meaning set forth in the terms of the Securities as set forth in Exhibits B and C hereto.

"MAJORITY IN LIQUIDATION AMOUNT OF THE SECURITIES" means, except as otherwise required by the Trust Indenture Act and except as provided in the penultimate paragraph of paragraph 5 of Exhibit B hereto, Holder(s) of outstanding Securities voting together as a single class or, as the context may require, Holder(s) of outstanding Preferred Securities or Common Securities voting separately as a class, who are the record owners of a relevant class of Securities whose liquidation amount (including the stated amount that would be paid on

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redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) represents more than 50% of the liquidation amount of all outstanding Securities of such class.

"MINISTERIAL ACTION" has the meaning set forth in Section 4(c) of the terms of the Securities as set forth in Exhibits B and C hereto.

"OPTION CLOSING DATE" means the Option Closing Date as specified in the Underwriting Agreement.

"ORIGINAL DECLARATION" has the meaning set forth in the first Whereas clause above.

"PAYING AGENT" has the meaning specified in Section 3.10(i).

"PERSON" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

"PREFERRED GUARANTEE" means the Guarantee Agreement dated as of [ ], of White Mountains in respect of the Preferred Securities.

"PREFERRED SECURITIES" has the meaning specified in Section 7.01(b).

"PREFERRED SECURITY BENEFICIAL OWNER" means, with respect to a Book Entry Interest, a Person who is the beneficial owner of such Book Entry Interest, as reflected on the books of the Clearing Agency, or on the books of a Person maintaining an account with such Clearing Agency (directly as a Clearing Agency Participant or as an indirect participant, in each case in accordance with the rules of such Clearing Agency).

"PREFERRED SECURITY CERTIFICATE" means a definitive certificate in

fully registered form representing a Preferred Security substantially in the form of Annex I to Exhibit B.

"PROPERTY TRUSTEE" means the Trustee meeting the eligibility requirements set forth in Section 5.01(c) and having the duties set forth for the Property Trustee herein.

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"PROPERTY ACCOUNT" has the meaning specified in Section 3.10(c)(i).

"QUORUM" means a majority of the Regular Trustees or, if there are only two Regular Trustees, both such Regular Trustees.

"REGULAR TRUSTEE" means any Trustee other than the Property Trustee or the Delaware Trustee.

"RELATED PARTY" means any direct or indirect wholly owned subsidiary of the Sponsor or any Person which owns, directly or indirectly, 100% of the outstanding voting securities of the Sponsor.

"RESIGNATION REQUEST" has the meaning specified in Section 5.02(d).

"RESPONSIBLE OFFICER" means, with respect to the Property Trustee, any officer of the Property Trustee with responsibility for the administration of this Declaration and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer's knowledge of, and familiarity with, the particular subject.

"RULE 3a-7" means Rule 3a-7 under the Investment Company Act or any successor rule thereunder.

"SECURITIES" means the Common Securities and the Preferred Securities.

"SECURITIES ACT" means the Securities Act of 1933, as amended from time to time, or any successor legislation.

"66-2/3% IN LIQUIDATION AMOUNT OF THE SECURITIES" means, except as otherwise required by the Trust Indenture Act and except as provided in the penultimate paragraph of paragraph 5 of Exhibit B hereto, Holder(s) of outstanding Securities voting together as a single class or, as the context may require, Holder(s) of outstanding Preferred Securities or Common Securities, voting separately as a class, who are the record owners of a relevant class of Securities whose liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) represents 66-2/3% or more of the liquidation amount of all outstanding Securities of such class.

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"SPECIAL EVENT" has the meaning set forth in Section 4(c) of the terms of the Securities as set forth in Exhibits B and C hereto.

"SPONSOR" means Fund American Companies, Inc., a Delaware corporation, or any successor entity in a merger, consolidation or other business combination transaction in its capacity as sponsor of the Trust.

"SUCCESSOR DELAWARE TRUSTEE" has the meaning specified in Section 5.02(b)(ii).

"SUCCESSOR PROPERTY TRUSTEE" means a successor Trustee possessing the qualifications to act as Property Trustee under Section 5.01(c).

"10% IN LIQUIDATION AMOUNT OF THE SECURITIES" means, except as otherwise required by the Trust Indenture Act and except as provided in the penultimate paragraph of paragraph 5 of Exhibit B hereto, Holder(s) of outstanding Securities voting together as a single class or, as the context may require, Holder(s) of outstanding Preferred Securities or Common Securities, voting separately as a class, who are the record owners of a relevant class of Securities whose liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) represents 10% or more of the liquidation amount of all outstanding Securities of such class.

"TREASURY REGULATIONS" means the income tax regulations, including temporary and proposed regulations, promulgated under the Code by the United States Treasury, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"TRUSTEE" or "TRUSTEES" means each Person who has signed this Declaration as a trustee, so long as such Person shall continue in office in accordance with the terms hereof, and all other Persons who may from time to time be duly appointed, qualified and serving as a Trustee in accordance with the provisions hereof, and references herein to a Trustee or the Trustees shall refer to such Person or Persons solely in their capacity as trustees hereunder.

"TRUST INDENTURE ACT" means the Trust Indenture Act of 1939, as

"UNDERWRITING AGREEMENT" means the Underwriting Agreement dated [ ], among the Trust, the Sponsor and [ ], as representative of the several underwriters named therein.

"WHITE MOUNTAINS" means White Mountains Insurance Group, Ltd., a company existing under the laws of Bermuda.

## ARTICLE II

### TRUST INDENTURE ACT

SECTION 2.01. TRUST INDENTURE ACT; APPLICATION. (a) This Declaration is subject to the provisions of the Trust Indenture Act that are required to be part of this Declaration and shall, to the extent applicable, be governed by such provisions; (b) if and to the extent that any provision of this Declaration limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control; (c) the Property Trustee, to the extent permitted by applicable law and/or the rules and regulations of the Commission, shall be the only Trustee which is a trustee for the purposes of the Trust Indenture Act; and (d) the application of the Trust Indenture Act to this Declaration shall not affect the nature of the Securities as equity securities representing undivided beneficial interests in the assets of the Trust.

SECTION 2.02. LISTS OF HOLDERS OF PREFERRED SECURITIES. (a) Each of the Sponsor and the Regular Trustees on behalf of the Trust shall provide the Property Trustee with such information as is required under Section 312(a) of the Trust Indenture Act at the times and in the manner provided in Section 312(a); and (b) the Property Trustee shall comply with its obligations under Sections 310(b), 311 and 312(b) of the Trust Indenture Act.

SECTION 2.03. REPORTS BY THE PROPERTY TRUSTEE. Within 60 days after May 15 of each year, the Property Trustee shall provide to the Holders of the Securities such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form, in the manner and at the times provided by Section 313 of the Trust Indenture Act. The Property Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

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SECTION 2.04. PERIODIC REPORTS TO PROPERTY TRUSTEE. Each of the Sponsor and the Regular Trustees on behalf of the Trust shall provide to the Property Trustee, the Commission and the Holders of the Securities, as applicable, such documents, reports and information as required by Section 314(a)(1)-(3) (if any) of the Trust Indenture Act and the compliance certificates required by Section 314(a)(4) and (c) of the Trust Indenture Act, any such certificates to be provided in the form, in the manner and at the times required by Section 314(a)(4) and (c) of the Trust Indenture Act (PROVIDED that any certificate to be provided pursuant to Section 314(a)(4) of the Trust Indenture Act shall be provided within 120 days of the end of each Fiscal Year).

SECTION 2.05. EVIDENCE OF COMPLIANCE WITH CONDITIONS PRECEDENT. Each of the Sponsor and the Regular Trustees on behalf of the Trust shall provide to the Property Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Declaration which relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given pursuant to Section 314(c) of the Trust Indenture Act shall comply with Section 314(e) of the Trust Indenture Act.

SECTION 2.06. EVENTS OF DEFAULT; WAIVER. (a) Subject to Section 2.06(c), Holders of Preferred Securities may, by vote of at least a Majority in liquidation amount of the Preferred Securities, (A) in accordance with the terms of the Preferred Securities, direct the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon the Property Trustee, or (B) on behalf of the Holders of all Preferred Securities, waive any past Event of Default in respect of the Preferred Securities and its consequences; PROVIDED that, if the Event of Default arises out of an Indenture Event of Default:

(i) which is not waivable under the Indenture, the Event of Default under this Declaration shall also be not waivable; or

(ii) which requires the consent or vote of (1) holders of Debentures representing a specified percentage greater than a majority in principal amount of the Debentures affected thereby, or (2) each holder of Debentures, the Event of Default under this Declaration may only be waived by, in the case of clause (1) above, the vote of Holders of Preferred Securities representing such specified

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percentage of the aggregate liquidation amount of the Preferred Securities or, in the case of clause (2) above, each Holder of Preferred Securities affected thereby.

Upon such waiver, any such default shall cease to exist, and any Event of Default with respect to the Preferred Securities arising therefrom shall be deemed to have been cured for every purpose of this Declaration, but no such waiver shall extend to any subsequent or other default or Event of Default with respect to the Preferred Securities or impair any right consequent thereto.

(b) Subject to Section 2.06(c), Holders of Common Securities may, by vote of at least a Majority in liquidation amount of the Common Securities, (A) in accordance with the terms of the Common Securities, direct the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon the Property Trustee, or (B) on behalf of the Holders of all of the Common Securities, waive any past Event of Default with respect to the Common Securities and its consequences; PROVIDED that if the Event of Default arises out of an Indenture Event of Default:

(i) which is not waivable under the Indenture, except where the Holders of the Common Securities are deemed to have waived such Event of Default under the Declaration as provided below, the Event of Default under this Declaration shall also not be waivable; or

(ii) which requires the consent or vote of (1) holders of Debentures representing a specified percentage greater than a majority in principal amount of the Debentures or (2) each holder of Debentures affected thereby, except where the holders of the Common Securities are deemed to have waived such Event of Default under this Declaration as provided below, the Event of Default under this Declaration may only be waived by, in the case of clause (1) above, the vote of Holders of Common Securities representing such specified percentage of the aggregate liquidation amount of the Common Securities or, in the case of clause (2) above, each holder of Common Securities affected thereby; and

PROVIDED FURTHER that each Holder of Common Securities will be deemed to have waived any Event of Default with respect to the Common Securities and its consequences until all Events of Default with respect to the Preferred

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Securities have been cured or waived by the Holders of Preferred Securities as provided in this Declaration or otherwise eliminated and until all Events of Default with respect to the Preferred Securities have been so cured, waived or otherwise eliminated, the Property Trustee will be deemed to be acting solely on behalf of the Holders of the Preferred Securities and only the Holders of the Preferred Securities will have the right to direct the Property Trustee in accordance with the terms of this Declaration or the Securities. In the event that an Event of Default with respect to the Preferred Securities is waived by the Holders of Preferred Securities as provided in this Declaration, the Holders of Common Securities agree that such waiver shall also constitute the waiver of such Event of Default with respect to the Common Securities for all purposes under this Declaration without any further act, vote or consent of the Holders of the Common Securities. Subject to the foregoing provisions of this Section 2.06(b), upon such waiver, any such default shall cease to exist and any Event of Default with respect to the Common Securities arising therefrom shall be deemed to have been cured for every purpose of this Declaration, but no such waiver shall extend to any subsequent or other default or Event of Default with respect to the Common Securities or impair any right consequent thereon.

(c) The right of any Holder of Securities to receive payment of Distributions on the Securities in accordance with this Declaration and the terms of the Securities set forth in Exhibits B and C on or after the respective payment dates therefor, or to institute suit for the enforcement of any such payment on or after such payment dates, shall not be impaired without the consent of such Holder.

(d) As provided in the terms of the Securities set forth in Exhibits B and C hereto, a waiver of an Indenture Event of Default by the Property Trustee at the written direction of the Holders of the Preferred Securities constitutes a waiver of the corresponding Event of Default under this Declaration in respect of the Securities.

SECTION 2.07. DISCLOSURE OF INFORMATION. The disclosure of information as to the names and addresses of the Holders of the Securities in accordance with Section 312 of the Trust Indenture Act, regardless of the source from which such information was derived, shall not be deemed to be a violation of any existing law or any law hereafter enacted which does not specifically refer to Section 312 of the Trust Indenture Act, nor shall the

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Property Trustee be held accountable by reason of mailing any material pursuant to a request made under Section 312(b) of the Trust Indenture Act.

### ARTICLE III

#### ORGANIZATION

SECTION 3.01. NAME. The Trust continued by this Declaration is named "Fund American Trust II" as such name may be modified from time to time by the

Regular Trustees following written notice to the Holders, the Property Trustee and the Delaware Trustee. The Trust's activities may be conducted under the name of the Trust or any other name deemed advisable by the Regular Trustees.

SECTION 3.02. OFFICE. The address of the principal office of the Trust is c/o Fund American Companies, Inc., One Beacon Street, Boston, Massachusetts 02108-3100. Upon ten days' written notice to the Holders (a copy of such notice to be sent to the Property Trustee and the Delaware Trustee), the Regular Trustees may change the location of the Trust's principal office. The name of the registered agent and office of the Trust in the State of [DE Trustee address]. At any time, the Regular Trustees may designate another registered agent and/or registered office.

SECTION 3.03. ISSUANCE OF THE TRUST SECURITIES. On [ ], the Sponsor, on behalf of the Trust and pursuant to the Original Declaration, executed and delivered the Underwriting Agreement. On the Closing Date and contemporaneously with the execution and delivery of this Declaration, the Regular Trustees, on behalf of the Trust, shall execute and deliver (i) to the underwriters named in the Underwriting Agreement, a Global Certificate, registered in the name of the nominee of the initial Clearing Agency as specified in Section 9.04, in an aggregate amount of [ ] Preferred Securities having an aggregate liquidation amount of \$[ ], against receipt of the aggregate purchase price of such Preferred Securities of \$[ ], and (ii) to the Sponsor, Common Securities Certificates, registered in the name of the Sponsor, in an aggregate amount of [ ] Common Securities having an aggregate liquidation amount of \$[ ], against receipt of the aggregate purchase price of such Common Securities of \$[ ].

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SECTION 3.04. PURCHASE OF DEBENTURES. On the Closing Date and contemporaneously with the execution and delivery of this Declaration, the Regular Trustees, on behalf of the Trust, shall purchase from the Sponsor with the proceeds received by the Trust from the sale of the Securities on such date pursuant to Section 3.03, at a purchase price of 100% of the principal amount thereof, Debentures, registered in the name of the Property Trustee and having an aggregate principal amount equal to \$[ ], and, in satisfaction of the purchase price for such Debentures, the Regular Trustees, on behalf of the

Trust, shall deliver or cause to be delivered to the Sponsor the sum of \$[ ]. In the event the overallotment option granted by the Trust with respect to the Preferred Securities pursuant to the Underwriting Agreement is exercised by the underwriters named therein, on the Option Closing Date the Regular Trustees, on behalf of the Trust, shall purchase from the Sponsor with the proceeds received by the Trust from the sale of the Securities on such date pursuant to Section 3.03, at a purchase price of 100% of the principal amount thereof, additional Debentures, registered in the name of the Property Trustee and having an aggregate principal amount of up to \$[ ], and, in satisfaction of the purchase price for such Debentures, the Regular Trustees, on behalf of the Trust, shall deliver or cause to be delivered to the Sponsor an amount equal to the aggregate principal amount of the Debentures being purchased.

SECTION 3.05. PURPOSE. The exclusive purposes and functions of the Trust are: (a)(i) to issue and sell Preferred Securities for cash and use the proceeds of such sales to purchase as trust assets Debentures issued under the Indenture having an aggregate principal amount equal to the aggregate liquidation amount of the Preferred Securities so issued and sold; (ii) to enter into such agreements and arrangements as may be necessary in connection with the sale of Preferred Securities to the initial purchasers thereof (including the Underwriting Agreement) and to take all actions and exercise such discretion as may be necessary or desirable in connection therewith and to file such registration statements or make such other filings under the Securities Act, the Exchange Act or state securities or "Blue Sky" laws as may be necessary or desirable in connection therewith and the issuance of the Preferred Securities; and (iii) to issue and sell Common Securities to the Sponsor for cash and use the proceeds of such sale to purchase as trust assets an equal aggregate principal amount of Debentures issued under the Indenture; and (b) except as otherwise limited herein, to engage in such other activities as are necessary, convenient or

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incidental thereto. The Trust shall not borrow money, issue debt or reinvest proceeds derived from investments, pledge any of its assets or, at any time while the Securities are outstanding, otherwise undertake (or permit to be undertaken) an activity that would result in or cause the Trust to be treated as anything other than a grantor trust for United States Federal income tax purposes.

SECTION 3.06. AUTHORITY. Subject to the limitations provided in this Declaration and to the specific duties of the Property Trustee, the Regular Trustees shall have exclusive and complete authority to carry out the purposes of the Trust. An action taken by one or more of the Regular Trustees in accordance with their powers shall constitute the act of and serve to bind the Trust and an action taken by the Property Trustee in accordance with its powers shall constitute the act of and serve to bind the Trust. In dealing with the Trustees acting on behalf of the Trust, no Person shall be required to inquire into the authority of the Trustees to bind the Trust. Persons dealing with the Trust are entitled to rely conclusively on the power and authority of the

Trustees as set forth in this Declaration.

SECTION 3.07. TITLE TO PROPERTY OF THE TRUST. Except as provided in Section 3.10 with respect to the Debentures and the Property Account or unless otherwise provided in this Declaration, legal title to all assets of the Trust shall be vested in the Trust. The Holders shall not have legal title to any part of the assets of the Trust, but shall have an individual undivided beneficial interest in the assets of the Trust.

SECTION 3.08. POWERS AND DUTIES OF THE REGULAR TRUSTEES. The Regular Trustees acting individually or together shall have the exclusive power, authority and duty to cause the Trust, and shall cause the Trust, to engage in the following activities:

(a) to issue Preferred Securities and Common Securities, in each case in accordance with this Declaration; PROVIDED, HOWEVER, that the Trust may issue no more than one series of Preferred Securities and no more than one series of Common Securities; and PROVIDED FURTHER that there shall be no interests in the Trust other than the Securities and the issuance of Securities shall be limited to (x) a one-time, simultaneous issuance of both Preferred Securities and Common Securities on the Closing Date and (y) any subsequent issuance of both

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Preferred Securities and Common Securities on the Option Closing Date pursuant to an exercise of the overallotment option granted to the underwriters in the Underwriting Agreement;

(b) in connection with the issuance of the Preferred Securities, at the direction of the Sponsor, to effect or cause to be effected the filings, and to execute or cause to be executed the documents, set forth in Section 3.13 and to execute, deliver and perform on behalf of the Trust the Depositary Agreement;

(c) to acquire as trust assets Debentures with the proceeds of the sale of the Preferred Securities and Common Securities; PROVIDED, HOWEVER, that the Regular Trustees shall cause all the Debentures to be held of record in the name of the Property Trustee for the benefit of the Holders of the Preferred Securities and the Common Securities;

(d) to cause the Trust to enter into such agreements and arrangements as may be necessary or desirable in connection with the sale of Preferred Securities to the initial purchasers thereof and the consummation thereof, and to take all action, and exercise all discretion, as may be necessary or desirable in connection with the consummation thereof;

(e) to give the Sponsor and the Property Trustee prompt written notice of the occurrence of a Special Event; PROVIDED that the Regular Trustees shall consult with the Sponsor and the Property Trustee before taking or refraining to take any Ministerial Action in relation to a Special Event;

(f) to establish a record date with respect to all actions to be taken hereunder that require a record date be established, including for the purposes of Section 316(c) of the Trust Indenture Act and with respect to Distributions, voting rights, redemptions and exchanges, and to issue relevant notices to Holders of the Preferred Securities and the Common Securities as to such actions and applicable record dates;

(g) to bring or defend, pay, collect, compromise, arbitrate, resort to legal action or otherwise adjust claims or demands of or against the Trust ("Legal Action"), unless, pursuant to

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Section 3.10(e), the Property Trustee has the exclusive power to bring such Legal Action;

(h) to employ or otherwise engage employees and agents (who may be designated as officers with titles) and managers, contractors, advisors and consultants and pay reasonable compensation for such services;

(i) to cause the Trust to comply with the Trust's obligations under the Trust Indenture Act;

(j) to give the certificate to the Property Trustee required by Section 314(a)(4) of the Trust Indenture Act, which certificate may be executed by any Regular Trustee;

(k) to incur expenses which are necessary or incidental to carrying out any of the purposes of the Trust;

(l) to act as, or appoint another Person to act as, registrar and transfer agent for the Securities, the Regular Trustees hereby initially appointing the Property Trustee for such purposes;

(m) to take all actions and perform such duties as may be required of the Regular Trustees pursuant to the terms of the Securities set forth



in Exhibits B and C hereto;

(n) to execute all documents or instruments including, but not limited to, the Declaration of Trust and the Certificate of Trust, perform all duties and powers and do all things for and on behalf of the Trust in all matters necessary, convenient or incidental to the foregoing;

(o) to take all action which may be necessary or appropriate for the preservation and the continuation of the Trust's valid existence, rights, franchises and privileges as a business trust under the laws of the State of Delaware and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Holders of the Securities or to enable the Trust to effect the purposes for which the Trust has been created;

(p) to take all action, not inconsistent with this Declaration or with applicable law, which the Regular Trustees determine in their discretion to be

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reasonable and necessary or desirable in carrying out the activities of the Trust as set out in this Section 3.08, in order that:

(i) the Trust will not be deemed to be an Investment Company required to be registered under the Investment Company Act;

(ii) the Trust will not be classified for United States Federal income tax purposes as an association taxable as a corporation or a partnership and will be treated as a grantor trust for United States Federal income tax purposes; and

(iii) the Trust will comply with any requirements imposed by any taxing authority on holders of instruments treated as indebtedness for United States Federal income tax purposes;

PROVIDED that such action does not adversely affect the interests of Holders;

(q) to take all action necessary to cause all applicable tax returns and tax information reports that are required to be filed with respect to the Trust to be duly prepared and filed by the Regular Trustees, on behalf of the Trust; and

(r) subject to the requirements of Rule 3a-7 and Section 317(b) of the Trust Indenture Act, to appoint one or more Paying Agents in addition to the Property Trustee.

The Regular Trustees must exercise the powers set forth in this Section 3.08 in a manner which is consistent with the purposes and functions of the Trust set out in Section 3.05 and the Regular Trustees shall not take any action which is inconsistent with the purposes and functions of the Trust set forth in Section 3.05.

Subject to this Section 3.08, the Regular Trustees shall have none of the powers nor any of the authority of the Property Trustee set forth in Section 3.10.

SECTION 3.09. PROHIBITION OF ACTIONS BY TRUST AND TRUSTEES. The Trust shall not, and no Trustee (including the Property Trustee) shall cause the Trust to, engage in any activity other than as required or

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authorized by this Declaration. In particular, the Trust shall not, and no Trustee (including the Property Trustee) shall cause the Trust to:

(a) invest any proceeds received by the Trust from holding the Debentures, but shall promptly distribute all such proceeds to Holders of Securities pursuant to the terms of this Declaration and of the Securities;

(b) acquire any assets other than as expressly provided herein;

(c) possess Trust property for other than a Trust purpose;

(d) make any loans, other than loans represented by the Debentures;

(e) possess any power or otherwise act in such a way as to vary the Trust assets or the terms of the Securities in any way whatsoever;

(f) issue any securities or other evidences of beneficial ownership of, or beneficial interests in, the Trust other than the Securities;

(g) incur any indebtedness for borrowed money; or

(h)(i) direct the time, method and place of exercising any trust or power conferred upon the Debenture Trustee with respect to the Debentures, (ii) waive any past default that is waivable under Section 6.06 of the Indenture, (iii) exercise any right to rescind or annul any declaration

that the principal of all of the Debentures shall be due and payable or (iv) consent to any amendment, modification or termination of the Indenture or the Debentures, where such consent shall be required, unless in the case of this clause (h) the Property Trustee shall have received an unqualified opinion of nationally recognized independent tax counsel recognized as expert in such matters to the effect that such action will not cause the Trust to be classified for United States Federal income tax purposes as an association taxable as a corporation or partnership and that the Trust will continue to be classified as a grantor trust for United States Federal income tax purposes.

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SECTION 3.10. POWERS AND DUTIES OF THE PROPERTY TRUSTEE. (a) The Debentures shall be held of record in the name of the Property Trustee in trust for the benefit of the Holders. The right, title and interest of the Property Trustee to the Debentures shall vest automatically in each Person who may hereafter be appointed as Property Trustee in accordance with Article V. Such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered.

(b) The Property Trustee shall not transfer its right, title and interest in the Debentures to the Regular Trustees or, if the Property Trustee does not also act as the Delaware Trustee, the Delaware Trustee.

(c) The Property Trustee shall:

(i) establish and maintain a segregated non-interest bearing bank account (the "Property Account") in the name of and under the exclusive control of the Property Trustee on behalf of the Holders of the Securities and on the receipt of payments of funds made in respect of the Debentures held by the Property Trustee, deposit such funds into the Property Account and, without any further acts of the Property Trustee or the Regular Trustees, promptly make payments to the Holders of the Preferred Securities and Common Securities from the Property Account in accordance with Section 6.01. Funds in the Property Account shall be held uninvested, and without liability for interest thereon, until disbursed in accordance with this Declaration. The Property Account shall be an account which is maintained with a banking institution whose long term unsecured indebtedness is rated by a "nationally recognized statistical rating organization", as such term is defined for purposes of Rule 436(g)(2) under the Securities Act, at least equal to (but in no event less than "A" or the equivalent) the rating assigned to the Preferred Securities by a nationally recognized statistical rating organization;

(ii) engage in such ministerial activities as shall be necessary or appropriate to effect promptly the redemption of the Securities to the extent the Debentures are redeemed or mature;

(iii) upon written notice of distribution issued by the Regular Trustees in accordance with the terms of the Preferred Securities and the Common

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Securities, engage in such ministerial activities as shall be necessary or appropriate to effect promptly, pursuant to the terms of the Securities, the distribution of Debentures to Holders of Securities upon the occurrence of a Special Event; and

(iv) have the legal power to exercise all of the rights, powers and privileges of a holder of the Debentures under the Indenture and, if an Event of Default occurs and is continuing, the Property Trustee, subject to Section 2.06(b), shall, for the benefit of the Holders of the Securities, enforce its rights as holder of the Debentures under the Indenture, subject to the rights of the Holders of the Preferred Securities pursuant to the terms of this Declaration, the Business Trust Act and the Trust Indenture Act.

(d) The Property Trustee shall take all actions and perform such duties as may be specifically required of the Property Trustee pursuant to the terms of this Declaration and the Securities set forth in Exhibits B and C hereto.

(e) The Property Trustee shall take any Legal Action which arises out of or in connection with an Event of Default of which a Responsible Officer has actual knowledge or the Property Trustee's duties and obligations under this Declaration, the Business Trust Act or the Trust Indenture Act.

(f) All moneys deposited in the Property Account, and all Debentures held by the Property Trustee for the benefit of the Holders of the Securities, will not be subject to any right, charge, security interest, lien or claim of any kind in favor of, or for the benefit of, the Property Trustee or its agents or their creditors.

(g) The Property Trustee shall, within 90 days after the occurrence of a default with respect to the Securities, transmit by mail, first class postage prepaid, to the Holders of the Securities, as their names and addresses appear upon the register, notice of all defaults with respect to the Securities known to the Property Trustee, unless such defaults shall have been cured before

the giving of such notice (the term "defaults" for the purposes of this Section 3.10(g) being hereby defined to be an Indenture Event of Default, not including any periods of grace provided for in the Indenture and irrespective of the giving of any notice

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provided therein); PROVIDED that, except in the case of default in the payment of the principal of (or premium, if any) or interest on any of the Debentures, the Property Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Property Trustee in good faith determines that the withholding of such notice is in the interests of the Holders. The Property Trustee shall not be deemed to have knowledge of any default, except (i) a default in the payment of principal of (or premium, if any) or interest on the Debentures or (ii) any default as to which the Property Trustee shall have received written notice or a Responsible Officer charged with the administration of this Declaration shall have obtained written notice.

(h) The Property Trustee shall not resign as a Trustee unless either:

(i) the Trust has been completely liquidated and the proceeds thereof distributed to the Holders of Securities pursuant to the terms of the Securities; or

(ii) a Successor Property Trustee has been appointed and accepted that appointment in accordance with Article V.

(i) The Property Trustee shall act as paying agent in respect of the Common Securities and the Preferred Securities and, subject to Section 3.08(r), may authorize one or more Persons (each, a "Paying Agent") to pay Distributions, redemption payments or liquidation payments on behalf of the Trust with respect to the Preferred Securities. Any such Paying Agent shall comply with Section 317(b) of the Trust Indenture Act. Any Paying Agent may be removed by the Property Trustee, after consultation with the Regular Trustees, at any time and a successor Paying Agent or additional Paying Agents may be appointed at any time by the Property Trustee, subject to Section 3.08(r).

(j) The Property Trustee shall give prompt written notice to the Holders of the Securities of any notice received by it from the Sponsor of its election to defer payments of interest on the Debentures by extending the interest payment period with respect thereto.

(k) Subject to this Section 3.10, the Property Trustee shall have none of the powers or the authority of the Regular Trustees set forth in Section 3.08.

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(1) The Property Trustee shall exercise the powers, duties and rights set forth in this Section 3.10 and Section 3.12 in a manner which is consistent with the purposes and functions of the Trust set out in Section 3.05, and the Property Trustee shall not take any action which is inconsistent with the purposes and functions of the Trust set forth in Section 3.05.

SECTION 3.11. DELAWARE TRUSTEE. Notwithstanding any other provision of this Declaration other than Section 5.01(a)(3), the Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities of the Regular Trustees or the Property Trustee described in this Declaration. Except as set forth in Section 5.01(a)(3), the Delaware Trustee shall be a Trustee for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Business Trust Act. In the event the Delaware Trustee shall at any time be required to take any action or perform any duty hereunder, the Delaware Trustee shall be entitled to the benefits of Section 3.12(b)(ii), (iii) and (iv) and Section 3.12(c). No implied covenants or obligations shall be read into this Declaration against the Delaware Trustee.

SECTION 3.12. CERTAIN RIGHTS AND DUTIES OF THE PROPERTY TRUSTEE. (a) The Property Trustee, before the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Declaration, and no implied covenants shall be read into this Declaration against the Property Trustee. In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.06), the Property Trustee shall exercise such of the rights and powers vested in it by this Declaration, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

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

(i) prior to the occurrence of an Event of Default and after the

curing or waiving of all such Events of Default that may have occurred:

(A) the duties and obligations of the Property Trustee shall be determined solely by the express provisions of this Declaration, and the Property Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Declaration, and no implied covenants or obligations shall be read into this Declaration against the Property Trustee; and

(B) in the absence of bad faith on the part of the Property Trustee, the Property Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Property Trustee and conforming to the requirements of this Declaration; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Property Trustee, the Property Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Declaration;

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

(iii) the Property Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders as provided herein relating to the time, method and place of conducting any proceeding for any remedy available to the Property Trustee hereunder or under the Indenture, or exercising any trust or power conferred upon the Property Trustee under this Declaration; and

(iv) no provision of this Declaration shall require the Property Trustee to expend or risk its

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own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if it shall have reasonable ground for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of this Declaration or adequate indemnity against such risk or liability is not reasonably assured to it.

(c) Subject to the provisions of Section 3.12(a) and (b):

(i) whenever in the administration of this Declaration, the Property Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Property Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part and, if the Trust is excluded from the definition of Investment Company solely by means of Rule 3a-7, subject to the requirements of Rule 3a-7, request and rely upon a certificate, which shall comply with the provisions of Section 314(e) of the Trust Indenture Act, signed by any two of the Regular Trustees or by an authorized officer of the Sponsor, as the case may be;

(ii) the Property Trustee (A) may consult with counsel (which may be counsel to the Sponsor or any of its Affiliates and may include any of its employees) selected by it in good faith and with due care and the written advice or opinion of such counsel with respect to legal matters shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon and in accordance with such advice and opinion and (B) shall have the right at any time to seek instructions concerning the administration of this Declaration from any court of competent jurisdiction;

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

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(iv) the Property Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Declaration at the request or direction of any Holders, unless such Holders shall have offered to the Property Trustee reasonable security and indemnity against the costs, expenses (including attorneys' fees and expenses) and liabilities that might be incurred by it in complying with such request or direction; PROVIDED that nothing contained in this clause (iv) shall relieve the Property Trustee of the obligation, upon the occurrence of an Event of Default (which has not been cured or waived) to exercise such of the rights and powers vested in it by this Declaration, and to use the same degree of care and skill in such exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs;

(v) any action taken by the Property Trustee or its agents hereunder shall bind the Trust and the Holders of the Securities and the signature of the Property Trustee or its agents alone shall be sufficient and effective to perform any such action; and no third party shall be required to inquire as to the authority of the Property Trustee to so act, or as to its compliance with any of the terms and provisions of this Declaration, both of which shall be conclusively evidenced by the Property Trustee's or its agent's taking such action;

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

(vii) the Property Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, security or other paper or document, but the Property Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.

SECTION 3.13. REGISTRATION STATEMENT AND RELATED MATTERS. In accordance with the Original

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Declaration, the Sponsor and the Trustees have authorized and directed, and hereby confirm the authorization of, the Sponsor, as the Sponsor of the Trust, (i) to file with the Commission and execute, in each case on behalf of the Trust, (a) the Registration Statement on Form S-3 (File Nos. [            ]) (the "1933 Act Registration Statement") including any amendments thereto and any further pre-effective or post-effective amendments to such Registration Statement, relating to the registration under the Securities Act of, among other things, the Preferred Securities of the Trust and the related guarantees of such Preferred Securities by the Sponsor and (b) a Registration Statement on Form 8-A or other appropriate form (the "1934 Act Registration Statement") (including all pre-effective and post-effective amendments thereto) relating to the registration of the Preferred Securities of the Trust and the related guarantees of such Preferred Securities by the Sponsor under Section 12(b) of the Exchange Act; (ii) to file with the New York Stock Exchange and execute on behalf of the Trust a listing application and all other applications, statements, certificates, agreements and other instruments as shall be necessary or desirable to cause the Preferred Securities to be listed on the New York Stock Exchange; (iii) to file and execute on behalf of the Trust such applications, reports, surety bonds, irrevocable consents, appointments of attorney for service of process and other papers and documents as shall be necessary or desirable to register the Preferred Securities under the securities or "Blue Sky" laws of such jurisdictions as the Sponsor, on behalf of the Trust, may deem necessary or desirable and (iv) to negotiate and execute on behalf of the Trust the Underwriting Agreement. In the event that any filing referred to in clauses (i)-(iii) above is required by the rules and regulations of the Commission, the New York Stock Exchange or state securities or blue sky laws, to be executed on behalf of the Trust by the Trustees, the Regular Trustees, in their capacities as Trustees of the Trust, are hereby authorized and directed to join in any such filing and to execute on behalf of the Trust any and all of the foregoing, it being understood that the Property Trustee and the Delaware Trustee, in their capacities as Trustees of the Trust, shall not be required to join in any such filing or execute on behalf of the Trust any such document unless required by the rules and regulations of the Commission, the New York Stock Exchange or state securities or blue sky laws. In connection with all of the foregoing, the Sponsor and each Trustee, solely in its capacity as a Trustee of the Trust, have constituted and appointed, and hereby confirm the appointment of Reid T. Campbell and Dennis R. Smith

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and each of them, as his, her or its, as the case may be, true and lawful attorneys-in-fact, and agents, with full power of substitution and resubstitution, for the Sponsor or such Trustee or in the Sponsor's or such Trustee's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to the 1933 Act Registration Statement and the 1934 Act Registration Statement and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as the Sponsor or such Trustee might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or his or her substitute or substitutes, shall do or cause to be done by virtue hereof.

SECTION 3.14. FILING OF AMENDMENTS TO CERTIFICATE OF TRUST. The Certificate of Trust as filed with the Secretary of State of the State of Delaware on November 2, 2001 is attached hereto as Exhibit A. The Trustees are hereby authorized to cause the filing with the Secretary of State of the State of Delaware of such amendments to the Certificate of Trust as the Trustees shall deem necessary or desirable and as required by the Business Trust Act.

SECTION 3.15. EXECUTION OF DOCUMENTS BY REGULAR TRUSTEES. Unless otherwise determined by the Regular Trustees and except as otherwise required by the Business Trust Act with respect to the Certificate of Trust or otherwise, a majority of, or if there are only two, both of, the Regular Trustees are authorized to execute and deliver on behalf of the Trust any documents which the Regular Trustees have the power and authority to execute or deliver pursuant to this Declaration.

SECTION 3.16. TRUSTEES NOT RESPONSIBLE FOR RECITALS OR ISSUANCE OF SECURITIES. The recitals contained in this Declaration and the Securities shall be taken as the statements of the Sponsor and the Trustees do not assume any responsibility for their correctness. The Trustees make no representations as to the value or condition of the property of the Trust or any part thereof. The Trustees make no representations as to the validity or sufficiency of this Declaration or the Securities.

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SECTION 3.17. DURATION OF TRUST. The Trust, absent termination pursuant to the provisions of Article VIII hereof, shall have existence until [ ], 20[ ]].

#### ARTICLE IV

##### SPONSOR

SECTION 4.01. PURCHASE OF COMMON SECURITIES BY SPONSOR. On the Closing Date, the Sponsor will purchase all of the Common Securities issued by the Trust at the same time as the Preferred Securities to be issued on such date are issued, such purchase to be in an amount equal to 3% of the total capital of the Trust. On the Option Closing Date, the Sponsor shall purchase all of the Common Securities issued by the Trust at the same time as the Preferred Securities to be issued on such date are issued, such purchase to be in such amount so that the Common Securities continue to represent 3% of the total capital of the Trust.

SECTION 4.02. EXPENSES. (a) In connection with the purchase of the Debentures by the Trust, the Sponsor, in its capacity as Sponsor and not as a Holder, shall be responsible for and shall pay for all debts and obligations (other than with respect to the Securities) and all costs and expenses of the Trust (including, but not limited to, costs and expenses relating to the organization of the Trust, the issuance of the Preferred Securities to initial purchasers thereof, the fees and expenses (including reasonable counsel fees and expenses and the expenses of the Trustee's agents, nominees or custodians) of the Trustees (including any amounts payable under Article X), the costs and expenses relating to the operation of the Trust, including without limitation, costs and expenses of accountants, attorneys, statistical or bookkeeping services, expenses for printing and engraving and computing or accounting equipment, Paying Agent(s), registrars, transfer agent(s), duplicating, travel and telephone and other telecommunications expenses and costs and expenses incurred in connection with the disposition of Trust assets).

(b) In connection with the purchase of the Debentures by the Trust, the Sponsor, in its capacity as Sponsor and not as a Holder, will pay any and all taxes (other than United States withholding taxes attributable to the Trust or its assets) and all liabilities, costs and expenses with respect to such taxes of the Trust.

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(c) The Sponsor's obligations under this Section 4.02 shall be for the benefit of, and shall be enforceable by, any Person to whom any such debts, obligations, costs, expenses and taxes are owed (a "Creditor") whether or not such Creditor has received notice hereof. Any such Creditor may enforce the Sponsor's obligations under this Section 4.02 directly against the Sponsor and the Sponsor irrevocably waives any right or remedy to require that any such Creditor take any action against the Trust or any other Person before proceeding against the Sponsor. The Sponsor agrees to execute such additional agreements as may be necessary or desirable in order to give full effect to the provisions of this Section 4.02.

#### ARTICLE V

##### TRUSTEES

SECTION 5.01. NUMBER OF TRUSTEES; QUALIFICATIONS. (a) Except as provided in (1) below, the number of Trustees initially shall be four. At any time (i) before the issuance of the Securities, the Sponsor may, by written instrument, increase or decrease the number of, and appoint, remove and replace the, Trustees, and (ii) after the issuance of the Securities the number of Trustees may be increased or decreased solely by, and Trustees may be appointed, removed or replaced solely by, vote of Holders of Common Securities representing a Majority in liquidation amount of the Common Securities voting as a class; PROVIDED that in any case:

(1) the number of Trustees shall be at least four (4) unless the Trustee that acts as the Property Trustee also acts as the Delaware Trustee, in which case the number of Trustees shall be at least three;

(2) at least a majority of the Trustees shall at all times be officers or employees of the Sponsor;

(3) if required by the Business Trust Act, one Trustee (the "Delaware Trustee") shall be either a natural person who is a resident of the State of Delaware or, if not a natural person, an entity which has its principal place of business in the State of Delaware and otherwise is permitted to act as a Trustee hereunder under the laws of the State of Delaware, except that if the Property Trustee has its principal place of business in the State of

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Delaware and otherwise is permitted to act as a Trustee hereunder under the laws of the State of Delaware, then the Property Trustee shall also be the Delaware Trustee and Section [3.11] shall have no application; and

(4) there shall at all times be a Property Trustee hereunder which shall satisfy the requirements of Section 5.01(c).

Each Trustee shall be either a natural person at least 21 years of age or a legal entity which shall act through one or more duly appointed representatives.

(b) The initial Regular Trustees shall be:

Reid T. Campbell  
Dennis R. Smith

In care of Fund American Companies, Inc.  
One Beacon Street  
Boston, Massachusetts 02108-3100

(c) There shall at all times be one Trustee which shall act as Property Trustee. In order to act as Property Trustee hereunder, such Trustee shall:

(i) not be an Affiliate of the Sponsor;

(ii) be a corporation organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or Person permitted by the Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by Federal, State, Territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then for the purposes of this Section 5.01(c)(ii), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published; and

(iii) if the Trust is excluded from the definition of an Investment Company solely by reason

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of Rule 3a-7 and to the extent Rule 3a-7 requires a trustee having certain qualifications to hold title to the "eligible assets" (as defined in Rule 3a-7) of the Trust, the Property Trustee shall possess those qualifications.

If at any time the Property Trustee shall cease to satisfy the requirements of clauses (i)-(iii) above, the Property Trustee shall immediately resign in the manner and with the effect set out in Section 5.02(d). If the Property Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Property Trustee and the Holders of the Common Securities (as if such Holders were the obligor referred to in Section 310(b) of the Trust Indenture Act) shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act. The Preferred Guarantee shall be deemed to be specifically described in this Declaration for the purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

The initial Trustee which shall serve as the Property Trustee is Bank One, National Association, whose address is as set forth in Section 14.01(b).

(d) The initial Trustee which shall serve as the Delaware Trustee is Bank One Delaware, Inc., a Delaware banking corporation, whose address is as set forth in Section 14.01(c).

(e) Any action taken by Holders of Common Securities pursuant to this Article V shall be taken at a meeting of Holders of Common Securities convened for such purpose or by written consent as provided in Section 12.02.

(f) No amendment may be made to this Section 5.01 which would change any rights with respect to the number, existence or appointment and removal of Trustees, except with the consent of each Holder of Common Securities.

SECTION 5.02. APPOINTMENT, REMOVAL AND RESIGNATION OF TRUSTEES. (a)

Subject to Section 5.02(b), Trustees may be appointed or removed without cause at any time:

(i) until the issuance of the Securities, by written instrument executed by the Sponsor; and

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(ii) after the issuance of the Securities by vote of the Holders of a Majority in liquidation amount of the Common Securities voting as a class.

(b)(i) The Trustee that acts as Property Trustee shall not be removed in accordance with Section 5.02(a) until a Successor Property Trustee possessing the qualifications to act as Property Trustee under Section 5.01(c) has been appointed and has accepted such appointment by written instrument executed by such Successor Property Trustee and delivered to the Regular Trustees, the Delaware Trustee the Sponsor and the Property Trustee being removed; and

(ii) the Trustee that acts as Delaware Trustee shall not be removed in accordance with Section 5.02(a) until a successor Trustee possessing the qualifications to act as Delaware Trustee under Section 5.01(a)(3) (a "Successor Delaware Trustee") has been appointed and has accepted such appointment by written instrument executed by such Successor Delaware Trustee and delivered to the Regular Trustees, the Property Trustee the Sponsor and the Delaware Trustee being removed.

(c) A Trustee appointed to office shall hold office until his successor shall have been appointed or until his death, removal or resignation.

(d) Any Trustee may resign from office (without need for prior or subsequent accounting) by an instrument (a "Resignation Request") in writing signed by the Trustee and delivered to the Sponsor, the other Trustees and the Trust, which resignation shall take effect upon such delivery or upon such later date as is specified therein; PROVIDED, HOWEVER, that:

(i) no such resignation of the Trustee that acts as the Property Trustee shall be effective until:

(A) a Successor Property Trustee possessing the qualifications to act as Property Trustee under Section 5.01(c) has been appointed and has accepted such appointment by instrument executed by such Successor Property Trustee and delivered to the Trust, the Delaware Trustee the Sponsor and the resigning Property Trustee; or

(B) if the Trust is excluded from the definition of an Investment Company solely by reason of Rule 3a-7, until the assets of the

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Trust have been completely liquidated and the proceeds thereof distributed to the Holders of the Securities; and

(ii) no such resignation of the Trustee that acts as the Delaware Trustee shall be effective until a Successor Delaware Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Delaware Trustee and delivered to the Trust, the Sponsor and the resigning Delaware Trustee.

(e) If no Successor Property Trustee or Successor Delaware Trustee shall have been appointed and accepted appointment as provided in this Section 5.02 within 60 days after delivery to the Sponsor and the Trust of a Resignation Request, the resigning Property Trustee or Delaware Trustee may petition any court of competent jurisdiction for appointment of a Successor Property Trustee or Successor Delaware Trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a Successor Property Trustee or Successor Delaware Trustee, as the case may be.

(f) The Sponsor shall provide notice to the Property Trustee of any resignation or removal of a Regular Trustee.

SECTION 5.03. VACANCIES AMONG TRUSTEES. If a Trustee ceases to hold office for any reason and the number of Trustees is not reduced pursuant to Section 5.01 or if the number of Trustees is increased pursuant to Section 5.01, a vacancy shall occur. A resolution certifying the existence of such vacancy by a majority of the Regular Trustees shall be conclusive evidence of the existence of such vacancy. The vacancy shall be filled with a Trustee appointed in accordance with the requirements of this Article V.

SECTION 5.04. EFFECT OF VACANCIES. The death, resignation, retirement, removal, bankruptcy, dissolution, liquidation, incompetence or incapacity to perform the duties of a Trustee, or any one of them, shall not operate to annul the Trust. Whenever a vacancy in the number of Regular Trustees shall occur until such vacancy is filled as provided in this Article V, the Regular Trustees in office, regardless of their number, shall have all the powers granted to the Regular Trustees and shall discharge all the duties imposed upon the Regular Trustees by this Declaration.



SECTION 5.05. MEETINGS. Meetings of the Regular Trustees shall be held from time to time upon the call of any Regular Trustee. Regular meetings of the Regular Trustees may be held at a time and place fixed by resolution of the Regular Trustees. Notice of any in-person meeting of the Regular Trustees shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 48 hours before such meeting. Notice of any telephonic meeting of the Regular Trustees or any committee thereof shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 24 hours before such meeting. Notices shall contain a brief statement of the time, place and anticipated purposes of the meeting. The presence (whether in person or by telephone) of a Regular Trustee at a meeting shall constitute a waiver of notice of such meeting except where a Regular Trustee attends a meeting for the express purpose of objecting to the transaction of any activity on the ground that the meeting has not been lawfully called or convened. Unless provided otherwise in this Declaration, any action of the Regular Trustees may be taken at a meeting by vote of a majority of the Regular Trustees present (whether in person or by telephone) and eligible to vote with respect to such matter; PROVIDED that a Quorum is present, or without a meeting by the unanimous written consent of the Regular Trustees.

SECTION 5.06. DELEGATION OF POWER. (a) Any Regular Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purpose of executing any registration statement or amendment thereto or other document or schedule filed with the Commission or making any other governmental filing (including, without limitation the filings referred to in Section 3.13).

(b) The Regular Trustees shall have the power to delegate from time to time to such of their number or to officers of the Trust or to officers of the Sponsor the doing of such things and the execution of such instruments either in the name of the Trust or the names of the Regular Trustees or otherwise as the Regular Trustees may deem expedient, to the extent such delegation is not prohibited by applicable law or contrary to the provisions of the Trust, as set forth herein.

## ARTICLE VI

### DISTRIBUTIONS

SECTION 6.01. DISTRIBUTIONS. Holders shall receive periodic distributions, redemption payments and liquidation distributions in accordance with the applicable terms of the relevant Holder's Securities ("Distributions"). Distributions shall be made to the Holders of Preferred Securities and Common Securities in accordance with the terms of the Securities as set forth in Exhibits B and C hereto. If and to the extent that the Sponsor makes a payment of interest (including Compounded Interest (as defined in the Indenture)), premium or principal on the Debentures held by the Property Trustee (the amount of any such payment being a "Payment Amount"), the Property Trustee shall and is directed to promptly make a Distribution of the Payment Amount to Holders in accordance with the terms of the Securities as set forth in Exhibits B and C hereto.

## ARTICLE VII

### ISSUANCE OF SECURITIES

SECTION 7.01. GENERAL PROVISIONS REGARDING SECURITIES. (a) The Regular Trustees shall issue on behalf of the Trust Securities in fully registered form representing undivided beneficial interests in the assets of the Trust in accordance with Section 7.01(b) and for the consideration specified in Section 3.03.

(b) The Regular Trustees shall issue on behalf of the Trust one class of Preferred Securities representing preferred undivided beneficial interests in the assets of the Trust having such terms as are set forth in Exhibit B (the "Preferred Securities") which terms are incorporated by reference in, and made a part of, this Declaration as if specifically set forth herein, and one class of common securities representing common undivided beneficial interests in the assets of the Trust having such terms as are set forth in Exhibit C (the "Common Securities") which terms are incorporated by reference in, and made a part of, this Declaration as if specifically set forth herein. The Trust shall have no securities or other interests in the assets of the Trust other than the Preferred Securities and the Common Securities.

(c) The Certificates shall be signed on behalf of the Trust by the Regular Trustees (or if there are

more than two Regular Trustees by any two of the Regular Trustees). Such signatures may be the manual or facsimile signatures of the present or any

future Regular Trustee. Typographical and other minor errors or defects in any such reproduction of any such signature shall not affect the validity of any Certificate. In case any Regular Trustee of the Trust who shall have signed any of the Certificates shall cease to be such Regular Trustee before the Certificate so signed shall be delivered by the Trust, such Certificate nevertheless may be delivered as though the person who signed such Certificate had not ceased to be such Regular Trustee; and any Certificate may be signed on behalf of the Trust by such persons as, at the actual date of the execution of such Certificate, shall be the Regular Trustees of the Trust, although at the date of the execution and delivery of the Declaration any such person was not such a Regular Trustee. Certificates shall be printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Regular Trustees, as evidenced by their execution thereof, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements as the Regular Trustees may deem appropriate, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Securities may be listed, or to conform to usage. Pending the preparation of definitive Certificates, the Regular Trustees on behalf of the Trust may execute temporary Certificates (printed, lithographed or typewritten), in substantially the form of the definitive Certificates in lieu of which they are issued, but with such omissions, insertions and variations as may be appropriate for temporary Certificates, all as may be determined by the Regular Trustees. Each temporary Certificate shall be executed by the Regular Trustees on behalf of the Trust upon the same conditions and in substantially the same manner, and with like effect, as definitive Certificates. Without unnecessary delay, the Regular Trustees on behalf of the Trust will execute and furnish definitive Certificates and thereupon any or all temporary Certificates may be surrendered to the transfer agent and registrar in exchange therefor (without charge to the Holders). Each Certificate whether in temporary or definitive form shall be countersigned by the manual or facsimile signature of an authorized signatory of the Person acting as registrar and transfer agent for the Securities, which shall initially be the Property Trustee.

(d) The consideration received by the Trust for the issuance of the Securities shall constitute a

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contribution to the capital of the Trust and shall not constitute a loan to the Trust.

(e) Upon issuance of the Securities as provided in this Declaration, the Securities so issued shall be deemed to be validly issued, fully paid and non-assessable.

(f) Every Person, by virtue of having become a Holder or a Preferred Security Beneficial Owner in accordance with the terms of this Declaration, shall be deemed to have expressly assented and agreed to the terms of, and shall be bound by, this Declaration.

(g) Upon issuance of the Securities as provided in this Declaration, the Regular Trustees on behalf of the Trust shall return to the Sponsor the \$10 constituting initial trust assets as set forth in the Original Declaration.

#### ARTICLE VIII

##### TERMINATION OF TRUST

SECTION 8.01. TERMINATION OF TRUST. The Trust shall dissolve when:

(i) all of the Securities shall have been called for redemption and the amounts necessary for redemption thereof shall have been paid to the Holders of Securities in accordance with the terms of the Securities; or

(ii) all of the Debentures shall have been distributed to the Holders of Securities in exchange for all of the Securities in accordance with the terms of the Securities; or

(iii) upon the expiration of the term of the Trust as set forth in Section 3.17,

and thereafter the Trustees shall, after satisfaction of all obligations of the trust, file a certificate of cancellation with the Secretary of State of the State of Delaware and the Trust shall terminate. The Trustees shall so file such a certificate as soon as practicable after the occurrence of an event referred to in this Section 8.01.

The provisions of Sections 3.12 and 4.02 and Article X shall survive the termination of the Trust.

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#### ARTICLE IX

##### TRANSFER OF INTERESTS

SECTION 9.01. TRANSFER OF SECURITIES. (a) Securities may only be transferred, in whole or in part, in accordance with the terms and conditions set forth in this Declaration. Any transfer or purported transfer of any

Security not made in accordance with this Declaration shall be null and void.

(b) Subject to this Article IX, Preferred Securities shall be freely transferable.

(c) Subject to this Article IX, the Sponsor and any Related Party may only transfer Common Securities to the Sponsor or a Related Party; PROVIDED that any such transfer shall be subject to the condition that the transferor shall have obtained (1) either a ruling from the Internal Revenue Service or an unqualified written opinion addressed to the Trust and delivered to the Trustees of nationally recognized independent tax counsel experienced in such matters to the effect that such transfer will not (i) cause the Trust to be treated as issuing a class of interests in the Trust differing from the class of interests represented by the Common Securities originally issued to the Sponsor, (ii) result in the Trust acquiring or disposing of, or being deemed to have acquired or disposed of, an asset, or (iii) result in or cause the Trust to be treated as anything other than a grantor trust for United States Federal income tax purposes and (2) an unqualified written opinion addressed to the Trust and delivered to the Trustees of a nationally recognized independent counsel experienced in such matters that such transfer will not cause the Trust to be an Investment Company or controlled by an Investment Company.

SECTION 9.02. TRANSFER OF CERTIFICATES. The Regular Trustees shall cause to be kept at an office or agency to be maintained by the Trust a register in which, subject to such reasonable regulations as it may prescribe, the Trust shall provide for the registration of Certificates and of transfers of Certificates, which will be effected without charge but only upon payment (with such indemnity as the Trust or the Registrar (as defined below) may require) in respect of any tax or other government charges which may be imposed in relation to it. The Property Trustee will be the initial registrar and transfer agent (the "Registrar") for the

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purpose of registering Certificates and transfers of Certificates as provided herein.

Upon surrender for registration of transfer of any Certificate at the office or agency of the Registrar, the Regular Trustees shall execute and the Registrar shall countersign in accordance with section 7.01(c) one or more new Certificates of any authorized denominations and of a like aggregate liquidation amount to be issued in the name of the designated transferee or transferees. Every Certificate surrendered for registration of transfer shall be accompanied by a written instrument of transfer in form satisfactory to the Trust duly executed by the Holder or such Holder's attorney duly authorized in writing. Each Certificate surrendered for registration of transfer shall be canceled by the Regular Trustees. A transferee of a Certificate shall be entitled to the rights and subject to the obligations of a Holder hereunder upon the receipt by such transferee of a Certificate. By acceptance of a Certificate, each transferee shall be deemed to have agreed to be bound by this Declaration.

SECTION 9.03. DEEMED SECURITY HOLDERS. The Trustees may treat the Person in whose name any Certificate shall be registered on the books and records of the Trust as the sole holder of such Certificate and of the Securities represented by such Certificate for purposes of receiving Distributions and for all other purposes whatsoever and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Certificate or in the Securities represented by such Certificate on the part of any Person, whether or not the Trustees shall have actual or other notice thereof.

SECTION 9.04. BOOK ENTRY INTERESTS. Unless otherwise specified in the terms of the Preferred Securities, the Preferred Securities Certificates, on original issuance (including Preferred Securities, if any, issued on the Option Closing Date pursuant to the exercise of the over-allotment option set forth in the Underwriting Agreement), will be issued in the form of one or more, fully registered, global Preferred Security Certificates (each a "Global Certificate"), to be delivered to DTC, the initial Clearing Agency, by, or on behalf of, the Trust. Such Global Certificates shall initially be registered on the books and records of the Trust in the name of Cede & Co., the nominee of DTC, and no Preferred Security Beneficial Owner will receive a definitive Preferred Security Certificate representing such Preferred Security Beneficial Owner's interests in

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such Global Certificates, except as provided in Section 9.07. Unless and until definitive, fully registered Preferred Security Certificates (the "Definitive Preferred Security Certificates") have been issued to the Preferred Security Beneficial Owners pursuant to Section 9.07:

(i) the provisions of this Section 9.04 shall be in full force and effect;

(ii) the Trust and the Trustees shall be entitled to deal with the Clearing Agency for all purposes of this Declaration (including the payment of Distributions on the Global Certificates and receiving approvals, votes or consents hereunder) as the Holder of the Preferred Securities and the sole holder of the Global Certificates and shall have no obligation to the Preferred Security Beneficial Owners;

(iii) to the extent that the provisions of this Section 9.04 conflict with any other provisions of this Declaration, the provisions of this Section 9.04 shall control; and

(iv) the rights of the Preferred Security Beneficial Owners shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreements between such Preferred Security Beneficial Owners and the Clearing Agency and/or the Clearing Agency Participants. DTC will make book entry transfers among the Clearing Agency Participants and receive and transmit payments of Distributions on the Global Certificates to such Clearing Agency Participants.

SECTION 9.05. NOTICES TO HOLDERS OF CERTIFICATES. Whenever a notice or other communication to the Holders is required to be given under this Declaration, unless and until Definitive Preferred Security Certificates shall have been issued pursuant to Section 9.07, the relevant Trustees shall give all such notices and communications, specified herein to be given to Preferred Securities Holders, to the Clearing Agency and, with respect to any Preferred Security Certificate registered in the name of a Clearing Agency or the nominee of a Clearing Agency, the Trustees shall, except as set forth herein, have no notice obligations to the Preferred Security Beneficial Owners.

SECTION 9.06. APPOINTMENT OF SUCCESSOR CLEARING AGENCY. If any Clearing Agency elects to discontinue its

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services as securities depository with respect to the Preferred Securities, the Regular Trustees may, in their sole discretion, appoint a successor Clearing Agency with respect to the Preferred Securities.

SECTION 9.07. DEFINITIVE PREFERRED SECURITIES CERTIFICATES. If (i) a Clearing Agency elects to discontinue its services as securities depository with respect to the Preferred Securities and a successor Clearing Agency is not appointed within 90 days after such discontinuance pursuant to Section 9.06 or (ii) the Regular Trustees elect after consultation with the Sponsor to terminate the book entry system through the Clearing Agency with respect to the Preferred Securities, then (x) Definitive Preferred Security Certificates shall be prepared by the Regular Trustees on behalf of the Trust with respect to such Preferred Securities and (y) upon surrender of the Global Certificates by the Clearing Agency, accompanied by registration instructions, the Regular Trustees shall cause definitive Preferred Security Certificates to be delivered to Preferred Security Beneficial Owners in accordance with the instructions of the Clearing Agency. Neither the Trustees nor the Trust shall be liable for any delay in delivery of such instructions and each of them may conclusively rely on, and shall be protected in relying on, such instructions.

SECTION 9.08. MUTILATED, DESTROYED, LOST OR STOLEN CERTIFICATES. If (a) any mutilated Certificates should be surrendered to the Registrar, or if the Registrar shall receive evidence to its satisfaction of the destruction, loss or theft of any Certificate and (b) there shall be delivered to the Trustees such security or indemnity as may be required by them to keep each of them harmless, then in the absence of notice that such Certificate shall have been acquired by a bona fide purchaser, any two Regular Trustees on behalf of the Trust shall execute and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Certificate, a new Certificate of like denomination. In connection with the issuance of any new Certificate under this Section 9.08, the Regular Trustees may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith. Any duplicate Certificate issued pursuant to this Section shall constitute conclusive evidence of an ownership interest in the relevant Securities, as if originally issued, whether or not the lost, stolen or destroyed Certificate shall be found at any time.

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## ARTICLE X

### LIMITATION OF LIABILITY; INDEMNIFICATION

SECTION 10.01 EXCULPATION. (a) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Trust or any Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Declaration or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's gross negligence (or, in the case of the Property Trustee, negligence) or willful misconduct with respect to such acts or omissions.

(b) An Indemnified Person shall be fully protected in relying in good faith upon the records of the Trust and upon such information, opinions, reports or statements presented to the Trust by any Person as to matters the Indemnified Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Trust, including information, opinions, reports or statements as to the value and amount of assets, liabilities, profits, losses or any other facts pertinent to the existence and amount of assets from which

Distributions to Holders of Securities might properly be paid.

(c) Pursuant to Section 3803(a) of the Business Trust Act, the Holders of Securities, in their capacities as Holders, shall be entitled to the same limitation of liability that is extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

SECTION 10.02. INDEMNIFICATION AND COMPENSATION. (a) To the fullest extent permitted by applicable law, the Sponsor shall indemnify and hold harmless each Indemnified Person from and against any loss, damage or claim incurred by such Indemnified Person by reason of any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of authority conferred on such Indemnified Person by this Declaration, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such

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Indemnified Person by reason of gross negligence (or, in the case of the Property Trustee, negligence) or willful misconduct with respect to such acts or omissions.

(b) To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by an Indemnified Person in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Sponsor prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Sponsor of an undertaking by or on behalf of the Indemnified Person to repay such amount if it shall be determined that the Indemnified Person is not entitled to be indemnified as authorized in Section 10.02(a).

(c) The Sponsor agrees to pay the Property Trustee and the Delaware Trustee from time to time such compensation for all services rendered by the Property Trustee and the Delaware Trustee hereunder as may be mutually agreed upon in writing by the Sponsor and the Property Trustee or the Delaware Trustee, as the case may be, and, except as otherwise expressly provided herein, to reimburse the Property Trustee and the Delaware Trustee upon its or their request for all reasonable expenses, disbursements and advances incurred or made by the Property Trustee or the Delaware Trustee, as the case may be, in accordance with the provisions of this Declaration, except any such expense, disbursement or advance as may be attributable to its or their negligence (or in the case of the Delaware Trustee, its gross negligence) or bad faith.

SECTION 10.03. OUTSIDE BUSINESSES. Any Covered Person, the Sponsor, the Delaware Trustee and the Property Trustee may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Trust, and the Trust and the Holders of Securities shall have no rights by virtue of this Declaration in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Trust, shall not be deemed wrongful or improper. None of the Covered Persons, the Sponsor, the Delaware Trustee or the Property Trustee shall be obligated to present any particular investment or other opportunity to the Trust even if such opportunity is of a character that, if presented to the Trust, could be taken by the Trust, and any Covered Person, the Sponsor, the Delaware Trustee and the Property Trustee shall have the right to take for its own account (individually or as a partner or

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fiduciary) or to recommend to others any such particular investment or other opportunity. Any Covered Person, the Delaware Trustee and the Property Trustee may engage or be interested in any financial or other transaction with the Sponsor or any Affiliate of the Sponsor, or may act as depositary for, trustee or agent for, or act on any committee or body of holders of, securities or other obligations of the Sponsor or its Affiliates.

#### ARTICLE XI

#### ACCOUNTING

SECTION 11.01. FISCAL YEAR. The fiscal year ("Fiscal Year") of the Trust shall be the calendar year, or such other year as is required by the Code.

SECTION 11.02. CERTAIN ACCOUNTING MATTERS. (a) At all times during the existence of the Trust, the Regular Trustees shall keep, or cause to be kept, full books of account, records and supporting documents, which shall reflect in reasonable detail each transaction of the Trust. The books of account shall be maintained on the accrual method of accounting, in accordance with generally accepted accounting principles consistently applied. The Trust shall use the accrual method of accounting for United States Federal income tax purposes. The books and records of the Trust, together with a copy of this Declaration and a certified copy of the Certificate of Trust, or any amendment thereto, shall at all times be maintained at the principal office of the Trust and shall be open for inspection by any Holder or its duly authorized representative for any purpose reasonably related to its interest in the Trust during normal business hours.

(b) The Regular Trustees shall, as soon as available after the end of each Fiscal Year of the Trust, cause to be prepared and mailed to each Holder of Securities unaudited financial statements of the Trust for such Fiscal Year, prepared in accordance with generally accepted accounting principles; PROVIDED that if the Trust is required to comply with the periodic reporting requirements of Sections 13(a) or 15(d) of the Exchange Act, such financial statements for such Fiscal Year shall be examined and reported on by a firm of independent certified public accountants selected by the Regular Trustees (which firm may be the firm used by the Sponsor).

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(c) The Regular Trustees shall cause to be prepared and mailed to each Holder of Securities an annual United States Federal income tax information statement, on such form as is required by the Code, containing such information with regard to the Securities held by each Holder as is required by the Code and the Treasury Regulations. Notwithstanding any right under the Code to deliver any such statement at a later date, the Regular Trustees shall endeavor to deliver all such statements within 30 days after the end of each Fiscal Year of the Trust.

(d) The Regular Trustees shall cause to be prepared and filed with the appropriate taxing authority an annual United States Federal income tax return, on such form as is required by the Code, and any other annual income tax returns required to be filed by the Regular Trustees on behalf of the Trust with any state or local taxing authority, such returns to be filed as soon as practicable after the end of each Fiscal Year of the Trust.

SECTION 11.03. BANKING. The Regular Trustees shall maintain one or more bank accounts in the name and for the sole benefit of the Trust; PROVIDED, HOWEVER, that all payments of funds in respect of the Debentures held by the Property Trustee shall be made directly to the Property Account and no other funds from the Trust shall be deposited in the Property Account. The sole signatories for such accounts shall be designated by the Regular Trustees; PROVIDED, HOWEVER, that the Property Trustee shall designate the sole signatories for the Property Account.

SECTION 11.04. WITHHOLDING. The Trust and the Trustees shall comply with all withholding requirements under United States Federal, state and local law. The Trust shall request, and the Holders shall provide to the Trust, such forms or certificates as are necessary to establish an exemption from withholding with respect to each Holder, and any representations and forms as shall reasonably be requested by the Trust to assist it in determining the extent of, and in fulfilling, its withholding obligations. The [Property] Trustee shall file required forms with applicable jurisdictions and, unless an exemption from withholding is properly established by a Holder, the Property Trustee shall remit amounts withheld with respect to the Holder to applicable jurisdictions. To the extent that the Trust is required to withhold and pay over any amounts to any authority with respect to distributions or allocations to any Holder, the amount withheld shall be deemed to be a

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distribution in the amount of the withholding to the Holder. In the event of any claimed overwithholding, Holders shall be limited to an action against the applicable jurisdiction. If the amount to be withheld was not withheld from a Distribution, the Property Trustee may reduce subsequent Distributions by the amount of such withholding.

## ARTICLE XII

### AMENDMENTS AND MEETINGS

SECTION 12.01. AMENDMENTS. (a) Except as otherwise provided in this Declaration or by any applicable terms of the Securities, this Declaration may be amended by, and only by, a written instrument executed by a majority of the Regular Trustees (or, if there are only two Regular Trustees, both Regular Trustees); PROVIDED, HOWEVER, that (i) no amendment to this Declaration shall be made unless the Regular Trustees shall have obtained (A) either a ruling from the Internal Revenue Service or a written unqualified opinion of nationally recognized independent tax counsel experienced in such matters to the effect that such amendment will not cause the Trust to be classified for United States Federal income tax purposes as an association taxable as a corporation or a partnership and to the effect that the Trust will continue to be treated as a grantor trust for purposes of United States Federal income taxation and (B) a written unqualified opinion of nationally recognized independent counsel experienced in such matters to the effect that such amendment will not cause the Trust to be an Investment Company which is required to be registered under the Investment Company Act, (ii) if Securities are outstanding, any amendment which would adversely affect the rights, privileges or preferences of any Holder of Securities may be effected only after satisfaction of such additional requirements as may be set forth in the terms of such Securities, (iii) Section 4.02, Section 9.01(c) and this Section 12.01 shall not be amended without the consent of all Holders of the Securities, (iv) no amendment which adversely affects the rights, powers and privileges of the Property Trustee or the Delaware Trustee shall be made without the consent of the Property Trustee or the Delaware Trustee, as the case may be, (v) Article IV shall not be amended without the consent of the Sponsor, and (vi) the rights of Holders of Common Securities under Article V to increase or decrease the number of, and to

appoint, replace or remove, Trustees shall not be amended without the consent of each Holder of Common Securities.

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(b) Notwithstanding Section 12.02(a)(ii), this Declaration may be amended without the consent of the Holders of the Securities to (i) cure any ambiguity, (ii) correct or supplement any provision in this Declaration that may be defective or inconsistent with any other provision of this Declaration, (iii) to add to the covenants, restrictions or obligations of the Sponsor, and (iv) to conform to any changes in Rule 3a-7 or any change in interpretation or application of Rule 3a-7 by the Commission, which amendment does not adversely affect the rights, preferences or privileges of the Holders.

(c) The Regular Trustees shall promptly furnish to each of the Property Trustee and the Delaware Trustee a copy of each amendment to this Declaration.

SECTION 12.02. MEETINGS OF THE HOLDERS OF SECURITIES; ACTION BY WRITTEN CONSENT. (a) Meetings of the Holders of Preferred Securities and/or Common Securities may be called at any time by the Regular Trustees (or as provided in the terms of the Securities) to consider and act on any matter on which Holders of such class of Securities are entitled to act under the terms of this Declaration, the terms of the Securities or the rules of any stock exchange on which the Preferred Securities are listed or admitted for trading. The Regular Trustees shall call a meeting of Holders of Preferred Securities or Common Securities if directed to do so by Holders of at least 10% in liquidation amount of such class of Securities. Such direction shall be given by delivering to the Regular Trustees one or more notices in writing stating that the signing Holders of Securities wish to call a meeting and indicating the general or specific purpose for which the meeting is to be called. Any Holders of Securities calling a meeting shall specify in writing the Certificates held by the Holders of Securities exercising the right to call a meeting and only those specified Certificates shall be counted for purposes of determining whether the required percentage set forth in the second sentence of this paragraph has been met.

(b) Except to the extent otherwise provided in the terms of the Securities, the following provision shall apply to meetings of Holders of Securities:

(i) Notice of any such meeting shall be given by mail to each Trustee and all the Holders of Securities having a right to vote thereat not less than seven days nor more than 60 days prior to the date of such meeting. Whenever a vote, consent or

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approval of the Holders of Securities is permitted or required under this Declaration or the rules of any stock exchange on which the Preferred Securities are listed or admitted for trading, such vote, consent or approval may be given at a meeting of the Holders of Securities. Any action that may be taken at a meeting of the Holders of Securities may be taken without a meeting if a consent in writing setting forth the action so taken is signed by Holders of Securities owning not less than the minimum aggregate liquidation amount of Securities that would be necessary to authorize or take such action at a meeting at which all Holders of Securities having a right to vote thereon were present and voting. Prompt notice of the taking of action without a meeting shall be given to the Holders of Securities entitled to vote who have not consented in writing. The Regular Trustees may specify that any written ballot submitted to the Holders of Securities for the purpose of taking any action without a meeting shall be returned to the Trust within the time specified by the Regular Trustees.

(ii) Each Holder of a Security may authorize any Person to act for it by proxy on all matters in which a Holder of a Security is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Holder of Security executing it. Except as otherwise provided herein or in the terms of the Securities, all matters relating to the giving, voting or validity of proxies shall be governed by the General Corporation Law of the State of Delaware relating to proxies and judicial interpretations thereunder as if the Trust were a Delaware corporation and the Holders of the Securities were stockholders of a Delaware corporation.

(iii) Each meeting of the Holders of the Securities shall be conducted by the Regular Trustees or by such other Person that the Regular Trustees may designate.

(iv) Unless otherwise provided in the Business Trust Act, this Declaration or the rules of any stock exchange on which the Preferred Securities are then listed or admitted for trading, the Regular

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Trustees, in their sole discretion, shall establish all other provisions relating to meetings of Holders of Securities, including notice of the time, place or purpose of any meeting at which any matter is to be voted on by any Holders of Securities, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy or any other matter with respect to the exercise of any such right to vote.

#### ARTICLE XIII

##### REPRESENTATIONS OF PROPERTY TRUSTEE AND DELAWARE TRUSTEE

###### SECTION 13.01. REPRESENTATIONS AND WARRANTIES OF PROPERTY TRUSTEE.

(a) The Trustee which acts as initial Property Trustee represents and warrants to the Trust and to the Sponsor at the date of this Declaration, and each Successor Property Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Property Trustee's acceptance of its appointment as Property Trustee that:

(i) The Property Trustee is a banking corporation with trust powers, duly organized, validly existing and in good standing under the laws of the State of its incorporation, with trust power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Declaration.

(ii) The execution, delivery and performance by the Property Trustee of this Declaration has been duly authorized by all necessary corporate action on the part of the Property Trustee. The Declaration has been duly executed and delivered by the Property Trustee, and constitutes a legal, valid and binding obligation of the Property Trustee, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency, and other similar laws affecting creditors' rights generally and to general principles of equity and the discretion of the court (regardless of whether the enforcement of such remedies is considered in a proceeding in equity or at law).

(iii) The execution, delivery and performance of this Declaration by the Property Trustee does not

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conflict with or constitute a breach of the charter or By-laws of the Property Trustee.

(iv) No consent, approval or authorization of, or registration with or notice to, any banking authority which supervises or regulates the Property Trustee is required for the execution, delivery or performance by the Property Trustee of this Declaration.

(v) The Property Trustee satisfies the qualifications set forth in Section 5.01(c).

(b) The Trustee which acts as initial Delaware Trustee represents and warrants to the Trust and the Sponsor at the date of this Declaration, and each Successor Delaware Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Delaware Trustee's acceptance of its appointment as Delaware Trustee, that it satisfies the qualifications set forth in Section 5.01(a)(3).

#### ARTICLE XIV

##### MISCELLANEOUS

SECTION 14.01. NOTICES. All notices provided for in this Declaration shall be in writing, duly signed by the party giving such notice, and shall be delivered, telecopied or mailed by first class mail, as follows:

(a) if given to the Trust, in care of the Regular Trustees at the Trust's mailing address set forth below (or such other address as the Regular Trustees on behalf of the Trust may give notice of to the Property Trustee, the Delaware Trustee and the Holders of the Securities):

Fund American Trust II  
In care of Fund American Companies, Inc.  
One Beacon Street  
Boston, Massachusetts 02108-3100  
Attention: [                    ]  
                  [                    ],  
                  Trustees  
Facsimile No: [ (            ) ]

(b) if given to the Property Trustee, at the mailing address of the Property Trustee set forth below (or such other address as the Property Trustee

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may give notice of to the Trust and the Holders of the Securities):

[ ]  
[ ]  
[ ]  
[ ]  
Attention: [ ]  
Facsimile No: [( ) ]

(c) if given to the Delaware Trustee, at the mailing address of the Delaware Trustee set forth below (or such other address as the Delaware Trustee may give notice of to the Trust and the Holders of the Securities):

[ ]  
[ ]  
[ ]  
Attention: [ ]  
Facsimile No: [( ) ]

with a copy to:

[ ]  
[ ]  
[ ]  
[ ]  
Attention: [ ]  
Facsimile No: [( ) ]

(d) if given to the Holder of the Common Securities, at the mailing address of the Sponsor set forth below (or such other address as the Holder of the Common Securities may give notice to the Property Trustee, the Delaware Trustee and the Trust):

Fund American Companies, Inc.  
One Beacon Street  
Boston, Massachusetts 02108-3100  
Attention: [ ]  
Facsimile No: [( ) ]

(e) if given to any other Holder, at the address set forth on the books and records of the Trust.

A copy of any notice to the Property Trustee or the Delaware Trustee shall also be sent to the Trust. All notices shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid except that

if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

SECTION 14.02. UNDERTAKING FOR COSTS. All parties to this Declaration agree, and each Holder of any Securities by his or her acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Declaration, or in any suit against the Property Trustee for any action taken or omitted by it as Property Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 14.02 shall not apply to any suit instituted by the Property Trustee, to any suit instituted by any Holder of Preferred Securities, or group of Holders of Preferred Securities, holding more than 10% in aggregate liquidation amount of the outstanding Preferred Securities, or to any suit instituted by any Holder of Preferred Securities for the enforcement of the payment of the principal of (or premium, if any) or interest on the Debentures, on or after the respective due dates expressed in such Debentures.

SECTION 14.03. GOVERNING LAW. This declaration and the Rights of the Parties hereunder shall be governed by and interpreted in accordance with the laws of the state of Delaware and all rights and remedies shall be governed by such laws without regard to the principles of conflict of laws of the state of Delaware or any other jurisdiction that would call for the application of the law of any jurisdiction other than the state of Delaware; PROVIDED, HOWEVER, that there shall not be applicable to the parties hereunder or this declaration any provision of the laws (statutory or common) of the state of Delaware pertaining to trusts that relate to or regulate, in a manner inconsistent with the terms hereof (A) the filing with any court or governmental body or agency of trustee accounts or schedules of trustee fees and charges, (B) affirmative requirements to post bonds for trustees, officers, agents or employees of a trust, (C) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property (D) fees or

other sums payable to trustees, officers, agents or employees of a trust, (E) the allocation of receipts and expenditures to income or principal, (F) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding or investing trust storage or (G) the establishment of fiduciary or other standards of responsibility or limitations on the acts or powers of trustees that are inconsistent with the limitations or liabilities or authorities and powers of the trustees hereunder as set forth or referenced in this declaration. Section 3540 of title 12 of the Delaware code shall not apply to the Trust.

SECTION 14.04. HEADINGS. Headings contained in this Declaration are inserted for convenience of reference only and do not affect the interpretation of this Declaration or any provision hereof.

SECTION 14.05. PARTIAL ENFORCEABILITY. If any provision of this Declaration, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this Declaration, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

SECTION 14.06. COUNTERPARTS. This Declaration may contain more than one counterpart of the signature pages and this Declaration may be executed by the affixing of the signature of the Sponsor and each of the Trustees to one of such counterpart signature pages. All of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

SECTION 14.07. INTENTION OF THE PARTIES. It is the intention of the parties hereto that the Trust not be classified for United States Federal income tax purposes as an association taxable as a corporation or partnership but that the Trust be treated as a grantor trust for United States Federal income tax purposes. The provisions of this Declaration shall be interpreted to further this intention of the parties.

SECTION 14.08. SUCCESSORS AND ASSIGNS. Whenever in this Declaration any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included, and all covenants and agreements in this Declaration by the Sponsor and the

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Trustees shall bind and inure to the benefit of their respective successors and assigns, whether so expressed.

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IN WITNESS WHEREOF, the undersigned have caused these presents to be executed as of the day and year first above written.

FUND AMERICAN COMPANIES, INC.,  
as Sponsor,

by

Name:  
Title:

REGULAR TRUSTEES:

as Regular Trustee

as Regular Trustee

BANK ONE, NATIONAL ASSOCIATION  
as Property Trustee,

by

Name:  
Title:

BANK ONE, DELAWARE, INC.  
as Delaware Trustee,

by

Name:  
Title:

CERTIFICATE OF TRUST OF FUND AMERICAN TRUST II

THIS Certificate of Trust of Fund American Trust II (the "Trust"), dated October 30, 2001, is being duly executed and filed by Reid T. Campbell and Dennis R. Smith, and Bank One Delaware, Inc., a Delaware corporation, as trustees, to form a business trust under the Delaware Business Trust Act (12 Del. C. Section 3801 ET SEQ.)(the "Act").

- 1. NAME. The name of the business trust formed hereby is Fund American Trust II.
- 2. DELAWARE TRUSTEE. The name and business address of the trustee of the Trust in the State of Delaware is Bank One Delaware, Inc., 3 Christiana Center, 201 North Walnut Street, Wilmington, Delaware 19801.
- 3. EFFECTIVE DATE. This Certificate of Trust shall be effective upon filing with the Secretary of State.

IN WITNESS WHEREOF, the undersigned, being all of the trustees of the Trust, have executed this Certificate of Trust in accordance with Section 3811(a) of the Act.

Bank One Delaware, Inc.,  
as Trustee

By: \_\_\_\_\_  
Name: Melissa G. Weisman  
Title: Vice President

\_\_\_\_\_  
as Trustee  
Name: Reid T. Campbell

\_\_\_\_\_  
as Trustee  
Name: Dennis R. Smith

TERMS OF THE  
Preferred Securities

Pursuant to Section 7.01 of the Amended and Restated Declaration of

Trust of Fund American Trust II dated as of [ ] (as amended from time to time, the "Declaration"), the designations, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Securities are set forth below (each capitalized term used but not defined herein having the meaning set forth in the Declaration):

- 1. DESIGNATION AND NUMBER. Preferred Securities of the Trust with an

aggregate liquidation amount in the assets of the Trust of up to [ ] Dollars (\$[ ]) (including up to [ ] Dollars (\$[ ]) issuable upon exercise of the overallocation option set forth in the Underwriting Agreement) and a liquidation amount in the assets of the Trust of \$[ ] per Preferred Security are hereby designated as "[ ]% Preferred Trust Securities". The Preferred Security Certificates evidencing the Preferred Securities shall be substantially in the form attached hereto as Annex I, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice or to conform to the rules of any stock exchange on which the Preferred Securities are listed. In connection with the issuance and sale of the Preferred Securities and the Common Securities, the Trust will purchase, as trust assets, Debentures of the Sponsor having an aggregate principal amount equal to the aggregate liquidation amount of the Preferred Securities and the Common Securities so issued and bearing interest at an annual rate equal to the annual Distribution rate on the Preferred Securities and the Common Securities and having payment and redemption provisions which correspond to the payment and redemption provisions of the Preferred Securities and the Common Securities.

- 2. DISTRIBUTIONS. (a) Distributions payable on each Preferred Security will be payable [at a fixed rate per annum of [ ]%] [floating rate] (the "Coupon Rate") of the stated liquidation amount of \$[ ] per Preferred Security. Distributions in arrears for more than one month will bear interest at the Coupon Rate (to the extent permitted by law), compounded monthly. The term "Distributions" as used in these terms means such periodic cash distributions and any such interest payable

unless otherwise stated. A Distribution will be made by the Property Trustee only to the extent that interest payments are made in respect of the Debentures held by the Property Trustee. The amount of Distributions payable for any period will be computed on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a 30-day period for which Distributions are computed, Distributions will be computed on the basis of the actual number of days elapsed.

(b) Distributions on the Preferred Securities will be cumulative, will accrue from [ ], and will be payable [monthly] [quarterly] [semi-annually] in arrears, on the first day of each period commencing on [ ], except as otherwise described below, but only if and to the extent that interest payments are made in respect of the Debentures held by the Property Trustee. So long as the Sponsor is not in default in the payment of interest on the Debentures, the Sponsor shall have the right under the Indenture for the Debentures to defer payments of interest by extending the interest payment period from time to time on the Debentures for a period not to exceed [60] [20] [10] consecutive [monthly] [quarterly] [semi-annually] interest periods (an "Extension Period"), PROVIDED, HOWEVER, that an Extension Period may not extend beyond the maturity of the Debentures. During any such Extension Period, monthly Distributions will continue to accrue with interest thereon (to the extent permitted by applicable law) at the Coupon Rate, compounded [monthly] [quarterly] [semi-annually]. Prior to the termination of any such Extension Period, the Sponsor may further extend such Extension Period; PROVIDED that such Extension Period together with all such previous and further extensions thereof may not exceed 60 consecutive monthly interest periods. Upon the termination of any Extension Period and the payment of all amounts then due, the Sponsor may commence a new Extension Period, subject to the above requirements. Payments of accrued Distributions will be payable to Holders of Preferred Securities as they appear on the books and records of the Trust on the record date for the first interest payment date occurring at or after the end of the Extension Period.

(c) Distributions on the Preferred Securities will be payable promptly by the Property Trustee (or other Paying Agent) upon receipt of immediately available funds to the Holders thereof as they appear on the books and records of the Trust on the relevant record dates.

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While the Preferred Securities remain in book-entry only form, the relevant record dates shall be one Business Day prior to the relevant Distribution date, and if the Preferred Securities are no longer in book-entry only form, the relevant record dates will be the fifteenth (15th) day of the month immediately preceding the month in which the relevant Distribution date occurs, which record and payment dates correspond to the record and interest payment dates for the Debentures. Distributions payable on any Preferred Securities that are not punctually paid on any Distribution payment date as a result of the Sponsor having failed to make the corresponding interest payment on the Debentures will forthwith cease to be payable to the Person in whose name such Preferred Security is registered on the relevant record date, and such defaulted Distribution will instead be payable to the Person in whose name such Preferred Security is registered on the special record date established by the Regular Trustees, which record date shall correspond to the special record date or other specified date determined in accordance with the Indenture; PROVIDED, HOWEVER, that Distributions shall not be considered payable on any Distribution payment date falling within an Extension Period unless the Sponsor has elected to make a full or partial payment of interest accrued on the Debentures on such Distribution payment date. Subject to any applicable laws and regulations and the provisions of the Declaration, each payment in respect of the Preferred Securities will be made as described in paragraph 9 hereof. If any date on which Distributions are payable on the Preferred Securities is not a Business Day, then payment of the Distribution payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date.

(d) All Distributions paid with respect to the Preferred Securities and the Common Securities will be paid pro rata to the Holders thereof entitled thereto. If an Event of Default has occurred and is continuing, the Preferred Securities shall have a priority over the Common Securities with respect to Distributions.

(e) In the event that there is any money or other property held by or for the Trust that is not

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accounted for under the Declaration, such money or property shall be distributed pro rata among the Holders of the Preferred Securities and the Common Securities.

3. LIQUIDATION DISTRIBUTION UPON DISSOLUTION. In the event of any voluntary or involuntary dissolution, winding-up or termination of the Trust, the Holders of the Preferred Securities and the Common Securities at the date of the dissolution, winding-up or termination, as the case may be, will be entitled to receive pro rata solely out of the assets of the Trust available for distribution to Holders of Preferred Securities and Common Securities, after satisfaction of liabilities to creditors, an amount equal to the aggregate of the stated liquidation amount of \$[ ] per Preferred Security and Common Security plus accrued and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"), unless, in connection with such dissolution, winding-up or termination after satisfaction of liabilities to creditors, Debentures in an aggregate principal amount equal to the aggregate stated liquidation amount of such Preferred Securities and Common Securities, and bearing accrued and unpaid interest in an amount equal to the accrued and

unpaid Distributions on such Preferred Securities and Common Securities, shall be distributed pro rata to the Holders of the Preferred Securities and Common Securities in exchange for such Securities.

If, upon any such dissolution, the Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then the amounts payable directly by the Trust on the Preferred Securities and the Common Securities shall be paid, subject to the next paragraph, on a pro rata basis.

Holders of Common Securities will be entitled to receive Liquidation Distributions upon any such dissolution pro rata with Holders of Preferred Securities, except that, if an Event of Default has occurred and is continuing, the Preferred Securities shall have a priority over the Common Securities with respect to such Liquidation Distribution.

4. REDEMPTION AND DISTRIBUTION OF DEBENTURES. The Preferred Securities and the Common Securities may only be redeemed if Debentures having an aggregate principal amount equal to the aggregate liquidation

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amount of the Preferred Securities and the Common Securities are repaid, redeemed or distributed as set forth below:

[(a) Upon the repayment of the Debentures, in whole or in part, whether at maturity or upon redemption at any time or from time to time on or after [ ], the proceeds of such repayment will be promptly applied to redeem pro rata Preferred Securities and Common Securities having an aggregate liquidation amount equal to the aggregate principal amount of the Debentures so repaid, upon not less than 30 nor more than 60 days notice, at a redemption price of \$[ ] per Preferred Security and Common Security plus an amount equal to accrued and unpaid Distributions thereon to the date of redemption, payable in cash (the "Redemption Price"). The date of any such repayment of Preferred Securities and Common Securities shall be established to coincide with the repayment date of the Debentures.] [Additional Redemption provisions to be provided.]

(b) If fewer than all the outstanding Preferred Securities and Common Securities are to be so redeemed, the Preferred Securities and the Common Securities will be redeemed pro rata, it being understood that Preferred Securities held of record by a Clearing Agency or nominee will be redeemed as described in paragraph 4(f)(ii) below. If a partial redemption would result in the delisting of the Preferred Securities by any national securities exchange or other organization on which the Preferred Securities are then listed, the Sponsor, pursuant to the Indenture, will only redeem Debentures in whole and the Trust will only redeem the Preferred Securities in whole.

(c) If, at any time, a Tax Event or an Investment Company Event (each as hereinafter defined, and each a "Special Event") shall occur and be continuing, the Regular Trustees shall, unless the Debentures are redeemed in the limited circumstances described below, dissolve the Trust and, after satisfaction of creditors, cause Debentures held by the Property Trustee having an aggregate principal amount equal to the aggregate stated liquidation amount of, and bearing accrued and unpaid interest equal to accrued and unpaid Distributions on, and having the same record date for payment as, the Preferred Securities and the Common Securities, to be distributed to the Holders of the Preferred Securities and the Common Securities on a pro

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rata basis in liquidation of such Holders' interests in the Trust, within 90 days following the occurrence of such Special Event (the "90 Day Period"); PROVIDED, HOWEVER, that in the case of the occurrence of a Tax Event, as a condition of such dissolution and distribution, the Regular Trustees shall have received an opinion of a nationally recognized independent tax counsel experienced in such matters (a "No Recognition Opinion"), which opinion may rely on any then applicable published revenue rulings of the Internal Revenue Service, to the effect that the Holders of the Preferred Securities will not recognize any gain or loss for United States Federal income tax purposes as a result of the dissolution of the Trust and distribution of Debentures; and PROVIDED FURTHER that, if at the time there is available to the Sponsor or the Regular Trustees, on behalf of the Trust, the opportunity to eliminate, within the 90 Day Period, the Special Event by taking some ministerial action, such as filing a form or making an election, or pursuing some other similar reasonable measure that has no adverse effect on the Trust, the Sponsor or the Holders of the Preferred Securities (a "Ministerial Action"), the Sponsor or the Regular Trustees, on behalf of the Trust, will pursue such Ministerial Action in lieu of dissolution.

If in the case of the occurrence of a Tax Event, (i) the Regular Trustees have received an opinion (a "Redemption Tax Opinion") of nationally recognized independent tax counsel experienced in such matters that, as a result of a Tax Event, there is more than an insubstantial risk that the Sponsor would be precluded from deducting the interest on the Debentures for United States Federal income tax purposes even if the Debentures were distributed to the Holders of Preferred Securities and Common Securities in liquidation of such Holder's interest in the Trust as described in this paragraph 4(c) or (ii) the Regular Trustees shall have been informed by such tax counsel that a No Recognition Opinion cannot be delivered to the Trust, the Sponsor shall have the

right at any time, upon not less than 30 nor more than 60 days notice, to redeem the Debentures in whole or in part for cash at the Redemption Price within 90 days following the occurrence of such Tax Event, and, promptly following such redemption, Preferred Securities and Common Securities with an aggregate liquidation amount equal to the aggregate principal amount of the Debentures so redeemed will be redeemed by the Trust at the Redemption Price on a pro rata basis; PROVIDED, HOWEVER, that, if at

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the time there is available to the Sponsor or the Regular Trustees, on behalf of the Trust, the opportunity to eliminate, within such 90 day period, the Tax Event by taking some Ministerial Action, the Sponsor, or, the Regular Trustees, on behalf of the Trust, will pursue such measure in lieu of redemption; and PROVIDED FURTHER that the Sponsor shall have no right to redeem the Debentures while the Regular Trustees, on behalf of the Trust, are pursuing such Ministerial Action. The Common Securities will be redeemed pro rata with the Preferred Securities, except that if an Event of Default under the Indenture has occurred and is continuing, the Preferred Securities will have a priority over the Common Securities with respect to payment of the Redemption Price.

"Tax Event" means that the Regular Trustees shall have obtained an opinion of nationally recognized independent tax counsel experienced in such matters (a "Dissolution Tax Opinion") to the effect that[, on or after [ ]], as a result of (a) any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein, (b) any amendment to, or change in, an interpretation or application of any such laws or regulations by any legislative body, court, governmental agency or regulatory authority (including the enactment of any legislation and the publication of any judicial decision or regulatory determination), (c) any interpretation or pronouncement that provides for a position with respect to such laws or regulations that differs from the theretofore generally accepted position or (d) any action taken by any governmental agency or regulatory authority, which amendment or change is enacted, promulgated, issued or effective or which interpretation or pronouncement is issued or adopted or which action is taken, in each case after [ ], (collectively, a "Change in Tax Law") there is more than an insubstantial risk that (i) the Trust is, or will be within 90 days of the date thereof, subject to United States Federal income tax with respect to income accrued or received on the Debentures, (ii) the Trust is, or will be within 90 days of the date thereof, subject to more than a DE MINIMIS amount of other taxes, duties or other governmental charges or (iii) interest payable by the Sponsor to the Trust on the Debentures is not, or within 90 days of the date thereof will not be, deductible by the Sponsor for United States Federal income tax purposes

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(determined without regard to the use made by the Company of the proceeds of the Debentures). Notwithstanding anything in the previous sentence to the contrary, a Tax Event shall not include any Change in Tax Law that requires the Company for Federal income tax purposes to defer taking a deduction for any OID that accrues with respect to the Debentures until the interest payment related to such OID is paid by the Company in money; PROVIDED that such Change in Tax Law does not create more than an insubstantial risk that the Company will be prevented from taking a deduction for OID accruing with respect to the Debentures at a date that is no later than the date the interest payment related to such OID is actually paid by the Company in money.

"Investment Company Event" means that the Regular Trustees shall have received an opinion of nationally recognized independent counsel experienced in practice under the Investment Company Act that, as a result of the occurrence of a change in law or regulation or a change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority (a "Change in 1940 Act Law"), there is more than an insubstantial risk that the Trust is or will be considered an "investment company" which is required to be registered under the Investment Company Act, which Change in 1940 Act Law becomes effective on or after [ ].

On the date fixed for any distribution of Debentures, upon dissolution of the Trust, (i) the Preferred Securities will no longer be deemed to be outstanding, and (ii) certificates representing Preferred Securities will be deemed to represent beneficial interests in the Debentures having an aggregate principal amount equal to the stated liquidation amount of, and bearing accrued and unpaid interest equal to accrued and unpaid Distributions on, such Preferred Securities until such certificates are presented to the Sponsor or its agent for transfer or reissuance.

(d) The Trust may not redeem fewer than all the outstanding Preferred Securities unless all accrued and unpaid Distributions have been paid on all Preferred Securities for all monthly Distribution periods terminating on or prior to the date of redemption.

(e) If Debentures are distributed to Holders of the Preferred Securities, the Sponsor, pursuant to the

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terms of the Indenture, will use its best efforts to have the Debentures listed on the New York Stock Exchange or on such other exchange as the Preferred Securities were listed immediately prior to the distribution of the Debentures.

(f)(i) Notice of any redemption of, or notice of distribution of Debentures in exchange for, the Preferred Securities and the Common Securities (a "Redemption/ Distribution Notice") will be given by the Regular Trustees on behalf of the Trust by mail to each Holder of Preferred Securities and Common Securities to be redeemed or exchanged not less than 30 nor more than 60 days prior to the date fixed for redemption or exchange thereof. For purposes of the calculation of the date of redemption or exchange and the dates on which notices are given pursuant to this paragraph (f)(i), a Redemption/Distribution Notice shall be deemed to be given on the day such notice is first mailed by first class mail, postage prepaid, to Holders of Preferred Securities and Common Securities. Each Redemption/ Distribution Notice shall be addressed to the Holders of Preferred Securities and Common Securities at the address of each such Holder appearing in the books and records of the Trust. No defect in the Redemption/Distribution Notice or in the mailing of either thereof with respect to any Holder shall affect the validity of the redemption or exchange proceedings with respect to any other Holder.

(ii) In the event that fewer than all the outstanding Preferred Securities are to be redeemed, the Preferred Securities to be redeemed will be redeemed pro rata from each Holder of Preferred Securities, it being understood that, in respect of Preferred Securities registered in the name of and held of record by DTC (or a successor Clearing Agency) or any other nominee, the Preferred Securities will be redeemed from, and the distribution of the proceeds of such redemption will be made to, each Clearing Agency Participant (or person on whose behalf such nominee holds such securities) in accordance with the procedures applied by such agency or nominee.

(iii) Subject to paragraph 9 hereof, if the Trust gives a Redemption/Distribution Notice in respect of a redemption of Preferred Securities as provided in this paragraph 4 (which notice will be irrevocable) then (A) while the Preferred Securities are in book-entry only form, by 12:00 noon, New York City time, on the

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redemption date, provided that the Sponsor has paid the Property Trustee in immediately available funds a sufficient amount of cash in connection with the related redemption or maturity of the Debentures, the Property Trustee will deposit irrevocably with DTC (or any successor Clearing Agency) funds sufficient to pay the applicable Redemption Price with respect to the Preferred Securities and will give DTC (or any successor Clearing Agency) irrevocable instructions and authority to pay the Redemption Price to the Holders of the Preferred Securities and (B) if the Preferred Securities are issued in definitive form, and provided that the Sponsor has paid the Property Trustee in immediately available funds a sufficient amount of cash in connection with the related redemption or maturity of the Debentures, the Property Trustee will pay the relevant Redemption Price to the Holders of such Preferred Securities by check mailed to the address of the relevant Holder appearing on the books and records of the Trust on the redemption date. If a Redemption/Distribution Notice shall have been given and funds deposited as required, if applicable, then immediately prior to the close of business on the redemption date, Distributions will cease to accrue on the Preferred Securities called for redemption, such Preferred Securities will no longer be deemed to be outstanding and all rights of Holders of such Preferred Securities so called for redemption will cease, except the right of the Holders of such Preferred Securities to receive the Redemption Price, but without interest on such Redemption Price. Neither the Trustees nor the Trust shall be required to register or cause to be registered the transfer of any Preferred Securities which have been so called for redemption. If any date fixed for redemption of Preferred Securities is not a Business Day, then payment of the Redemption Price payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day falls in the next calendar year, such payment will be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date fixed for redemption. If the Sponsor fails to repay Debentures on maturity or on the date fixed for redemption or if payment of the Redemption Price in respect of Preferred Securities is improperly withheld or refused and not paid either by the Property Trustee or, pursuant to the Preferred Securities Guarantee, by White Mountains, Distributions on such Preferred Securities will continue to accrue, from the

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original redemption date to the date of payment, in which case the actual payment date will be considered the date fixed for redemption for purposes of calculating the Redemption Price.

(iv) Redemption/Distribution Notices shall be sent by the Regular Trustees on behalf of the Trust to DTC or its nominee (or any successor Clearing Agency or its nominee) if the Global Certificates have been issued or, if Definitive Preferred Security Certificates have been issued, to the Holders of the Preferred Securities.

(v) Upon the date of dissolution of the Trust and distribution of Debentures as a result of the occurrence of a Special Event, Preferred Security Certificates shall be deemed to represent beneficial interests in the Debentures

so distributed, and the Preferred Securities will no longer be deemed outstanding and may be canceled by the Regular Trustees. The Debentures so distributed shall have an aggregate principal amount equal to the aggregate liquidation amount of the Preferred Securities so distributed.

(vi) If a partial redemption of the Preferred Securities would result in the delisting of the Preferred Securities by any national securities exchange or other organization on which the Preferred Securities are then listed, the Company pursuant to the Indenture will only redeem Debentures in whole and, as a result, the Trust would only redeem the Preferred Securities in whole.

(vii) Subject to the foregoing and applicable law (including, without limitation, United States Federal and state securities laws), the Sponsor or any of its subsidiaries may at any time and from time to time purchase outstanding Preferred Securities by tender, in the open market or by private agreement.

5. VOTING RIGHTS. (a) Except as provided under paragraph 5(b) below and as otherwise required by law and the Declaration, the Holders of the Preferred Securities will have no voting rights.

(b) If any proposed amendment to the Declaration provides for, or the Regular Trustees otherwise propose to effect, (i) any action that would adversely affect the powers, preferences or special rights of the Securities, whether by way of amendment to the Declaration or otherwise, or (ii) the dissolution,

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winding-up or termination of the Trust, other than in connection with the distribution of Debentures held by the Property Trustee, upon the occurrence of a Special Event or in connection with the redemption of Preferred Securities as a consequence of a redemption of Debentures, then the Holders of outstanding Securities will be entitled to vote on such amendment or proposal as a class and such amendment or proposal shall not be effective except with the approval of the Holders of Securities representing 66-2/3% in liquidation amount of such Securities; PROVIDED, HOWEVER, that (A) if any amendment or proposal referred to in clause (i) above would adversely affect only the Preferred Securities or the Common Securities, then only the affected class will be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of 66-2/3% in liquidation amount of such class of Securities and (B) amendments to the Declaration shall be subject to such further requirements as are set forth in Sections 12.01 and 12.02 of the Declaration.

In the event the consent of the Property Trustee, as the holder of the Debentures, is required under the Indenture with respect to any amendment, modification or termination of the Indenture or the Debentures, the Property Trustee shall request the written direction of the Holders of the Securities with respect to such amendment, modification or termination. The Property Trustee shall vote with respect to such amendment, modification or termination as directed by a Majority in liquidation amount of the Securities voting together as a single class; PROVIDED that where such amendment, modification or termination of the Indenture requires the consent or vote of (1) holders of Debentures representing a specified percentage greater than a majority in principal amount of the Debentures or (2) each holder of Debentures affected thereby, the Property Trustee may only vote with respect to that amendment, modification or termination as directed by, in the case of clause (1) above, the vote of Holders of Securities representing such specified percentage of the aggregate liquidation amount of the Securities, or, in the case of clause (2) above, each Holder of Securities affected thereby; and PROVIDED FURTHER that the Property Trustee shall be under no obligation to take any action in accordance with the directions of the Holders of Securities unless the Property Trustee shall have received, at the expense of the Sponsor, an opinion of

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nationally recognized independent tax counsel recognized as expert in such matters to the effect that the Trust will not be classified for United States Federal income tax purposes as an association taxable as a corporation or a partnership on account of such action and will be treated as a grantor trust for United States Federal income tax purposes following such action.

Subject to Section 2.06 of the Declaration, and the provisions of this and the next succeeding paragraph, the Holders of a Majority in liquidation amount of the Preferred Securities, voting separately as a class, shall have the right to (A) on behalf of all Holders of Preferred Securities, waive any past default that is waivable under the Declaration (subject to, and in accordance with, the Declaration) and (B) direct the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon the Property Trustee under the Declaration, including the right to direct the Property Trustee, as the holder of the Debentures, to (i) direct the time, method and place of conducting any proceeding for any remedy available to the Debenture Trustee, or exercising any trust or power conferred on the Debenture Trustee with respect to the Debentures, (ii) waive any past default that is waivable under Section 6.06 of the Indenture, or (iii) exercise any right to rescind or annul a declaration that the principal of all the Debentures shall be due and payable; PROVIDED that where the taking of any action under the Indenture requires the consent or vote



of (1) holders of Debentures representing a specified percentage greater than a majority in principal amount of the Debentures or (2) each holder of Debentures affected thereby, the Property Trustee may only take such action if directed by, in the case of clause (1) above, the vote of Holders of Preferred Securities representing such specified percentage of the aggregate liquidation amount of the Preferred Securities, or, in the case of clause (2) above, each Holder of Preferred Securities affected thereby. The Property Trustee shall not revoke any action previously authorized or approved by a vote of the Holders of the Preferred Securities. Other than with respect to directing the time, method and place of conducting any proceeding for any remedy available to the Property Trustee or the Debenture Trustee as set forth above, the Property Trustee shall be under no obligation to take any of the foregoing actions at the direction of the Holders of Preferred Securities unless the Property

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Trustee shall have received, at the expense of the Sponsor, an opinion of nationally recognized independent tax counsel recognized as expert in such matters to the effect that the Trust will not be classified for United States Federal income tax purposes as an association taxable as a corporation or a partnership on account of such action and will be treated as a grantor trust for United States Federal income tax purposes following such action. If the Property Trustee fails to enforce its rights under the Declaration (including, without limitation, its rights, powers and privileges as a holder of the Debentures under the Indenture), any Holder of Preferred Securities may, to the extent permitted by law, after a period of 30 days has elapsed from such Holder's written request to the Property Trustee to enforce such rights, institute a legal proceeding directed against the Sponsor to enforce the Property Trustee's rights under the Declaration, without first instituting a legal proceeding against the Property Trustee or any other Person. Notwithstanding the foregoing, if an Event of Default has occurred and is continuing and such event is attributable to the failure of the Sponsor to pay interest or principal on the Debentures on the date such interest or principal is otherwise payable (or in the case of redemption, the redemption date), then a Holder of Preferred Securities may directly institute suit against the Sponsor for enforcement of payment to such Holder of the principal of or interest on Debentures having a principal amount equal to the aggregate liquidation amount of the Preferred Securities held by such Holder on or after the respective due date specified in the Debentures. The Holders of Preferred Securities will not be able to exercise directly against the Sponsor any other remedy available to the Holders of the Debentures unless the Property Trustee first fails to do so.

A waiver of an Indenture Event of Default by the Property Trustee at the direction of the Holders of the Preferred Securities will constitute a waiver of the corresponding Event of Default under the Declaration in respect of the Securities.

Any required approval or direction of Holders of Preferred Securities may be given at a separate meeting of Holders of Preferred Securities convened for such purpose, at a meeting of all of the Holders of Securities of the Trust or pursuant to written consent. The Regular Trustees will cause a notice of any meeting at which

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Holders of Preferred Securities are entitled to vote, or of any matter upon which action by written consent of such Holders is to be taken, to be mailed to each Holder of record of Preferred Securities. Each such notice will include a statement setting forth (i) the date of such meeting or the date by which such action is to be taken, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote or of such matter upon which written consent is sought and (iii) instructions for the delivery of proxies or consents.

No vote or consent of the Holders of Preferred Securities will be required for the Trust to redeem and cancel Preferred Securities in accordance with the Declaration.

Notwithstanding that Holders of Preferred Securities are entitled to vote or consent under any of the circumstances described above, any of the Preferred Securities at such time that are owned by the Sponsor or by any entity directly or indirectly controlling or controlled by or under direct or indirect common control with the Sponsor shall not be entitled to vote or consent and shall, for purposes of such vote or consent, be treated as if they were not outstanding.

Holders of the Preferred Securities will have no rights to increase or decrease the number of Trustees or to appoint, remove or replace a Trustee, which voting rights are vested exclusively in the Holders of the Common Securities.

[6. CONVERSION RIGHTS. To be provided if applicable.]

7. PRO RATA TREATMENT. A reference in these terms of the Preferred Securities to any payment, distribution or treatment as being "pro rata" shall mean pro rata to each Holder of Securities according to the aggregate liquidation amount of the Securities held by the relevant Holder in relation to the aggregate liquidation amount of all Securities outstanding unless, in relation to a payment, an Event of Default has occurred and is continuing, in which case any funds available to make such payment shall be paid first to each

Holder of the Preferred Securities pro rata according to the aggregate liquidation amount of Preferred Securities held by the relevant Holder relative

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to the aggregate liquidation amount of all Preferred Securities outstanding, and only after satisfaction of all amounts owed to the Holders of the Preferred Securities, to each Holder of Common Securities pro rata according to the aggregate liquidation amount of Common Securities held by the relevant Holder relative to the aggregate liquidation amount of all Common Securities outstanding.

8. RANKING. The Preferred Securities rank pari passu and payment thereon will be made pro rata with the Common Securities except that where an Event of Default occurs and is continuing, the rights of Holders of Preferred Securities to payment in respect of Distributions and payments upon liquidation, redemption or otherwise rank in priority to the rights of Holders of the Common Securities.

9. MERGERS, CONSOLIDATIONS OR AMALGAMATIONS. The Trust may not consolidate, amalgamate, merge with or into, or be replaced by, or sell, transfer or lease all or substantially all its properties and assets to, any Person.

10. TRANSFER, EXCHANGE, METHOD OF PAYMENTS. Payment of Distributions and payments on redemption of the Preferred Securities will be payable, the transfer of the Preferred Securities will be registrable, and Preferred Securities will be exchangeable for Preferred Securities of other denominations of a like aggregate liquidation amount, at the principal corporate trust office of the Property Trustee in The City of New York; PROVIDED that payment of Distributions may be made at the option of the Regular Trustees on behalf of the Trust by check mailed to the address of the Persons entitled thereto and that the payment on redemption of any Preferred Security will be made only upon surrender of such Preferred Security to the Property Trustee.

11. ACCEPTANCE OF INDENTURE AND PREFERRED GUARANTEE. Each Holder of Preferred Securities, by the acceptance thereof, agrees to the provisions of (i) the Preferred Guarantee, including the subordination provisions thereof and (ii) the Junior Subordinated Indenture and the Debentures, including the subordination provisions of the Indenture.

12. NO PREEMPTIVE RIGHTS. The Holders of Preferred Securities shall have no preemptive rights to

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subscribe to any additional Preferred Securities or Common Securities.

13. MISCELLANEOUS. These terms shall constitute a part of the Declaration. The Trust will provide a copy of the Declaration and the Indenture to a Holder without charge on written request to the Trust at its principal place of business.

ANNEX I

[IF THE PREFERRED SECURITY IS TO BE A GLOBAL

CERTIFICATE INSERT--THIS PREFERRED SECURITY IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE DECLARATION HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITARY TRUST COMPANY ("DTC") OR A NOMINEE OF DTC. THIS PREFERRED SECURITY IS EXCHANGEABLE FOR PREFERRED SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN DTC OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE DECLARATION AND NO TRANSFER OF THIS PREFERRED SECURITY (OTHER THAN A TRANSFER OF THIS PREFERRED SECURITY AS A WHOLE BY DTC TO A NOMINEE OF DTC OR BY A NOMINEE OF DTC TO DTC OR ANOTHER NOMINEE OF DTC) MAY BE REGISTERED EXCEPT IN SUCH LIMITED CIRCUMSTANCES.

UNLESS THIS PREFERRED SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TO THE TRUST OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY PREFERRED SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC OR ANY SUCCESSOR DEPOSITARY AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC OR ANY SUCCESSOR DEPOSITARY, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY A PERSON IS WRONGFUL, SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

Preferred Securities:

Number:

CUSIP NO.:

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FUND AMERICAN TRUST II

% PREFERRED SECURITIES  
(LIQUIDATION AMOUNT \$[ ] PER PREFERRED SECURITY)

Fund American Trust II, a statutory business trust created under the

laws of the State of Delaware (the "Trust"), hereby certifies that [ ] (the "Holder") is the registered owner of [ ] preferred securities of the Trust representing undivided beneficial interests in the assets of the Trust designated the [ ]% Preferred Securities (liquidation amount \$[ ] per Preferred Security) (the "Preferred Securities"). The transfer of Preferred Securities is registrable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for registration of transfer. The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Securities are set forth in, and this certificate and the Preferred Securities represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Amended and Restated Declaration of Trust of the Trust dated as of \_\_\_\_\_, 2001, as the same may be amended from time to time (the "Declaration"), including the designation of the terms of Preferred Securities as set forth in Exhibit B thereto. The Preferred Securities and the Common Securities issued by the Trust pursuant to the Declaration represent undivided beneficial interests in the assets of the Trust, including the Debentures (as defined in the Declaration) issued by Fund American Companies, Inc., a Delaware corporation (the "Sponsor"), to the Trust pursuant to the Indenture referred to in the Declaration. The Holder is entitled to the benefits of the Guarantee Agreement of White Mountains Insurance Group, Ltd., a corporation existing under the laws of Bermuda ("White Mountains"), dated as of [ ] (the "Guarantee"), to the extent provided therein. The Trust will furnish a copy of the Declaration, the Guarantee and the Indenture to the Holder without charge, upon written request to the Trust, at its principal place of business or registered office.

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The Holder of this Certificate, by accepting this Certificate, is deemed to have (i) agreed to the terms of the Indenture and the Debentures, including that the Debentures are subordinate and junior in right of payment to all Senior Indebtedness (as defined in the Indenture) as and to the extent provided in the Indenture and (ii) agreed to the terms of the Guarantee, including that the Guarantee is subordinate and junior in right of payment to all other indebtedness, liabilities and obligations of White Mountains, including the Debentures, except those made PARI PASSU or subordinate by their terms, and senior to all capital stock now or hereafter issued by the Sponsor and to any guarantee now or hereafter entered into by the Sponsor in respect of any of its capital stock.

Upon receipt of this certificate, the Holder is bound by the Declaration and is entitled to the benefits thereunder.

IN WITNESS WHEREOF, the Trustees of the Trust have executed this certificate this \_\_\_\_\_ day of \_\_\_\_\_.

Fund American Trust II,

by \_\_\_\_\_  
Name:  
Title: Regular Trustee

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by \_\_\_\_\_  
Name:  
Title: Regular Trustee

Dated:  
Countersigned and Registered:

[ ], as  
Transfer Agent and Registrar

by \_\_\_\_\_  
Authorized Officer

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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Preferred Security to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints

agent to transfer this Preferred Security Certificate on the books of the Trust. The agent may substitute another to act for him or her.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

NOTICE: THE SIGNATURE(S) TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME(S) AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

EXHIBIT C

TERMS OF  
COMMON SECURITIES

Pursuant to Section 7.01 of the Amended and Restated Declaration of Trust of Fund American Trust II dated as of [ ] (as amended from time to time, the "Declaration"), the designations, rights, privileges, restrictions, preferences and other terms and provisions of the Common Securities are set forth below (each capitalized term used but not defined herein having the meaning set forth in the Declaration):

1. DESIGNATION AND NUMBER. Common Securities of the Trust with an aggregate liquidation amount in the assets of the Trust of up to [ ] Dollars (\$[ ]) (including up to [ ] Dollars (\$[ ]) issuable upon exercise of the overallocation option set forth in the Underwriting Agreement) and a liquidation amount in the assets of the Trust of \$[ ] per Common Security are hereby designated as "[ ]% Common Trust Securities". The Common Security Certificates evidencing the Common Securities shall be substantially in the form attached hereto as Annex I, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice. The Common Securities are to be issued and sold to Fund American Companies, Inc. ("the Sponsor"). In connection with the issuance and sale of the Preferred Securities and the Common Securities, the Trust will purchase, as trust assets, Debentures of the Sponsor having an aggregate principal amount equal to the aggregate liquidation amount of the Preferred Securities and the Common Securities so issued, and bearing interest at an annual rate equal to the annual Distribution rate on the Preferred Securities and the Common Securities and having payment and redemption provisions which correspond to the payment and redemption provisions of the Preferred Securities and the Common Securities.

2. DISTRIBUTIONS. (a) Distributions payable on each Common Security will be payable at a [fixed rate per annum of [ ]%] [floating rate] (the "Coupon Rate") of the stated liquidation amount of \$[ ] per Common Security. Distributions in arrears for more than one month will bear interest at the Coupon Rate (to the extent permitted by applicable law), compounded monthly. The term "Distributions" as used in these terms means such periodic cash distributions and any such interest payable unless otherwise stated. A Distribution will be

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made by the Property Trustee only to the extent that interest payments are made in respect of the Debentures held by the Property Trustee. The amount of Distributions payable for any period will be computed on the basis of a 360-day year of twelve 30-day months, and for any Distribution period shorter than a 30-day period for which Distributions are computed, Distributions will be computed on the basis of the actual number of days elapsed.

(b) Distributions on the Common Securities will be cumulative, will accrue from [ ], and will be payable [monthly] [quarterly] [semi-annually] in arrears, on the first day of each period, commencing on [ ], except as otherwise described below, but only if and to the extent that interest payments are made in respect of the Debentures held by the Property Trustee. So long as the Sponsor is not in default in the payment of interest on the Debentures, the Sponsor shall have the right under the Indenture for the Debentures to defer payments of interest by extending the interest payment period from time to time on the Debentures for a period not to exceed [60] [20] [10] consecutive [monthly] [quarterly] [semi-annual] interest periods (each, an "Extension Period"), PROVIDED, HOWEVER, that an Extension Period may not extend beyond the maturity of the Debentures. During any such Extension Period, [monthly] [quarterly] [semi-annually] Distributions will continue to accrue with interest

thereon (to the extent permitted by applicable law) at the Coupon Rate, compounded [monthly] [quarterly] [semi-annually]. Prior to the termination of any such Extension Period, the Sponsor may further extend such Extension Period; PROVIDED that such Extension Period, together with all such previous and further extensions thereof, may not exceed [60] [20] [10] consecutive monthly interest periods. Upon the termination of any Extension Period and the payment of all amounts then due, the Sponsor may commence a new Extension Period, subject to the above requirements. Payments of accrued Distributions will be payable to Holders of Common Securities as they appear on the books and records of the Trust on the record date for the first interest payment date occurring at or after the end of the Extension Period.

(c) Distributions on the Common Securities will be payable promptly by the Property Trustee (or other Paying Agent) upon receipt of immediately available funds to the Holders thereof as they appear on the books and

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records of the Trust on the relevant record dates which will be one Business Day prior to the relevant Distribution date unless the Preferred Securities are no longer in book-entry only form, in which event the relevant record dates will be the fifteenth (15th) day of the month immediately preceding the month in which the relevant Distribution date occurs, which record and payment dates correspond to the record and interest payment dates for the Debentures. Distributions payable on any Common Securities that are not punctually paid on any Distribution date as a result of the Sponsor having failed to make the corresponding interest payment on the Debentures will forthwith cease to be payable to the Person in whose name such Common Security is registered on the relevant record date, and such defaulted Distribution will instead be payable to the Person in whose name such Common Security is registered on the special record date established by the Regular Trustees, which record date shall correspond to the special record date or other specified date determined in accordance with the Indenture; PROVIDED, HOWEVER, that Distributions shall not be considered payable on any Distribution payment date falling within an Extension Period unless the Sponsor has elected to make a full or partial payment of interest accrued on the Debentures on such Distribution payment date. Subject to any applicable laws and regulations and the provisions of the Declaration, each payment in respect of the Common Securities will be made as described in paragraph 9 hereof. If any date on which Distributions are payable on the Common Securities is not a Business Day, then payment of the Distribution payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date.

(d) All Distributions paid with respect to the Common Securities and the Preferred Securities will be paid pro rata to the Holders thereof entitled thereto. If an Event of Default has occurred and is continuing, the Preferred Securities shall have a priority over the Common Securities with respect to Distributions.

(e) In the event that there is any money or other property held by or for the Trust that is not

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accounted for under the Declaration, such money or property shall be distributed pro rata among the Holders of the Preferred Securities and the Common Securities.

3. LIQUIDATION DISTRIBUTION UPON DISSOLUTION. In the event of any voluntary or involuntary dissolution, winding-up or termination of the Trust, the Holders of the Preferred Securities and Common Securities at the date of the dissolution, winding-up or termination, as the case may be, will be entitled to receive pro rata solely out of the assets of the Trust available for distribution to Holders of Preferred Securities and the Common Securities, after satisfaction of liabilities to creditors, an amount equal to the aggregate of the stated liquidation amount of \$[ ] per Preferred Security and Common Security plus accrued and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"), unless, in connection with such dissolution, winding-up or termination, after paying after satisfaction of liabilities to creditors, Debentures in an aggregate principal amount equal to the aggregate stated liquidation amount of such Preferred Securities and Common Securities, and bearing accrued and unpaid interest in an amount equal to the accrued and unpaid Distributions on such Preferred Securities and Common Securities, shall be distributed pro rata to the Holders of the Preferred Securities and Common Securities in exchange for such Securities.

If, upon any such dissolution, the Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then the amounts payable directly by the Trust on the Preferred Securities and the Common Securities shall be paid, subject to the next paragraph, on a pro rata basis.

Holders of Common Securities will be entitled to receive Liquidation Distributions upon any such dissolution pro rata with Holders of Preferred Securities, except that, if an Event of Default has occurred and is continuing,

the Preferred Securities shall have a priority over the Common Securities with respect to such Liquidation Distribution.

4. REDEMPTION AND DISTRIBUTION OF DEBENTURES. The Preferred Securities and the Common Securities may only be redeemed if Debentures having an aggregate principal amount equal to the aggregate liquidation

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amount of the Preferred Securities and the Common Securities are repaid, redeemed or distributed as set forth below:

[(a) Upon the repayment of the Debentures, in whole or in part, whether at maturity or upon redemption at any time or from time to time on or after [ ], the proceeds of such repayment will be promptly applied to redeem pro rata Preferred Securities and Common Securities having an aggregate liquidation amount equal to the aggregate principal amount of the Debentures so repaid, upon not less than 30 nor more than 60 days notice, at a redemption price of \$[ ] per Preferred Security and Common Security plus an amount equal to accrued and unpaid Distributions thereon to the date of redemption, payable in cash (the "Redemption Price"). The date of any such repayment of Preferred Securities and Common Securities shall be established to coincide with the repayment or redemption date of the Debentures.] [Other applicable redemption provisions, if any.]

(b) If fewer than all the outstanding Preferred Securities and Common Securities are to be so redeemed, the Preferred Securities and the Common Securities will be redeemed pro rata and, with respect to the Common Securities to be redeemed, as described in paragraph 4(e)(ii) below. If a partial redemption would result in the delisting of the Preferred Securities by any national securities exchange or other organization on which the Preferred Securities are then listed, the Sponsor, pursuant to the Indenture, will only redeem Debentures in whole and the Trust will only redeem the Common Securities in whole.

(c) If, at any time, a Tax Event or an Investment Company Event (each, as hereinafter defined and, each, a "Special Event") shall occur and be continuing, the Regular Trustees shall, unless the Debentures are redeemed in the limited circumstances described below, dissolve the Trust and, after satisfaction of creditors, cause Debentures held by the Property Trustee having an aggregate principal amount equal to the aggregate stated liquidation amount of, and bearing accrued and unpaid interest equal to accrued and unpaid Distributions on, and having the same record date for payment as, the Preferred Securities and the Common Securities, to be distributed to the Holders of the Preferred Securities and the Common Securities on a pro

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rata basis in liquidation of such Holders' interests in the Trust, within 90 days following the occurrence of such Special Event (the "90 Day Period"); PROVIDED, HOWEVER, that in the case of the occurrence of a Tax Event, as a condition of such dissolution and distribution, the Regular Trustees shall have received an opinion of a nationally recognized independent tax counsel experienced in such matters (a "No Recognition Opinion"), which opinion may rely on any then applicable published revenue rulings of the Internal Revenue Service, to the effect that the Holders of the Preferred Securities will not recognize any gain or loss for United States Federal income tax purposes as a result of the dissolution of the Trust and distribution of Debentures; and PROVIDED FURTHER that, if at the time there is available to the Sponsor or the Regular Trustees, on behalf of the Trust, the opportunity to eliminate, within such 90 Day Period, the Special Event by taking some ministerial action, such as filing a form or making an election, or pursuing some other similar reasonable measure that has no adverse effect on the Trust, the Sponsor or the Holders of the Preferred Securities (a "Ministerial Action"), the Sponsor or the Regular Trustees, on behalf of the Trust, will pursue such Ministerial Action in lieu of dissolution.

If in the case of the occurrence of a Tax Event, (i) the Regular Trustees have received an opinion (a "Redemption Tax Opinion") of nationally recognized independent tax counsel experienced in such matters that, as a result of a Tax Event, there is more than an insubstantial risk that the Sponsor would be precluded from deducting the interest on the Debentures for United States Federal income tax purposes even if the Debentures were distributed to the Holders of Preferred Securities and Common Securities in liquidation of such Holders' interest in the Trust as described in this paragraph 4(c) or (ii) the Regular Trustees shall have been informed by such tax counsel that a No Recognition Opinion cannot be delivered to the Trust, the Sponsor shall have the right at any time, upon not less than 30 nor more than 60 days notice, to redeem the Debentures in whole or in part for cash at the Redemption Price within 90 days following the occurrence of such Tax Event, and, promptly following such redemption, Preferred Securities and Common Securities with an aggregate liquidation amount equal to the aggregate principal amount of the Debentures so redeemed will be redeemed by the Trust at the Redemption Price on a pro rata basis; PROVIDED, HOWEVER, that, if at

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the time there is available to the Sponsor or the Regular Trustees on behalf of

the Trust, the opportunity to eliminate, within such 90 Day Period, the Tax Event by taking some Ministerial Action, the Sponsor or the Holders of the Preferred Securities, the Sponsor or the Regular Trustees, on behalf of the Trust, will pursue such measure in lieu of redemption; and PROVIDED FURTHER, that the Sponsor shall have no right to redeem the Debentures while the Regular Trustees, on behalf of the Trust, are pursuing such Ministerial Action. The Common Securities will be redeemed pro rata with the Preferred Securities, except that if an Event of Default under the Indenture has occurred and is continuing, the Preferred Securities will have a priority over the Common Securities with respect to payment of the Redemption Price.

"Tax Event" means that the Regular Trustees shall have obtained an opinion of nationally recognized independent tax counsel experienced in such matters (a "Dissolution Tax Opinion") to the effect that, on or after [ ], as a result of (a) any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein, (b) any amendment to, or change (including any announced prospective change) in, an interpretation or application of any such laws or regulations by any legislative body, court, governmental agency or regulatory authority (including the enactment of any legislation and the publication of any judicial decision or regulatory determination), (c) any interpretation or pronouncement that provides for a position with respect to such laws or regulations that differs from the theretofore generally accepted position or (d) any action taken by any governmental agency or regulatory authority, which amendment or change is enacted, promulgated, issued or effective or which interpretation or pronouncement is issued or announced or which action is taken, in each case on or after [ ], there is more than an insubstantial risk that (i) the Trust is, or will be within 90 days of the date thereof, subject to United States Federal income tax with respect to income accrued or received on the Debentures, (ii) the Trust is, or will be within 90 days of the date thereof, subject to more than a DE MINIMIS amount of taxes, duties or other governmental charges or (iii) interest payable by the Sponsor to the Trust on the Debentures is not, or within 90 days of the date thereof

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will not be, deductible by the Sponsor for United States Federal income tax purposes.

"Investment Company Event" means that the Regular Trustees shall have received an opinion of nationally recognized independent counsel experienced in practice under the Investment Company Act that, as a result of the occurrence of a change in law or regulation or a change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority (a "Change in 1940 Act Law"), there is more than an insubstantial risk that the Trust is or will be considered an Investment Company which is required to be registered under the Investment Company Act, which Change in 1940 Act Law becomes effective on or after [ ].

On the date fixed for any distribution of Debentures, upon dissolution of the Trust, (i) the Common Securities will no longer be deemed to be outstanding and (ii) any certificates representing Common Securities will be deemed to represent beneficial interests in the Debentures having an aggregate principal amount equal to the stated liquidation amount of, and bearing accrued and unpaid interest equal to accrued and unpaid Distributions on, such Common Securities until such certificates are presented to the Sponsor or its agent for transfer or reissuance.

(d) The Trust may not redeem fewer than all the outstanding Common Securities unless all accrued and unpaid Distributions have been paid on all Common Securities for all monthly Distribution periods terminating on or prior to the date of redemption.

(e)(i) Notice of any redemption of, or notice of distribution of Debentures in exchange for, the Preferred Securities and the Common Securities (a "Redemption/ Distribution Notice") will be given by the Regular Trustees on behalf of the Trust by mail to each Holder of Preferred Securities and Common Securities to be redeemed or exchanged not less than 30 nor more than 60 days prior to the date fixed for redemption or exchange thereof. For purposes of the calculation of the date of redemption or exchange and the dates on which notices are given pursuant to this paragraph (e)(i), a Redemption/Distribution Notice shall be deemed to be given on the day such notice is first mailed by first-class mail, postage prepaid, to Holders of Preferred

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Securities and Common Securities. Each Redemption/ Distribution Notice shall be addressed to the Holders of Preferred Securities and Common Securities at the address of each such Holder appearing in the books and records of the Trust. No defect in the Redemption/Distribution Notice or in the mailing of either thereof with respect to any Holder shall affect the validity of the redemption or exchange proceedings with respect to any other Holder.

(ii) In the event that fewer than all the outstanding Common Securities are to be redeemed, the Common Securities to be redeemed will be redeemed pro rata from each Holder of Common Securities (subject to adjustment to eliminate fractional Common Securities).

(iii) If the Trust gives a Redemption/Distribution Notice in respect

of a redemption of Common Securities as provided in this paragraph 4 (which notice will be irrevocable), then immediately prior to the close of business on the redemption date, PROVIDED that the Sponsor has paid to the Property Trustee in immediately available funds a sufficient amount of cash in connection with the related redemption or maturity of the Debentures, Distributions will cease to accrue on the Common Securities called for redemption, such Common Securities will no longer be deemed to be outstanding and all rights of Holders of such Common Securities so called for redemption will cease, except the right of the Holders of such Common Securities to receive the Redemption Price, but without interest on such Redemption Price. Neither the Trustees nor the Trust shall be required to register or cause to be registered the transfer of any Common Securities which have been so called for redemption. If any date fixed for redemption of Common Securities is not a Business Day, then payment of the Redemption Price payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay), except that, if such Business Day falls in the next calendar year, such payment will be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date fixed for redemption. If payment of the Redemption Price in respect of Common Securities is improperly withheld or refused and not paid by the Property Trustee, Distributions on such Common Securities will continue to accrue, from the original redemption date to the date of payment, in which case the actual payment date will be considered the date fixed for

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redemption for purposes of calculating the Redemption Price.

(iv) Redemption/Distribution Notices shall be sent by the Regular Trustees on behalf of the Trust to the Holders of the Common Securities.

(v) Upon the date of dissolution of the Trust and distribution of Debentures as a result of the occurrence of a Special Event, Common Security Certificates shall be deemed to represent beneficial interests in the Debentures so distributed, and the Common Securities will no longer be deemed outstanding and may be canceled by the Regular Trustees. The Debentures so distributed shall have an aggregate principal amount equal to the aggregate liquidation amount of the Common Securities so distributed.

5. VOTING RIGHTS. (a) Except as provided under paragraph 5(b) below and as otherwise required by law and the Declaration, the Holders of the Common Securities will have no voting rights.

(b) Holders of Common Securities have the sole right under the Declaration to increase or decrease the number of Trustees, and to appoint, remove or replace a Trustee, any such increase, decrease, appointment, removal or replacement to be approved by Holders of Common Securities representing a Majority in liquidation amount of the Common Securities.

If any proposed amendment to the Declaration provides for, or the Regular Trustees otherwise propose to effect, (i) any action that would adversely affect the powers, preferences or special rights of the Securities, whether by way of amendment to the Declaration or otherwise, or (ii) the dissolution, winding-up or termination of the Trust, other than in connection with the distribution of Debentures held by the Property Trustee, upon the occurrence of a Special Event or in connection with the redemption of Common Securities as a consequence of a redemption of Debentures, then the Holders of outstanding Securities will be entitled to vote on such amendment or proposal as a class and such amendment or proposal shall not be effective except with the approval of the Holders of Securities representing 66-2/3% in liquidation amount of such Securities; PROVIDED, HOWEVER, that (A) if any amendment or proposal referred to in clause (i) above would adversely affect

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only the Preferred Securities or the Common Securities, then only the affected class will be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of 66-2/3% in liquidation amount of such class of Securities, (B) the rights of Holders of Common Securities under Article V of the Declaration to increase or decrease the number of, and to appoint, replace or remove, Trustees shall not be amended without the consent of each Holder of Common Securities, and (C) amendments to the Declaration shall be subject to such further requirements as are set forth in Sections 12.01 and 12.02 of the Declaration.

In the event the consent of the Property Trustee as the holder of the Debentures, is required under the Indenture with respect to any amendment, modification or termination of the Indenture or the Debentures, the Property Trustee shall request the written direction of the Holders of the Securities with respect to such amendment, modification or termination. The Property Trustee shall vote with respect to such amendment, modification or termination as directed by a Majority in liquidation amount of the Securities voting together as a single class; PROVIDED that where such amendment, modification or termination of the Indenture requires the consent or vote of (1) holders of Debentures representing a specified percentage greater than a majority in principal amount of the Debentures or (2) each holder of Debentures affected thereby, the Property Trustee may vote only with respect to that amendment, modification or termination as directed by, in the case of clause (1) above, the vote of Holders of Securities representing such specified percentage of the aggregate liquidation amount of the Securities, or, in the case of clause (2)



above, each Holder of Securities affected thereby; and PROVIDED, FURTHER, that the Property Trustee shall be under no obligation to take any action in accordance with the directions of the Holders of the Securities unless the Property Trustee shall have received, at the expense of the Sponsor, an opinion of nationally recognized independent tax counsel recognized as an expert in such matters to the effect that the Trust will not be classified for United States Federal income tax purposes as an association taxable as a corporation or a partnership on account of such action and will be treated as a grantor trust for United States Federal income tax purposes following such action.

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Subject to Section 2.06 of the Declaration and the provisions of this and the next succeeding paragraph, the Holders of a Majority in liquidation amount of the Common Securities, voting separately as a class, shall have the right to (A) on behalf of all Holders of Common Securities, waive any past default that is waivable under the Declaration (subject to, and in accordance with, the Declaration) and (B) direct the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon the Property Trustee under the Declaration, including the right to direct the Property Trustee, as holder of the Debentures, to (i) direct the time, method and place of conducting any proceeding for any remedy available to the Debenture Trustee, or exercising any trust or power conferred on the Debenture Trustee with respect to the Debentures, (ii) waive any past default and its consequences that is waivable under Section 6.06 of the Indenture, or (iii) exercise any right to rescind or annul a declaration that the principal of all the Debentures shall be due and payable; PROVIDED that where the taking of any action under the Indenture requires the consent or vote of (1) holders of Debentures representing a specified percentage greater than a majority in principal amount of the Debentures or (e) each holder of Debentures affected thereby, the Property Trustee may take such action only if directed by, in the case of clause (1) above, the vote of Holders of Common Securities representing such specified percentage of the aggregate liquidation amount of the Common Securities, or, in the case of clause (2) above, each Holder of Common Securities affected thereby. Pursuant to this paragraph, the Property Trustee shall not revoke, or take any action inconsistent with, any action previously authorized or approved by a vote of the Holders of the Preferred Securities, and shall not take any action in accordance with the direction of the Holders of the Common Securities under this paragraph if the action is prejudicial to the Holders of Preferred Securities. Other than with respect to directing the time, method and place of conducting any proceeding for any remedy available to the Property Trustee or the Debenture Trustee as set forth above, the Property Trustee shall be under no obligation to take any of the foregoing actions at the direction of the Holders of Common Securities unless the Property Trustee shall have received, at the expense of the Sponsor, an opinion of nationally recognized independent tax counsel recognized as expert in such matters to the effect that the Trust

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will not be classified for United States Federal income tax purposes as an association taxable as a corporation or a partnership on account of such action and will be treated as a grantor trust for United States income tax purposes following such action.

Notwithstanding any other provision of these terms, each Holder of Common Securities will be deemed to have waived any Event of Default with respect to the Common Securities and its consequences until all Events of Default with respect to the Preferred Securities have been cured, waived by the Holders of Preferred Securities as provided in the Declaration or otherwise eliminated, and until all Events of Default with respect to the Preferred Securities have been so cured, waived by the Holders of Preferred Securities or otherwise eliminated, the Property Trustee will be deemed to be acting solely on behalf of the Holders of Preferred Securities and only the Holders of the Preferred Securities will have the right to direct the Property Trustee in accordance with the terms of the Declaration or of the Securities. In the event that any Event of Default with respect to the Preferred Securities is waived by the Holders of Preferred Securities as provided in the Declaration, the Holders of Common Securities agree that such waiver shall also constitute the waiver of such Event of Default with respect to the Common Securities for all purposes under the Declaration without any further act, vote or consent of the Holders of the Common Securities.

A waiver of an Indenture Event of Default by the Property Trustee at the direction of the Holders of the Preferred Securities will constitute a waiver of the corresponding Event of Default under the Declaration in respect of the Securities.

Any required approval of Holders of Common Securities may be given at a separate meeting of Holders of Common Securities convened for such purpose, at a meeting of all of the Holders of Securities of the Trust or pursuant to written consent. The Regular Trustees will cause a notice of any meeting at which Holders of Common Securities are entitled to vote, or of any matter upon which action by written consent of such Holders is to be taken, to be mailed to each Holder of record of Common Securities. Each such notice will include a statement setting forth (i) the date of such meeting or the date by which such action is to be taken, (ii) a description of any resolution proposed for adoption at

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such meeting on which such Holders are entitled to vote or of such matter upon which written consent is sought and (iii) instructions for the delivery of proxies or consents.

No vote or consent of the Holders of Common Securities will be required for the Trust to redeem and cancel Common Securities in accordance with the Declaration.

6. CONVERSION RIGHTS. [to be provided if applicable.]

7. PRO RATA TREATMENT. A reference in these terms of the Common Securities to any payment, distribution or treatment as being "pro rata" shall mean pro rata to each Holder of Securities according to the aggregate liquidation amount of the Securities held by the relevant Holder in relation to the aggregate liquidation amount of all Securities outstanding unless, in relation to a payment, an Event of Default has occurred and is continuing, in which case any funds available to make such payment shall be paid first to each Holder of the Preferred Securities pro rata according to the aggregate liquidation amount of Preferred Securities held by the relevant Holder relative to the aggregate liquidation amount of all Preferred Securities outstanding, and only after satisfaction of all amounts owed to the Holders of the Preferred Securities, to each Holder of Common Securities pro rata according to the aggregate liquidation amount of Common Securities held by the relevant Holder relative to the aggregate liquidation amount of all Common Securities outstanding.

8. RANKING. The Common Securities rank PARI PASSU and payment thereon will be made pro rata with the Preferred Securities except that where an Event of Default occurs and is continuing, the rights of Holders of Common Securities to payment in respect of Distributions and payments upon liquidation, redemption or otherwise are subordinate to the rights of Holders of the Preferred Securities.

9. MERGERS, CONSOLIDATIONS OR AMALGAMATIONS. The Trust may not consolidate, amalgamate, merge with or into, or be replaced by, or sell, transfer or lease all or substantially all its properties and assets to, any Person.

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10. TRANSFERS, EXCHANGES, METHOD PAYMENTS. Payment of Distributions and payments on redemption of the Common Securities will be payable, the transfer of the Common Securities will be registrable, and Common Securities will be exchangeable for Common Securities of other denominations of a like aggregate liquidation amount, at the principal corporate trust office of the Property Trustee in The City of New York; PROVIDED that payment of Distributions may be made at the option of the Regular Trustees on behalf of the Trust by check mailed to the address of the Persons entitled thereto and that the payment on redemption of any Common Security will be made only upon surrender of such Common Security to the Property Trustee. Notwithstanding the foregoing, transfers of Common Securities are subject to conditions set forth in Section 9.01(c) of the Declaration.

11. ACCEPTANCE OF INDENTURE. Each Holder of Common Securities, by the acceptance thereof, agrees to the provisions of the Indenture and the Debentures, including the subordination provisions thereof.

12. NO PREEMPTIVE RIGHTS. The Holders of Common Securities shall have no preemptive rights to subscribe to any additional Common Securities or Preferred Securities.

13. MISCELLANEOUS. These terms shall constitute a part of the Declaration. The Trust will provide a copy of the Declaration and the Indenture to a Holder without charge on written request to the Trust at its principal place of business.

Annex I

TRANSFER OF THIS CERTIFICATE  
IS SUBJECT TO THE CONDITIONS  
SET FORTH IN THE DECLARATION  
REFERRED TO BELOW

Number: Common Securities:

CERTIFICATE EVIDENCING COMMON SECURITIES

OF

FUND AMERICAN TRUST II

[ ]% COMMON TRUST SECURITIES  
(LIQUIDATION AMOUNT \$[ ] PER COMMON SECURITY)

Fund American Trust II, a business trust formed under the laws of the State of Delaware (the "Trust"), hereby certifies that Fund American Companies, Inc. (the "Holder"), is the registered owner of [ ] common securities of the Trust representing undivided beneficial interests in the assets of the Trust designated the "[ ]% Common Trust Securities"

(liquidation amount \$[ ] per Common Security) (the "Common Securities"). The transfer of Common Securities is registrable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for registration of transfer and satisfaction of the other conditions set forth in the Declaration (as defined below) including, without limitation, Section 9.01(c) thereof. The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Common Securities are set forth in, and this certificate and the Common Securities represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Amended and Restated Declaration of Trust of the Trust dated as of [ , 2001], as the same may be amended from time to time (the "Declaration"), including the designation of the terms of Common Securities as set forth in Exhibit C thereto. The Common Securities and the Preferred Securities issued by the Trust pursuant to the Declaration represent undivided beneficial interests in the assets of the Trust, including the Debentures (as defined in the Declaration) issued by Fund American

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Companies, Inc., a Delaware corporation, to the Trust pursuant to the Indenture referred to in the Declaration. The Trust will furnish a copy of the Declaration and the Indenture to the Holder without charge upon written request to the Trust at its principal place of business or registered office.

The Holder of this Certificate, by accepting this Certificate, is deemed to have agreed to the terms of the Indenture and the Debentures, including that the Debentures are subordinate and junior in right of payment to all Senior Indebtedness (as defined in the Indenture) as and to the extent provided in the Indenture.

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Upon receipt of this certificate, the Holder is bound by the Declaration and is entitled to the benefits thereunder.

IN WITNESS WHEREOF, the Trustees of the Trust have executed this certificate this [ ] day of [ ].

Fund American Trust II,

by \_\_\_\_\_

Name:  
Title: Regular Trustee

by \_\_\_\_\_

Name:  
Title: Regular Trustee

Dated:

Countersigned and Registered:

[ ], as  
Transfer Agent and Registrar

by \_\_\_\_\_

Authorized Officer

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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Common Security Certificate to:

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(Insert assignee's social security or tax identification number)

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(Insert address and zip code of assignee)

and irrevocably appoints

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agent to transfer this Common Security Certificate on the books of the Trust.  
The agent may substitute another to act for him or her.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

5

[            ]

(Sign exactly as your name appears on the other side of this Common Security  
Certificate)

[Form of Amended and Restated Declaration of Trust]

=====

AMENDED AND RESTATED DECLARATION OF TRUST

OF

Fund American Trust III

-----

Dated as of [            ]

=====

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[FORM OF]

AMENDED AND RESTATED  
DECLARATION OF TRUST  
OF  
Fund American Trust III

[ ]

AMENDED AND RESTATED DECLARATION OF TRUST  
("Declaration"), dated and effective as of [ ], by the undersigned trustees (together with all other Persons from time to time duly appointed and serving as trustees in accordance with the provisions of this Declaration, the "Trustees"), Fund American Companies, Inc., a Delaware corporation, as trust sponsor (the "Sponsor"), and the holders, from time to time, of undivided beneficial interests in the assets of the Fund American Trust III to be issued pursuant to this Declaration.

WHEREAS the Sponsor and the original trustees entered into a Declaration of Trust dated as of [ ], 2001 (the "Original Declaration") in order to establish Fund American Trust III, a business trust (the "Trust") under the Business Trust Act (as defined herein);

WHEREAS the Certificate of Trust (the "Certificate of Trust") of the Trust was filed with the office of the Secretary of State of the State of Delaware on [ ], 2001;

WHEREAS the Trustees and the Sponsor desire to continue the Trust pursuant to the Business Trust Act for the purpose of, as described more fully in Sections 3.03, 3.04 and 3.05 hereof, (i) issuing and selling Preferred Securities (as defined herein) representing preferred undivided beneficial interests in the assets of the Trust for cash and investing the proceeds thereof in Debentures (as defined herein) of the Sponsor issued under the Indenture (as defined herein) to be held as assets of the Trust, (ii) issuing and selling Common Securities (as defined herein) representing common undivided beneficial interests in the assets of the Trust to the Sponsor for cash and investing the proceeds thereof in additional

Debentures issued under the Indenture to be held as assets of the Trust and (iii) engaging in such other activities as are necessary, convenient or incidental thereto;

NOW, THEREFORE, it being the intention of the parties hereto that the Trust constitute a business trust under the Business Trust Act, that the Original Declaration be amended and restated in its entirety as provided herein and that this Declaration constitute the governing instrument of such business trust, the Trustees declare that all assets referred to in clauses (i) and (ii) of the previous Whereas clause purchased by the Trust will be held in trust for the benefit of the Holders (as defined herein) from time to time of the Certificates (as defined herein) representing undivided beneficial interests in the assets of the Trust issued hereunder, subject to the provisions of this Declaration.

ARTICLE I

DEFINITIONS

SECTION 1.01. DEFINITIONS. (a) Capitalized terms used in this Declaration but not defined in the preamble above have the respective meanings assigned to them in this Section 1.01; (b) a term defined anywhere in this Declaration has the same meaning throughout; (c) all references to "the Declaration" or "this Declaration" are to this Amended and Restated Declaration of Trust (including Exhibits A, B and C hereto (the "Exhibits")) as modified, supplemented or amended from time to time; (d) all references in this Declaration to Articles and Sections and Exhibits are to Articles and Sections



of and Exhibits to this Declaration unless otherwise specified; (e) a term defined in the Trust Indenture Act has the same meaning when used in this Declaration unless otherwise defined in this Declaration or unless the context otherwise requires; and (f) a reference to the singular includes the plural and vice versa.

"AFFILIATE" has the same meaning as given to that term in Rule 405 under the Securities Act or any successor rule thereunder.

"BOOK ENTRY INTEREST" means a beneficial interest in a Global Certificate registered in the name of a Clearing Agency or a nominee thereof, ownership and transfers of which shall be maintained and made through

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book entries by such Clearing Agency as described in Section 9.04.

"BUSINESS DAY" means any day other than a Saturday, Sunday or any other day on which banking institutions in New York, New York or Wilmington, Delaware are authorized or required by law to close.

"BUSINESS TRUST ACT" means Chapter 38 of Title 12 of the Delaware Code, 12 Del. Code Section 3801 ET SEQ., as it may be amended from time to time.

"CERTIFICATE" means a Common Security Certificate or a Preferred Security Certificate.

"CERTIFICATE OF TRUST" has the meaning set forth in the second Whereas clause above.

"CLEARING AGENCY" means an organization registered as a "clearing agency" pursuant to Section 17A of the Exchange Act that is acting as depository for the Preferred Securities and in whose name, or in the name of a nominee of that organization, shall be registered a Global Certificate and which shall undertake to effect book entry transfers and pledges of the Preferred Securities.

"CLEARING AGENCY PARTICIPANT" means a broker, dealer, bank, other financial institution or other Person for whom from time to time the Clearing Agency effects book entry transfers and pledges of securities deposited with the Clearing Agency.

"CLOSING DATE" means the Closing Date as specified in the Underwriting Agreement, which date is also the date of execution and delivery of this Declaration.

"CODE" means the Internal Revenue Code of 1986, as amended from time to time, or any successor legislation. A reference to a specific section of the Code refers not only to such specific section but also to any corresponding provision of any Federal tax statute enacted after the date of this Declaration, as such specific section or corresponding provision is in effect on the date of application of the provisions of this Declaration containing such reference.

"COMMISSION" means the Securities and Exchange Commission.

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"COMMON SECURITIES" has the meaning specified in Section 7.01(b).

"COMMON SECURITY CERTIFICATE" means a definitive certificate in fully registered form representing a Common Security substantially in the form of Annex I to Exhibit C.

"COVERED PERSON" means (i) any officer, director, shareholder, partner, member, representative, employee or agent of the Trust or its Affiliates, (ii) any officer, director, shareholder, employee, representative or agent of the Sponsor or any of its Affiliates and (iii) the Holders from time to time of the Securities.

"DEBENTURE TRUSTEE" means [ ], as trustee under the Indenture, until a successor, if any, is appointed thereunder and thereafter means such successor trustee.

"DEBENTURES" means the series of Junior Subordinated Debentures issued by the Sponsor under the Indenture to the Property Trustee and entitled the "[ ] Junior Subordinated Debentures due [ ]".

"DEFINITIVE PREFERRED SECURITY CERTIFICATES" has the meaning set forth in Section 9.04.

"DELAWARE TRUSTEE" has the meaning set forth in Section 5.01(a)(3).

"DEPOSITARY AGREEMENT" means the agreement among the Trust, the Property Trustee and DTC dated as of the Closing Date, as the same may be amended or supplemented from time to time.

"DISTRIBUTION" means a distribution payable to Holders of Securities in accordance with Section 6.01.

"DTC" means The Depository Trust Company, the initial Clearing

Agency.

"EVENT OF DEFAULT" in respect of the Securities means an Indenture Event of Default has occurred and is continuing in respect of the Debentures.

"EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended from time to time, or any successor legislation.

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"FISCAL YEAR" has the meaning specified in Section 11.01.

"GLOBAL CERTIFICATE" has the meaning set forth in Section 9.04.

"HOLDER" means a Person in whose name a Certificate representing a Security is registered, such Person being a beneficial owner within the meaning of the Business Trust Act.

"INDEMNIFIED PERSON" means any Trustee in its individual capacity and as a Trustee, any Affiliate of any Trustee, any officer, director, shareholder, member, partner, employee, representative or agent of any Trustee, or any employee or agent of the Trust or any of its Affiliates.

"INDENTURE" means the Junior Subordinated Indenture dated as of [ ], among White Mountains, the Sponsor and the Debenture Trustee, as amended or supplemented from time to time.

"INDENTURE EVENT OF DEFAULT" means an event or condition defined as an "Event of Default" with respect to the Debentures under Section 6.01(a) of the Indenture has occurred and is continuing.

"INVESTMENT COMPANY" means an investment company as defined in the Investment Company Act.

"INVESTMENT COMPANY ACT" means the Investment Company Act of 1940, as amended from time to time, or any successor legislation.

"LEGAL ACTION" has the meaning specified in Section 3.08(g).

"LIQUIDATION DISTRIBUTION" has the meaning set forth in the terms of the Securities as set forth in Exhibits B and C hereto.

"MAJORITY IN LIQUIDATION AMOUNT OF THE SECURITIES" means, except as otherwise required by the Trust Indenture Act and except as provided in the penultimate paragraph of paragraph 5 of Exhibit B hereto, Holder(s) of outstanding Securities voting together as a single class or, as the context may require, Holder(s) of outstanding Preferred Securities or Common Securities voting separately as a class, who are the record owners of a relevant class of Securities whose liquidation amount (including the stated amount that would be paid on

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redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) represents more than 50% of the liquidation amount of all outstanding Securities of such class.

"MINISTERIAL ACTION" has the meaning set forth in Section 4(c) of the terms of the Securities as set forth in Exhibits B and C hereto.

"OPTION CLOSING DATE" means the Option Closing Date as specified in the Underwriting Agreement.

"ORIGINAL DECLARATION" has the meaning set forth in the first Whereas clause above.

"PAYING AGENT" has the meaning specified in Section 3.10(i).

"PERSON" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

"PREFERRED GUARANTEE" means the Guarantee Agreement dated as of [ ], of White Mountains in respect of the Preferred Securities.

"PREFERRED SECURITIES" has the meaning specified in Section 7.01(b).

"PREFERRED SECURITY BENEFICIAL OWNER" means, with respect to a Book Entry Interest, a Person who is the beneficial owner of such Book Entry Interest, as reflected on the books of the Clearing Agency, or on the books of a Person maintaining an account with such Clearing Agency (directly as a Clearing Agency Participant or as an indirect participant, in each case in accordance with the rules of such Clearing Agency).

"PREFERRED SECURITY CERTIFICATE" means a definitive certificate in fully registered form representing a Preferred Security substantially in the form of Annex I to Exhibit B.

"PROPERTY TRUSTEE" means the Trustee meeting the eligibility requirements set forth in Section 5.01(c) and having the duties set forth for the Property Trustee herein.

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"PROPERTY ACCOUNT" has the meaning specified in Section 3.10(c)(i).

"QUORUM" means a majority of the Regular Trustees or, if there are only two Regular Trustees, both such Regular Trustees.

"REGULAR TRUSTEE" means any Trustee other than the Property Trustee or the Delaware Trustee.

"RELATED PARTY" means any direct or indirect wholly owned subsidiary of the Sponsor or any Person which owns, directly or indirectly, 100% of the outstanding voting securities of the Sponsor.

"RESIGNATION REQUEST" has the meaning specified in Section 5.02(d).

"RESPONSIBLE OFFICER" means, with respect to the Property Trustee, any officer of the Property Trustee with responsibility for the administration of this Declaration and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer's knowledge of, and familiarity with, the particular subject.

"RULE 3A-7" means Rule 3a-7 under the Investment Company Act or any successor rule thereunder.

"SECURITIES" means the Common Securities and the Preferred Securities.

"SECURITIES ACT" means the Securities Act of 1933, as amended from time to time, or any successor legislation.

"66-2/3% IN LIQUIDATION AMOUNT OF THE SECURITIES" means, except as otherwise required by the Trust Indenture Act and except as provided in the penultimate paragraph of paragraph 5 of Exhibit B hereto, Holder(s) of outstanding Securities voting together as a single class or, as the context may require, Holder(s) of outstanding Preferred Securities or Common Securities, voting separately as a class, who are the record owners of a relevant class of Securities whose liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) represents 66-2/3% or more of the liquidation amount of all outstanding Securities of such class.

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"SPECIAL EVENT" has the meaning set forth in Section 4(c) of the terms of the Securities as set forth in Exhibits B and C hereto.

"SPONSOR" means Fund American Companies, Inc., a Delaware corporation, or any successor entity in a merger, consolidation or other business combination transaction in its capacity as sponsor of the Trust.

"SUCCESSOR DELAWARE TRUSTEE" has the meaning specified in Section 5.02(b)(ii).

"SUCCESSOR PROPERTY TRUSTEE" means a successor Trustee possessing the qualifications to act as Property Trustee under Section 5.01(c).

"10% IN LIQUIDATION AMOUNT OF THE SECURITIES" means, except as otherwise required by the Trust Indenture Act and except as provided in the penultimate paragraph of paragraph 5 of Exhibit B hereto, Holder(s) of outstanding Securities voting together as a single class or, as the context may require, Holder(s) of outstanding Preferred Securities or Common Securities, voting separately as a class, who are the record owners of a relevant class of Securities whose liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) represents 10% or more of the liquidation amount of all outstanding Securities of such class.

"TREASURY REGULATIONS" means the income tax regulations, including temporary and proposed regulations, promulgated under the Code by the United States Treasury, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"TRUSTEE" or "TRUSTEES" means each Person who has signed this Declaration as a trustee, so long as such Person shall continue in office in accordance with the terms hereof, and all other Persons who may from time to time be duly appointed, qualified and serving as a Trustee in accordance with the provisions hereof, and references herein to a Trustee or the Trustees shall refer to such Person or Persons solely in their capacity as trustees hereunder.

"TRUST INDENTURE ACT" means the Trust Indenture Act of 1939, as amended from time to time, or any successor legislation.

"UNDERWRITING AGREEMENT" means the Underwriting Agreement dated [ ], among the Trust, the Sponsor and [ ], as representative of the several underwriters named therein.

"WHITE MOUNTAINS" means White Mountains Insurance Group, Ltd., a company existing under the laws of Bermuda.

## ARTICLE II

### TRUST INDENTURE ACT

SECTION 2.01. TRUST INDENTURE ACT; APPLICATION. (a) This Declaration is subject to the provisions of the Trust Indenture Act that are required to be part of this Declaration and shall, to the extent applicable, be governed by such provisions; (b) if and to the extent that any provision of this Declaration limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control; (c) the Property Trustee, to the extent permitted by applicable law and/or the rules and regulations of the Commission, shall be the only Trustee which is a trustee for the purposes of the Trust Indenture Act; and (d) the application of the Trust Indenture Act to this Declaration shall not affect the nature of the Securities as equity securities representing undivided beneficial interests in the assets of the Trust.

SECTION 2.02. LISTS OF HOLDERS OF PREFERRED SECURITIES. (a) Each of the Sponsor and the Regular Trustees on behalf of the Trust shall provide the Property Trustee with such information as is required under Section 312(a) of the Trust Indenture Act at the times and in the manner provided in Section 312(a); and (b) the Property Trustee shall comply with its obligations under Sections 310(b), 311 and 312(b) of the Trust Indenture Act.

SECTION 2.03. REPORTS BY THE PROPERTY TRUSTEE. Within 60 days after May 15 of each year, the Property Trustee shall provide to the Holders of the Securities such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form, in the manner and at the times provided by Section 313 of the Trust Indenture Act. The Property Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

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SECTION 2.04. PERIODIC REPORTS TO PROPERTY TRUSTEE. Each of the Sponsor and the Regular Trustees on behalf of the Trust shall provide to the Property Trustee, the Commission and the Holders of the Securities, as applicable, such documents, reports and information as required by Section 314(a)(1)-(3) (if any) of the Trust Indenture Act and the compliance certificates required by Section 314(a)(4) and (c) of the Trust Indenture Act, any such certificates to be provided in the form, in the manner and at the times required by Section 314(a)(4) and (c) of the Trust Indenture Act (PROVIDED that any certificate to be provided pursuant to Section 314(a)(4) of the Trust Indenture Act shall be provided within 120 days of the end of each Fiscal Year).

SECTION 2.05. EVIDENCE OF COMPLIANCE WITH CONDITIONS PRECEDENT. Each of the Sponsor and the Regular Trustees on behalf of the Trust shall provide to the Property Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Declaration which relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given pursuant to Section 314(c) of the Trust Indenture Act shall comply with Section 314(e) of the Trust Indenture Act.

SECTION 2.06. EVENTS OF DEFAULT; WAIVER. (a) Subject to Section 2.06(c), Holders of Preferred Securities may, by vote of at least a Majority in liquidation amount of the Preferred Securities, (A) in accordance with the terms of the Preferred Securities, direct the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon the Property Trustee, or (B) on behalf of the Holders of all Preferred Securities, waive any past Event of Default in respect of the Preferred Securities and its consequences; PROVIDED that, if the Event of Default arises out of an Indenture Event of Default:

(i) which is not waivable under the Indenture, the Event of Default under this Declaration shall also be not waivable; or

(ii) which requires the consent or vote of (1) holders of Debentures representing a specified percentage greater than a majority in principal amount of the Debentures affected thereby, or (2) each holder of Debentures, the Event of Default under this Declaration may only be waived by, in the case of clause (1) above, the vote of Holders of Preferred Securities representing such specified

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percentage of the aggregate liquidation amount of the Preferred Securities or, in the case of clause (2) above, each Holder of Preferred Securities affected thereby.

Upon such waiver, any such default shall cease to exist, and any Event of

Default with respect to the Preferred Securities arising therefrom shall be deemed to have been cured for every purpose of this Declaration, but no such waiver shall extend to any subsequent or other default or Event of Default with respect to the Preferred Securities or impair any right consequent thereto.

(b) Subject to Section 2.06(c), Holders of Common Securities may, by vote of at least a Majority in liquidation amount of the Common Securities, (A) in accordance with the terms of the Common Securities, direct the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon the Property Trustee, or (B) on behalf of the Holders of all of the Common Securities, waive any past Event of Default with respect to the Common Securities and its consequences; PROVIDED that if the Event of Default arises out of an Indenture Event of Default:

(i) which is not waivable under the Indenture, except where the Holders of the Common Securities are deemed to have waived such Event of Default under the Declaration as provided below, the Event of Default under this Declaration shall also not be waivable; or

(ii) which requires the consent or vote of (1) holders of Debentures representing a specified percentage greater than a majority in principal amount of the Debentures or (2) each holder of Debentures affected thereby, except where the holders of the Common Securities are deemed to have waived such Event of Default under this Declaration as provided below, the Event of Default under this Declaration may only be waived by, in the case of clause (1) above, the vote of Holders of Common Securities representing such specified percentage of the aggregate liquidation amount of the Common Securities or, in the case of clause (2) above, each holder of Common Securities affected thereby; and

PROVIDED FURTHER that each Holder of Common Securities will be deemed to have waived any Event of Default with respect to the Common Securities and its consequences until all Events of Default with respect to the Preferred

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Securities have been cured or waived by the Holders of Preferred Securities as provided in this Declaration or otherwise eliminated and until all Events of Default with respect to the Preferred Securities have been so cured, waived or otherwise eliminated, the Property Trustee will be deemed to be acting solely on behalf of the Holders of the Preferred Securities and only the Holders of the Preferred Securities will have the right to direct the Property Trustee in accordance with the terms of this Declaration or the Securities. In the event that an Event of Default with respect to the Preferred Securities is waived by the Holders of Preferred Securities as provided in this Declaration, the Holders of Common Securities agree that such waiver shall also constitute the waiver of such Event of Default with respect to the Common Securities for all purposes under this Declaration without any further act, vote or consent of the Holders of the Common Securities. Subject to the foregoing provisions of this Section 2.06(b), upon such waiver, any such default shall cease to exist and any Event of Default with respect to the Common Securities arising therefrom shall be deemed to have been cured for every purpose of this Declaration, but no such waiver shall extend to any subsequent or other default or Event of Default with respect to the Common Securities or impair any right consequent thereon.

(c) The right of any Holder of Securities to receive payment of Distributions on the Securities in accordance with this Declaration and the terms of the Securities set forth in Exhibits B and C on or after the respective payment dates therefor, or to institute suit for the enforcement of any such payment on or after such payment dates, shall not be impaired without the consent of such Holder.

(d) As provided in the terms of the Securities set forth in Exhibits B and C hereto, a waiver of an Indenture Event of Default by the Property Trustee at the written direction of the Holders of the Preferred Securities constitutes a waiver of the corresponding Event of Default under this Declaration in respect of the Securities.

SECTION 2.07. DISCLOSURE OF INFORMATION. The disclosure of information as to the names and addresses of the Holders of the Securities in accordance with Section 312 of the Trust Indenture Act, regardless of the source from which such information was derived, shall not be deemed to be a violation of any existing law or any law hereafter enacted which does not specifically refer to Section 312 of the Trust Indenture Act, nor shall the

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Property Trustee be held accountable by reason of mailing any material pursuant to a request made under Section 312(b) of the Trust Indenture Act.

### ARTICLE III

#### ORGANIZATION

SECTION 3.01. NAME. The Trust continued by this Declaration is named "Fund American Trust III" as such name may be modified from time to time by the Regular Trustees following written notice to the Holders, the Property Trustee and the Delaware Trustee. The Trust's activities may be conducted under the name of the Trust or any other name deemed advisable by the Regular Trustees.

SECTION 3.02. OFFICE. The address of the principal office of the Trust is c/o Fund American Companies, Inc., One Beacon Street, Boston, Massachusetts 02108-3100. Upon ten days' written notice to the Holders (a copy of such notice to be sent to the Property Trustee and the Delaware Trustee), the Regular Trustees may change the location of the Trust's principal office. The name of the registered agent and office of the Trust in the State of [DE Trustee address]. At any time, the Regular Trustees may designate another registered agent and/or registered office.

SECTION 3.03. ISSUANCE OF THE TRUST SECURITIES. On [ ], the Sponsor, on behalf of the Trust and pursuant to the Original Declaration, executed and delivered the Underwriting Agreement. On the Closing Date and contemporaneously with the execution and delivery of this Declaration, the Regular Trustees, on behalf of the Trust, shall execute and deliver (i) to the underwriters named in the Underwriting Agreement, a Global Certificate, registered in the name of the nominee of the initial Clearing Agency as specified in Section 9.04, in an aggregate amount of [ ] Preferred Securities having an aggregate liquidation amount of \$[ ], against receipt of the aggregate purchase price of such Preferred Securities of \$[ ], and (ii) to the Sponsor, Common Securities Certificates, registered in the name of the Sponsor, in an aggregate amount of [ ] Common Securities having an aggregate liquidation amount of \$[ ], against receipt of the aggregate purchase price of such Common Securities of \$[ ].

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SECTION 3.04. PURCHASE OF DEBENTURES. On the Closing Date and contemporaneously with the execution and delivery of this Declaration, the Regular Trustees, on behalf of the Trust, shall purchase from the Sponsor with the proceeds received by the Trust from the sale of the Securities on such date pursuant to Section 3.03, at a purchase price of 100% of the principal amount thereof, Debentures, registered in the name of the Property Trustee and having an aggregate principal amount equal to \$[ ], and, in satisfaction of the purchase price for such Debentures, the Regular Trustees, on behalf of the Trust, shall deliver or cause to be delivered to the Sponsor the sum of \$[ ]. In the event the over-allotment option granted by the Trust with respect to the Preferred Securities pursuant to the Underwriting Agreement is exercised by the underwriters named therein, on the Option Closing Date the Regular Trustees, on behalf of the Trust, shall purchase from the Sponsor with the proceeds received by the Trust from the sale of the Securities on such date pursuant to Section 3.03, at a purchase price of 100% of the principal amount thereof, additional Debentures, registered in the name of the Property Trustee and having an aggregate principal amount of up to \$[ ], and, in satisfaction of the purchase price for such Debentures, the Regular Trustees, on behalf of the Trust, shall deliver or cause to be delivered to the Sponsor an amount equal to the aggregate principal amount of the Debentures being purchased.

SECTION 3.05. PURPOSE. The exclusive purposes and functions of the Trust are: (a)(i) to issue and sell Preferred Securities for cash and use the proceeds of such sales to purchase as trust assets Debentures issued under the Indenture having an aggregate principal amount equal to the aggregate liquidation amount of the Preferred Securities so issued and sold; (ii) to enter into such agreements and arrangements as may be necessary in connection with the sale of Preferred Securities to the initial purchasers thereof (including the Underwriting Agreement) and to take all actions and exercise such discretion as may be necessary or desirable in connection therewith and to file such registration statements or make such other filings under the Securities Act, the Exchange Act or state securities or "Blue Sky" laws as may be necessary or desirable in connection therewith and the issuance of the Preferred Securities; and (iii) to issue and sell Common Securities to the Sponsor for cash and use the proceeds of such sale to purchase as trust assets an equal aggregate principal amount of Debentures issued under the Indenture; and (b) except as otherwise limited herein, to engage in such other activities as are necessary, convenient or

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incidental thereto. The Trust shall not borrow money, issue debt or reinvest proceeds derived from investments, pledge any of its assets or, at any time while the Securities are outstanding, otherwise undertake (or permit to be undertaken) an activity that would result in or cause the Trust to be treated as anything other than a grantor trust for United States Federal income tax purposes.

SECTION 3.06. AUTHORITY. Subject to the limitations provided in this Declaration and to the specific duties of the Property Trustee, the Regular Trustees shall have exclusive and complete authority to carry out the purposes of the Trust. An action taken by one or more of the Regular Trustees in accordance with their powers shall constitute the act of and serve to bind the Trust and an action taken by the Property Trustee in accordance with its powers shall constitute the act of and serve to bind the Trust. In dealing with the Trustees acting on behalf of the Trust, no Person shall be required to inquire into the authority of the Trustees to bind the Trust. Persons dealing with the Trust are entitled to rely conclusively on the power and authority of the Trustees as set forth in this Declaration.

SECTION 3.07. TITLE TO PROPERTY OF THE TRUST. Except as provided in Section 3.10 with respect to the Debentures and the Property Account or unless otherwise provided in this Declaration, legal title to all assets of the Trust

shall be vested in the Trust. The Holders shall not have legal title to any part of the assets of the Trust, but shall have an individual undivided beneficial interest in the assets of the Trust.

SECTION 3.08. POWERS AND DUTIES OF THE REGULAR TRUSTEES. The Regular Trustees acting individually or together shall have the exclusive power, authority and duty to cause the Trust, and shall cause the Trust, to engage in the following activities:

(a) to issue Preferred Securities and Common Securities, in each case in accordance with this Declaration; PROVIDED, HOWEVER, that the Trust may issue no more than one series of Preferred Securities and no more than one series of Common Securities; and PROVIDED FURTHER that there shall be no interests in the Trust other than the Securities and the issuance of Securities shall be limited to (x) a one-time, simultaneous issuance of both Preferred Securities and Common Securities on the Closing Date and (y) any subsequent issuance of both

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Preferred Securities and Common Securities on the Option Closing Date pursuant to an exercise of the overallotment option granted to the underwriters in the Underwriting Agreement;

(b) in connection with the issuance of the Preferred Securities, at the direction of the Sponsor, to effect or cause to be effected the filings, and to execute or cause to be executed the documents, set forth in Section 3.13 and to execute, deliver and perform on behalf of the Trust the Depositary Agreement;

(c) to acquire as trust assets Debentures with the proceeds of the sale of the Preferred Securities and Common Securities; PROVIDED, HOWEVER, that the Regular Trustees shall cause all the Debentures to be held of record in the name of the Property Trustee for the benefit of the Holders of the Preferred Securities and the Common Securities;

(d) to cause the Trust to enter into such agreements and arrangements as may be necessary or desirable in connection with the sale of Preferred Securities to the initial purchasers thereof and the consummation thereof, and to take all action, and exercise all discretion, as may be necessary or desirable in connection with the consummation thereof;

(e) to give the Sponsor and the Property Trustee prompt written notice of the occurrence of a Special Event; PROVIDED that the Regular Trustees shall consult with the Sponsor and the Property Trustee before taking or refraining to take any Ministerial Action in relation to a Special Event;

(f) to establish a record date with respect to all actions to be taken hereunder that require a record date be established, including for the purposes of Section 316(c) of the Trust Indenture Act and with respect to Distributions, voting rights, redemptions and exchanges, and to issue relevant notices to Holders of the Preferred Securities and the Common Securities as to such actions and applicable record dates;

(g) to bring or defend, pay, collect, compromise, arbitrate, resort to legal action or otherwise adjust claims or demands of or against the Trust ("Legal Action"), unless, pursuant to

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Section 3.10(e), the Property Trustee has the exclusive power to bring such Legal Action;

(h) to employ or otherwise engage employees and agents (who may be designated as officers with titles) and managers, contractors, advisors and consultants and pay reasonable compensation for such services;

(i) to cause the Trust to comply with the Trust's obligations under the Trust Indenture Act;

(j) to give the certificate to the Property Trustee required by Section 314(a)(4) of the Trust Indenture Act, which certificate may be executed by any Regular Trustee;

(k) to incur expenses which are necessary or incidental to carrying out any of the purposes of the Trust;

(l) to act as, or appoint another Person to act as, registrar and transfer agent for the Securities, the Regular Trustees hereby initially appointing the Property Trustee for such purposes;

(m) to take all actions and perform such duties as may be required of the Regular Trustees pursuant to the terms of the Securities set forth in Exhibits B and C hereto;

(n) to execute all documents or instruments including, but not

limited to, the Declaration of Trust and the Certificate of Trust, perform all duties and powers and do all things for and on behalf of the Trust in all matters necessary, convenient or incidental to the foregoing;

(o) to take all action which may be necessary or appropriate for the preservation and the continuation of the Trust's valid existence, rights, franchises and privileges as a business trust under the laws of the State of Delaware and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Holders of the Securities or to enable the Trust to effect the purposes for which the Trust has been created;

(p) to take all action, not inconsistent with this Declaration or with applicable law, which the Regular Trustees determine in their discretion to be

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reasonable and necessary or desirable in carrying out the activities of the Trust as set out in this Section 3.08, in order that:

(i) the Trust will not be deemed to be an Investment Company required to be registered under the Investment Company Act;

(ii) the Trust will not be classified for United States Federal income tax purposes as an association taxable as a corporation or a partnership and will be treated as a grantor trust for United States Federal income tax purposes; and

(iii) the Trust will comply with any requirements imposed by any taxing authority on holders of instruments treated as indebtedness for United States Federal income tax purposes;

PROVIDED that such action does not adversely affect the interests of Holders;

(q) to take all action necessary to cause all applicable tax returns and tax information reports that are required to be filed with respect to the Trust to be duly prepared and filed by the Regular Trustees, on behalf of the Trust; and

(r) subject to the requirements of Rule 3a-7 and Section 317(b) of the Trust Indenture Act, to appoint one or more Paying Agents in addition to the Property Trustee.

The Regular Trustees must exercise the powers set forth in this Section 3.08 in a manner which is consistent with the purposes and functions of the Trust set out in Section 3.05 and the Regular Trustees shall not take any action which is inconsistent with the purposes and functions of the Trust set forth in Section 3.05.

Subject to this Section 3.08, the Regular Trustees shall have none of the powers nor any of the authority of the Property Trustee set forth in Section 3.10.

SECTION 3.09. PROHIBITION OF ACTIONS BY TRUST AND TRUSTEES. The Trust shall not, and no Trustee (including the Property Trustee) shall cause the Trust to, engage in any activity other than as required or

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authorized by this Declaration. In particular, the Trust shall not, and no Trustee (including the Property Trustee) shall cause the Trust to:

(a) invest any proceeds received by the Trust from holding the Debentures, but shall promptly distribute all such proceeds to Holders of Securities pursuant to the terms of this Declaration and of the Securities;

(b) acquire any assets other than as expressly provided herein;

(c) possess Trust property for other than a Trust purpose;

(d) make any loans, other than loans represented by the Debentures;

(e) possess any power or otherwise act in such a way as to vary the Trust assets or the terms of the Securities in any way whatsoever;

(f) issue any securities or other evidences of beneficial ownership of, or beneficial interests in, the Trust other than the Securities;

(g) incur any indebtedness for borrowed money; or

(h)(i) direct the time, method and place of exercising any trust or power conferred upon the Debenture Trustee with respect to the Debentures, (ii) waive any past default that is waivable under Section 6.06 of the Indenture, (iii) exercise any right to rescind or annul any declaration that the principal of all of the Debentures shall be due and payable or (iv) consent to any amendment, modification or termination of the



Indenture or the Debentures, where such consent shall be required, unless in the case of this clause (h) the Property Trustee shall have received an unqualified opinion of nationally recognized independent tax counsel recognized as expert in such matters to the effect that such action will not cause the Trust to be classified for United States Federal income tax purposes as an association taxable as a corporation or partnership and that the Trust will continue to be classified as a grantor trust for United States Federal income tax purposes.

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SECTION 3.10. POWERS AND DUTIES OF THE PROPERTY TRUSTEE. (a) The Debentures shall be held of record in the name of the Property Trustee in trust for the benefit of the Holders. The right, title and interest of the Property Trustee to the Debentures shall vest automatically in each Person who may hereafter be appointed as Property Trustee in accordance with Article V. Such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered.

(b) The Property Trustee shall not transfer its right, title and interest in the Debentures to the Regular Trustees or, if the Property Trustee does not also act as the Delaware Trustee, the Delaware Trustee.

(c) The Property Trustee shall:

(i) establish and maintain a segregated non-interest bearing bank account (the "Property Account") in the name of and under the exclusive control of the Property Trustee on behalf of the Holders of the Securities and on the receipt of payments of funds made in respect of the Debentures held by the Property Trustee, deposit such funds into the Property Account and, without any further acts of the Property Trustee or the Regular Trustees, promptly make payments to the Holders of the Preferred Securities and Common Securities from the Property Account in accordance with Section 6.01. Funds in the Property Account shall be held uninvested, and without liability for interest thereon, until disbursed in accordance with this Declaration. The Property Account shall be an account which is maintained with a banking institution whose long term unsecured indebtedness is rated by a "nationally recognized statistical rating organization", as such term is defined for purposes of Rule 436(g)(2) under the Securities Act, at least equal to (but in no event less than "A" or the equivalent) the rating assigned to the Preferred Securities by a nationally recognized statistical rating organization;

(ii) engage in such ministerial activities as shall be necessary or appropriate to effect promptly the redemption of the Securities to the extent the Debentures are redeemed or mature;

(iii) upon written notice of distribution issued by the Regular Trustees in accordance with the terms of the Preferred Securities and the Common

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Securities, engage in such ministerial activities as shall be necessary or appropriate to effect promptly, pursuant to the terms of the Securities, the distribution of Debentures to Holders of Securities upon the occurrence of a Special Event; and

(iv) have the legal power to exercise all of the rights, powers and privileges of a holder of the Debentures under the Indenture and, if an Event of Default occurs and is continuing, the Property Trustee, subject to Section 2.06(b), shall, for the benefit of the Holders of the Securities, enforce its rights as holder of the Debentures under the Indenture, subject to the rights of the Holders of the Preferred Securities pursuant to the terms of this Declaration, the Business Trust Act and the Trust Indenture Act.

(d) The Property Trustee shall take all actions and perform such duties as may be specifically required of the Property Trustee pursuant to the terms of this Declaration and the Securities set forth in Exhibits B and C hereto.

(e) The Property Trustee shall take any Legal Action which arises out of or in connection with an Event of Default of which a Responsible Officer has actual knowledge or the Property Trustee's duties and obligations under this Declaration, the Business Trust Act or the Trust Indenture Act.

(f) All moneys deposited in the Property Account, and all Debentures held by the Property Trustee for the benefit of the Holders of the Securities, will not be subject to any right, charge, security interest, lien or claim of any kind in favor of, or for the benefit of, the Property Trustee or its agents or their creditors.

(g) The Property Trustee shall, within 90 days after the occurrence of a default with respect to the Securities, transmit by mail, first class postage prepaid, to the Holders of the Securities, as their names and addresses appear upon the register, notice of all defaults with respect to the Securities known to the Property Trustee, unless such defaults shall have been cured before the giving of such notice (the term "defaults" for the purposes of this Section 3.10(g) being hereby defined to be an Indenture Event of Default, not including

any periods of grace provided for in the Indenture and irrespective of the giving of any notice

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provided therein); PROVIDED that, except in the case of default in the payment of the principal of (or premium, if any) or interest on any of the Debentures, the Property Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Property Trustee in good faith determines that the withholding of such notice is in the interests of the Holders. The Property Trustee shall not be deemed to have knowledge of any default, except (i) a default in the payment of principal of (or premium, if any) or interest on the Debentures or (ii) any default as to which the Property Trustee shall have received written notice or a Responsible Officer charged with the administration of this Declaration shall have obtained written notice.

(h) The Property Trustee shall not resign as a Trustee unless either:

(i) the Trust has been completely liquidated and the proceeds thereof distributed to the Holders of Securities pursuant to the terms of the Securities; or

(ii) a Successor Property Trustee has been appointed and accepted that appointment in accordance with Article V.

(i) The Property Trustee shall act as paying agent in respect of the Common Securities and the Preferred Securities and, subject to Section 3.08(r), may authorize one or more Persons (each, a "Paying Agent") to pay Distributions, redemption payments or liquidation payments on behalf of the Trust with respect to the Preferred Securities. Any such Paying Agent shall comply with Section 317(b) of the Trust Indenture Act. Any Paying Agent may be removed by the Property Trustee, after consultation with the Regular Trustees, at any time and a successor Paying Agent or additional Paying Agents may be appointed at any time by the Property Trustee, subject to Section 3.08(r).

(j) The Property Trustee shall give prompt written notice to the Holders of the Securities of any notice received by it from the Sponsor of its election to defer payments of interest on the Debentures by extending the interest payment period with respect thereto.

(k) Subject to this Section 3.10, the Property Trustee shall have none of the powers or the authority of the Regular Trustees set forth in Section 3.08.

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(1) The Property Trustee shall exercise the powers, duties and rights set forth in this Section 3.10 and Section 3.12 in a manner which is consistent with the purposes and functions of the Trust set out in Section 3.05, and the Property Trustee shall not take any action which is inconsistent with the purposes and functions of the Trust set forth in Section 3.05.

SECTION 3.11. DELAWARE TRUSTEE. Notwithstanding any other provision of this Declaration other than Section 5.01(a)(3), the Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities of the Regular Trustees or the Property Trustee described in this Declaration. Except as set forth in Section 5.01(a)(3), the Delaware Trustee shall be a Trustee for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Business Trust Act. In the event the Delaware Trustee shall at any time be required to take any action or perform any duty hereunder, the Delaware Trustee shall be entitled to the benefits of Section 3.12(b)(ii), (iii) and (iv) and Section 3.12(c). No implied covenants or obligations shall be read into this Declaration against the Delaware Trustee.

SECTION 3.12. CERTAIN RIGHTS AND DUTIES OF THE PROPERTY TRUSTEE. (a) The Property Trustee, before the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Declaration, and no implied covenants shall be read into this Declaration against the Property Trustee. In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.06), the Property Trustee shall exercise such of the rights and powers vested in it by this Declaration, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

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

(i) prior to the occurrence of an Event of Default and after the curing or waiving of all such Events of Default that may have occurred:

(A) the duties and obligations of the Property Trustee shall be determined solely by the express provisions of this Declaration, and the Property Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Declaration, and no implied covenants or obligations shall be read into this Declaration against the Property Trustee; and

(B) in the absence of bad faith on the part of the Property Trustee, the Property Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Property Trustee and conforming to the requirements of this Declaration; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Property Trustee, the Property Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Declaration;

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

(iii) the Property Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders as provided herein relating to the time, method and place of conducting any proceeding for any remedy available to the Property Trustee hereunder or under the Indenture, or exercising any trust or power conferred upon the Property Trustee under this Declaration; and

(iv) no provision of this Declaration shall require the Property Trustee to expend or risk its

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own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if it shall have reasonable ground for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of this Declaration or adequate indemnity against such risk or liability is not reasonably assured to it.

(c) Subject to the provisions of Section 3.12(a) and (b):

(i) whenever in the administration of this Declaration, the Property Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Property Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part and, if the Trust is excluded from the definition of Investment Company solely by means of Rule 3a-7, subject to the requirements of Rule 3a-7, request and rely upon a certificate, which shall comply with the provisions of Section 314(e) of the Trust Indenture Act, signed by any two of the Regular Trustees or by an authorized officer of the Sponsor, as the case may be;

(ii) the Property Trustee (A) may consult with counsel (which may be counsel to the Sponsor or any of its Affiliates and may include any of its employees) selected by it in good faith and with due care and the written advice or opinion of such counsel with respect to legal matters shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon and in accordance with such advice and opinion and (B) shall have the right at any time to seek instructions concerning the administration of this Declaration from any court of competent jurisdiction;

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

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(iv) the Property Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Declaration at the request or direction of any Holders, unless such Holders shall have offered to the Property Trustee reasonable security and indemnity against the costs, expenses (including attorneys' fees and expenses) and liabilities that might be incurred by it in complying with such request or direction; PROVIDED that nothing contained in this clause (iv) shall relieve the Property Trustee of the obligation, upon the occurrence of an Event of Default (which has not been cured or waived) to exercise such of the rights and powers vested in it by this Declaration, and to use the same degree of care and skill in such exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs;

(v) any action taken by the Property Trustee or its agents hereunder

shall bind the Trust and the Holders of the Securities and the signature of the Property Trustee or its agents alone shall be sufficient and effective to perform any such action; and no third party shall be required to inquire as to the authority of the Property Trustee to so act, or as to its compliance with any of the terms and provisions of this Declaration, both of which shall be conclusively evidenced by the Property Trustee's or its agent's taking such action;

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

(vii) the Property Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, security or other paper or document, but the Property Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.

SECTION 3.13. REGISTRATION STATEMENT AND RELATED MATTERS. In accordance with the Original

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Declaration, the Sponsor and the Trustees have authorized and directed, and hereby confirm the authorization of, the Sponsor, as the Sponsor of the Trust, (i) to file with the Commission and execute, in each case on behalf of the Trust, (a) the Registration Statement on Form S-3 (File Nos. [     ]) (the "1933 Act Registration Statement") including any amendments thereto and any further pre-effective or post-effective amendments to such Registration Statement, relating to the registration under the Securities Act of, among other things, the Preferred Securities of the Trust and the related guarantees of such Preferred Securities by the Sponsor and (b) a Registration Statement on Form 8-A or other appropriate form (the "1934 Act Registration Statement") (including all pre-effective and post-effective amendments thereto) relating to the registration of the Preferred Securities of the Trust and the related guarantees of such Preferred Securities by the Sponsor under Section 12(b) of the Exchange Act; (ii) to file with the New York Stock Exchange and execute on behalf of the Trust a listing application and all other applications, statements, certificates, agreements and other instruments as shall be necessary or desirable to cause the Preferred Securities to be listed on the New York Stock Exchange; (iii) to file and execute on behalf of the Trust such applications, reports, surety bonds, irrevocable consents, appointments of attorney for service of process and other papers and documents as shall be necessary or desirable to register the Preferred Securities under the securities or "Blue Sky" laws of such jurisdictions as the Sponsor, on behalf of the Trust, may deem necessary or desirable and (iv) to negotiate and execute on behalf of the Trust the Underwriting Agreement. In the event that any filing referred to in clauses (i)- (iii) above is required by the rules and regulations of the Commission, the New York Stock Exchange or state securities or blue sky laws, to be executed on behalf of the Trust by the Trustees, the Regular Trustees, in their capacities as Trustees of the Trust, are hereby authorized and directed to join in any such filing and to execute on behalf of the Trust any and all of the foregoing, it being understood that the Property Trustee and the Delaware Trustee, in their capacities as Trustees of the Trust, shall not be required to join in any such filing or execute on behalf of the Trust any such document unless required by the rules and regulations of the Commission, the New York Stock Exchange or state securities or blue sky laws. In connection with all of the foregoing, the Sponsor and each Trustee, solely in its capacity as a Trustee of the Trust, have constituted and appointed, and hereby confirm the appointment of Reid T. Campbell and Dennis R. Smith

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and each of them, as his, her or its, as the case may be, true and lawful attorneys-in- fact, and agents, with full power of substitution and resubstitution, for the Sponsor or such Trustee or in the Sponsor's or such Trustee's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to the 1933 Act Registration Statement and the 1934 Act Registration Statement and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as the Sponsor or such Trustee might or could do in person, hereby ratifying and confirming all that said attorneys-in- fact and agents or any of them, or their or his or her substitute or substitutes, shall do or cause to be done by virtue hereof.

SECTION 3.14. FILING OF AMENDMENTS TO CERTIFICATE OF TRUST. The Certificate of Trust as filed with the Secretary of State of the State of Delaware on November 2, 2001 is attached hereto as Exhibit A. The Trustees are hereby authorized to cause the filing with the Secretary of State of the State of Delaware of such amendments to the Certificate of Trust as the Trustees shall deem necessary or desirable and as required by the Business Trust Act.

SECTION 3.15. EXECUTION OF DOCUMENTS BY REGULAR TRUSTEES. Unless

otherwise determined by the Regular Trustees and except as otherwise required by the Business Trust Act with respect to the Certificate of Trust or otherwise, a majority of, or if there are only two, both of, the Regular Trustees are authorized to execute and deliver on behalf of the Trust any documents which the Regular Trustees have the power and authority to execute or deliver pursuant to this Declaration.

SECTION 3.16. TRUSTEES NOT RESPONSIBLE FOR RECITALS OR ISSUANCE OF SECURITIES. The recitals contained in this Declaration and the Securities shall be taken as the statements of the Sponsor and the Trustees do not assume any responsibility for their correctness. The Trustees make no representations as to the value or condition of the property of the Trust or any part thereof. The Trustees make no representations as to the validity or sufficiency of this Declaration or the Securities.

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SECTION 3.17. DURATION OF TRUST. The Trust, sent termination pursuant to the provisions of Article VIII hereof, shall have existence until [ ], 20[ ].

#### ARTICLE IV

##### SPONSOR

SECTION 4.01. PURCHASE OF COMMON SECURITIES BY SPONSOR. On the Closing Date, the Sponsor will purchase all of the Common Securities issued by the Trust at the same time as the Preferred Securities to be issued on such date are issued, such purchase to be in an amount equal to 3% of the total capital of the Trust. On the Option Closing Date, the Sponsor shall purchase all of the Common Securities issued by the Trust at the same time as the Preferred Securities to be issued on such date are issued, such purchase to be in such amount so that the Common Securities continue to represent 3% of the total capital of the Trust.

SECTION 4.02. EXPENSES. (a) In connection with the purchase of the Debentures by the Trust, the Sponsor, in its capacity as Sponsor and not as a Holder, shall be responsible for and shall pay for all debts and obligations (other than with respect to the Securities) and all costs and expenses of the Trust (including, but not limited to, costs and expenses relating to the organization of the Trust, the issuance of the Preferred Securities to initial purchasers thereof, the fees and expenses (including reasonable counsel fees and expenses and the expenses of the Trustee's agents, nominees or custodians) of the Trustees (including any amounts payable under Article X), the costs and expenses relating to the operation of the Trust, including without limitation, costs and expenses of accountants, attorneys, statistical or bookkeeping services, expenses for printing and engraving and computing or accounting equipment, Paying Agent(s), registrars, transfer agent(s), duplicating, travel and telephone and other telecommunications expenses and costs and expenses incurred in connection with the disposition of Trust assets).

(b) In connection with the purchase of the Debentures by the Trust, the Sponsor, in its capacity as Sponsor and not as a Holder, will pay any and all taxes (other than United States withholding taxes attributable to the Trust or its assets) and all liabilities, costs and expenses with respect to such taxes of the Trust.

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(c) The Sponsor's obligations under this Section 4.02 shall be for the benefit of, and shall be enforceable by, any Person to whom any such debts, obligations, costs, expenses and taxes are owed (a "Creditor") whether or not such Creditor has received notice hereof. Any such Creditor may enforce the Sponsor's obligations under this Section 4.02 directly against the Sponsor and the Sponsor irrevocably waives any right or remedy to require that any such Creditor take any action against the Trust or any other Person before proceeding against the Sponsor. The Sponsor agrees to execute such additional agreements as may be necessary or desirable in order to give full effect to the provisions of this Section 4.02.

#### ARTICLE V

##### TRUSTEES

SECTION 5.01. NUMBER OF TRUSTEES; QUALIFICATIONS. (a) Except as provided in (1) below, the number of Trustees initially shall be four. At any time (i) before the issuance of the Securities, the Sponsor may, by written instrument, increase or decrease the number of, and appoint, remove and replace the, Trustees, and (ii) after the issuance of the Securities the number of Trustees may be increased or decreased solely by, and Trustees may be appointed, removed or replaced solely by, vote of Holders of Common Securities representing a Majority in liquidation amount of the Common Securities voting as a class; PROVIDED that in any case:

(1) the number of Trustees shall be at least four (4) unless the Trustee that acts as the Property Trustee also acts as the Delaware Trustee, in which case the number of Trustees shall be at least three;

(2) at least a majority of the Trustees shall at all times be officers or employees of the Sponsor;

(3) if required by the Business Trust Act, one Trustee (the "Delaware Trustee") shall be either a natural person who is a resident of the State of Delaware or, if not a natural person, an entity which has its principal place of business in the State of Delaware and otherwise is permitted to act as a Trustee hereunder under the laws of the State of Delaware, except that if the Property Trustee has its principal place of business in the State of

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Delaware and otherwise is permitted to act as a Trustee hereunder under the laws of the State of Delaware, then the Property Trustee shall also be the Delaware Trustee and Section [3.11] shall have no application; and

(4) there shall at all times be a Property Trustee hereunder which shall satisfy the requirements of Section 5.01(c).

Each Trustee shall be either a natural person at least 21 years of age or a legal entity which shall act through one or more duly appointed representatives.

(b) The initial Regular Trustees shall be:

Reid T. Campbell  
Dennis R. Smith

In care of Fund American Companies, Inc.

One Beacon Street  
Boston, Massachusetts 02108-3100

(c) There shall at all times be one Trustee which shall act as Property Trustee. In order to act as Property Trustee hereunder, such Trustee shall:

(i) not be an Affiliate of the Sponsor;

(ii) be a corporation organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or Person permitted by the Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by Federal, State, Territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then for the purposes of this Section 5.01(c)(ii), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published; and

(iii) if the Trust is excluded from the definition of an Investment Company solely by reason

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of Rule 3a-7 and to the extent Rule 3a-7 requires a trustee having certain qualifications to hold title to the "eligible assets" (as defined in Rule 3a-7) of the Trust, the Property Trustee shall possess those qualifications.

If at any time the Property Trustee shall cease to satisfy the requirements of clauses (i)-(iii) above, the Property Trustee shall immediately resign in the manner and with the effect set out in Section 5.02(d). If the Property Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Property Trustee and the Holders of the Common Securities (as if such Holders were the obligor referred to in Section 310(b) of the Trust Indenture Act) shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act. The Preferred Guarantee shall be deemed to be specifically described in this Declaration for the purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

The initial Trustee which shall serve as the Property Trustee is Bank One, National Association, whose address is as set forth in Section 14.01(b).

(d) The initial Trustee which shall serve as the Delaware Trustee is Bank One Delaware, Inc., a Delaware banking corporation, whose address is as set forth in Section 14.01(c).

(e) Any action taken by Holders of Common Securities pursuant to this Article V shall be taken at a meeting of Holders of Common Securities convened for such purpose or by written consent as provided in Section 12.02.

(f) No amendment may be made to this Section 5.01 which would change any rights with respect to the number, existence or appointment and removal of Trustees, except with the consent of each Holder of Common Securities.

SECTION 5.02. APPOINTMENT, REMOVAL AND RESIGNATION OF TRUSTEES. (a)

Subject to Section 5.02(b), Trustees may be appointed or removed without cause at any time:

(i) until the issuance of the Securities, by written instrument executed by the Sponsor; and

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(ii) after the issuance of the Securities by vote of the Holders of a Majority in liquidation amount of the Common Securities voting as a class.

(b)(i) The Trustee that acts as Property Trustee shall not be removed in accordance with Section 5.02(a) until a Successor Property Trustee possessing the qualifications to act as Property Trustee under Section 5.01(c) has been appointed and has accepted such appointment by written instrument executed by such Successor Property Trustee and delivered to the Regular Trustees, the Delaware Trustee the Sponsor and the Property Trustee being removed; and

(ii) the Trustee that acts as Delaware Trustee shall not be removed in accordance with Section 5.02(a) until a successor Trustee possessing the qualifications to act as Delaware Trustee under Section 5.01(a)(3) (a "Successor Delaware Trustee") has been appointed and has accepted such appointment by written instrument executed by such Successor Delaware Trustee and delivered to the Regular Trustees, the Property Trustee the Sponsor and the Delaware Trustee being removed.

(c) A Trustee appointed to office shall hold office until his successor shall have been appointed or until his death, removal or resignation.

(d) Any Trustee may resign from office (without need for prior or subsequent accounting) by an instrument (a "Resignation Request") in writing signed by the Trustee and delivered to the Sponsor, the other Trustees and the Trust, which resignation shall take effect upon such delivery or upon such later date as is specified therein; PROVIDED, HOWEVER, that:

(i) no such resignation of the Trustee that acts as the Property Trustee shall be effective until:

(A) a Successor Property Trustee possessing the qualifications to act as Property Trustee under Section 5.01(c) has been appointed and has accepted such appointment by instrument executed by such Successor Property Trustee and delivered to the Trust, the Delaware Trustee the Sponsor and the resigning Property Trustee; or

(B) if the Trust is excluded from the definition of an Investment Company solely by reason of Rule 3a-7, until the assets of the

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Trust have been completely liquidated and the proceeds thereof distributed to the Holders of the Securities; and

(ii) no such resignation of the Trustee that acts as the Delaware Trustee shall be effective until a Successor Delaware Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Delaware Trustee and delivered to the Trust, the Sponsor and the resigning Delaware Trustee.

(e) If no Successor Property Trustee or Successor Delaware Trustee shall have been appointed and accepted appointment as provided in this Section 5.02 within 60 days after delivery to the Sponsor and the Trust of a Resignation Request, the resigning Property Trustee or Delaware Trustee may petition any court of competent jurisdiction for appointment of a Successor Property Trustee or Successor Delaware Trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a Successor Property Trustee or Successor Delaware Trustee, as the case may be.

(f) The Sponsor shall provide notice to the Property Trustee of any resignation or removal of a Regular Trustee.

SECTION 5.03. VACANCIES AMONG TRUSTEES. If a Trustee ceases to hold office for any reason and the number of Trustees is not reduced pursuant to Section 5.01 or if the number of Trustees is increased pursuant to Section 5.01, a vacancy shall occur. A resolution certifying the existence of such vacancy by a majority of the Regular Trustees shall be conclusive evidence of the existence of such vacancy. The vacancy shall be filled with a Trustee appointed in accordance with the requirements of this Article V.

SECTION 5.04. EFFECT OF VACANCIES. The death, resignation, retirement, removal, bankruptcy, dissolution, liquidation, incompetence or incapacity to perform the duties of a Trustee, or any one of them, shall not operate to annul the Trust. Whenever a vacancy in the number of Regular Trustees shall occur until such vacancy is filled as provided in this Article V, the Regular Trustees in office, regardless of their number, shall have all the powers granted to the Regular Trustees and shall discharge all the duties imposed upon the Regular Trustees by this Declaration.

SECTION 5.05. MEETINGS. Meetings of the Regular Trustees shall be held from time to time upon the call of any Regular Trustee. Regular meetings of the Regular Trustees may be held at a time and place fixed by resolution of the Regular Trustees. Notice of any in-person meeting of the Regular Trustees shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 48 hours before such meeting. Notice of any telephonic meeting of the Regular Trustees or any committee thereof shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 24 hours before such meeting. Notices shall contain a brief statement of the time, place and anticipated purposes of the meeting. The presence (whether in person or by telephone) of a Regular Trustee at a meeting shall constitute a waiver of notice of such meeting except where a Regular Trustee attends a meeting for the express purpose of objecting to the transaction of any activity on the ground that the meeting has not been lawfully called or convened. Unless provided otherwise in this Declaration, any action of the Regular Trustees may be taken at a meeting by vote of a majority of the Regular Trustees present (whether in person or by telephone) and eligible to vote with respect to such matter; PROVIDED that a Quorum is present, or without a meeting by the unanimous written consent of the Regular Trustees.

SECTION 5.06. DELEGATION OF POWER. (a) Any Regular Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purpose of executing any registration statement or amendment thereto or other document or schedule filed with the Commission or making any other governmental filing (including, without limitation the filings referred to in Section 3.13).

(b) The Regular Trustees shall have the power to delegate from time to time to such of their number or to officers of the Trust or to officers of the Sponsor the doing of such things and the execution of such instruments either in the name of the Trust or the names of the Regular Trustees or otherwise as the Regular Trustees may deem expedient, to the extent such delegation is not prohibited by applicable law or contrary to the provisions of the Trust, as set forth herein.

## ARTICLE VI

### DISTRIBUTIONS

SECTION 6.01. DISTRIBUTIONS. Holders shall receive periodic distributions, redemption payments and liquidation distributions in accordance with the applicable terms of the relevant Holder's Securities ("Distributions"). Distributions shall be made to the Holders of Preferred Securities and Common Securities in accordance with the terms of the Securities as set forth in Exhibits B and C hereto. If and to the extent that the Sponsor makes a payment of interest (including Compounded Interest (as defined in the Indenture)), premium or principal on the Debentures held by the Property Trustee (the amount of any such payment being a "Payment Amount"), the Property Trustee shall and is directed to promptly make a Distribution of the Payment Amount to Holders in accordance with the terms of the Securities as set forth in Exhibits B and C hereto.

## ARTICLE VII

### ISSUANCE OF SECURITIES

SECTION 7.01. GENERAL PROVISIONS REGARDING SECURITIES. (a) The Regular Trustees shall issue on behalf of the Trust Securities in fully registered form representing undivided beneficial interests in the assets of the Trust in accordance with Section 7.01(b) and for the consideration specified in Section 3.03.

(b) The Regular Trustees shall issue on behalf of the Trust one class of Preferred Securities representing preferred undivided beneficial interests in the assets of the Trust having such terms as are set forth in Exhibit B (the "Preferred Securities") which terms are incorporated by reference in, and made a part of, this Declaration as if specifically set forth herein, and one class of common securities representing common undivided beneficial interests in the assets of the Trust having such terms as are set forth in Exhibit C (the "Common Securities") which terms are incorporated by reference in, and made a part of, this Declaration as if specifically set forth herein. The Trust shall have no securities or other interests in the assets of the Trust other than the Preferred Securities and the Common Securities.

(c) The Certificates shall be signed on behalf of the Trust by the Regular Trustees (or if there are

more than two Regular Trustees by any two of the Regular Trustees). Such signatures may be the manual or facsimile signatures of the present or any future Regular Trustee. Typographical and other minor errors or defects in any



such reproduction of any such signature shall not affect the validity of any Certificate. In case any Regular Trustee of the Trust who shall have signed any of the Certificates shall cease to be such Regular Trustee before the Certificate so signed shall be delivered by the Trust, such Certificate nevertheless may be delivered as though the person who signed such Certificate had not ceased to be such Regular Trustee; and any Certificate may be signed on behalf of the Trust by such persons as, at the actual date of the execution of such Certificate, shall be the Regular Trustees of the Trust, although at the date of the execution and delivery of the Declaration any such person was not such a Regular Trustee. Certificates shall be printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Regular Trustees, as evidenced by their execution thereof, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements as the Regular Trustees may deem appropriate, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Securities may be listed, or to conform to usage. Pending the preparation of definitive Certificates, the Regular Trustees on behalf of the Trust may execute temporary Certificates (printed, lithographed or typewritten), in substantially the form of the definitive Certificates in lieu of which they are issued, but with such omissions, insertions and variations as may be appropriate for temporary Certificates, all as may be determined by the Regular Trustees. Each temporary Certificate shall be executed by the Regular Trustees on behalf of the Trust upon the same conditions and in substantially the same manner, and with like effect, as definitive Certificates. Without unnecessary delay, the Regular Trustees on behalf of the Trust will execute and furnish definitive Certificates and thereupon any or all temporary Certificates may be surrendered to the transfer agent and registrar in exchange therefor (without charge to the Holders). Each Certificate whether in temporary or definitive form shall be countersigned by the manual or facsimile signature of an authorized signatory of the Person acting as registrar and transfer agent for the Securities, which shall initially be the Property Trustee.

(d) The consideration received by the Trust for the issuance of the Securities shall constitute a

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contribution to the capital of the Trust and shall not constitute a loan to the Trust.

(e) Upon issuance of the Securities as provided in this Declaration, the Securities so issued shall be deemed to be validly issued, fully paid and non-assessable.

(f) Every Person, by virtue of having become a Holder or a Preferred Security Beneficial Owner in accordance with the terms of this Declaration, shall be deemed to have expressly assented and agreed to the terms of, and shall be bound by, this Declaration.

(g) Upon issuance of the Securities as provided in this Declaration, the Regular Trustees on behalf of the Trust shall return to the Sponsor the \$10 constituting initial trust assets as set forth in the Original Declaration.

#### ARTICLE VIII

##### TERMINATION OF TRUST

SECTION 8.01. TERMINATION OF TRUST. The Trust shall dissolve when:

(i) all of the Securities shall have been called for redemption and the amounts necessary for redemption thereof shall have been paid to the Holders of Securities in accordance with the terms of the Securities; or

(ii) all of the Debentures shall have been distributed to the Holders of Securities in exchange for all of the Securities in accordance with the terms of the Securities; or

(iii) upon the expiration of the term of the Trust as set forth in Section 3.17,

and thereafter the Trustees shall, after satisfaction of all obligations of the trust, file a certificate of cancellation with the Secretary of State of the State of Delaware and the Trust shall terminate. The Trustees shall so file such a certificate as soon as practicable after the occurrence of an event referred to in this Section 8.01.

The provisions of Sections 3.12 and 4.02 and Article X shall survive the termination of the Trust.

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#### ARTICLE IX

##### TRANSFER OF INTERESTS

SECTION 9.01. TRANSFER OF SECURITIES. (a) Securities may only be transferred, in whole or in part, in accordance with the terms and conditions set forth in this Declaration. Any transfer or purported transfer of any Security not made in accordance with this Declaration shall be null and void.

(b) Subject to this Article IX, Preferred Securities shall be freely transferable.

(c) Subject to this Article IX, the Sponsor and any Related Party may only transfer Common Securities to the Sponsor or a Related Party; PROVIDED that any such transfer shall be subject to the condition that the transferor shall have obtained (1) either a ruling from the Internal Revenue Service or an unqualified written opinion addressed to the Trust and delivered to the Trustees of nationally recognized independent tax counsel experienced in such matters to the effect that such transfer will not (i) cause the Trust to be treated as issuing a class of interests in the Trust differing from the class of interests represented by the Common Securities originally issued to the Sponsor, (ii) result in the Trust acquiring or disposing of, or being deemed to have acquired or disposed of, an asset, or (iii) result in or cause the Trust to be treated as anything other than a grantor trust for United States Federal income tax purposes and (2) an unqualified written opinion addressed to the Trust and delivered to the Trustees of a nationally recognized independent counsel experienced in such matters that such transfer will not cause the Trust to be an Investment Company or controlled by an Investment Company.

SECTION 9.02. TRANSFER OF CERTIFICATES. The Regular Trustees shall cause to be kept at an office or agency to be maintained by the Trust a register in which, subject to such reasonable regulations as it may prescribe, the Trust shall provide for the registration of Certificates and of transfers of Certificates, which will be effected without charge but only upon payment (with such indemnity as the Trust or the Registrar (as defined below) may require) in respect of any tax or other government charges which may be imposed in relation to it. The Property Trustee will be the initial registrar and transfer agent (the "Registrar") for the

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purpose of registering Certificates and transfers of Certificates as provided herein.

Upon surrender for registration of transfer of any Certificate at the office or agency of the Registrar, the Regular Trustees shall execute and the Registrar shall countersign in accordance with section 7.01(c) one or more new Certificates of any authorized denominations and of a like aggregate liquidation amount to be issued in the name of the designated transferee or transferees. Every Certificate surrendered for registration of transfer shall be accompanied by a written instrument of transfer in form satisfactory to the Trust duly executed by the Holder or such Holder's attorney duly authorized in writing. Each Certificate surrendered for registration of transfer shall be canceled by the Regular Trustees. A transferee of a Certificate shall be entitled to the rights and subject to the obligations of a Holder hereunder upon the receipt by such transferee of a Certificate. By acceptance of a Certificate, each transferee shall be deemed to have agreed to be bound by this Declaration.

SECTION 9.03. DEEMED SECURITY HOLDERS. The Trustees may treat the Person in whose name any Certificate shall be registered on the books and records of the Trust as the sole holder of such Certificate and of the Securities represented by such Certificate for purposes of receiving Distributions and for all other purposes whatsoever and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Certificate or in the Securities represented by such Certificate on the part of any Person, whether or not the Trustees shall have actual or other notice thereof.

SECTION 9.04. BOOK ENTRY INTERESTS. Unless otherwise specified in the terms of the Preferred Securities, the Preferred Securities Certificates, on original issuance (including Preferred Securities, if any, issued on the Option Closing Date pursuant to the exercise of the over-allotment option set forth in the Underwriting Agreement), will be issued in the form of one or more, fully registered, global Preferred Security Certificates (each a "Global Certificate"), to be delivered to DTC, the initial Clearing Agency, by, or on behalf of, the Trust. Such Global Certificates shall initially be registered on the books and records of the Trust in the name of Cede & Co., the nominee of DTC, and no Preferred Security Beneficial Owner will receive a definitive Preferred Security Certificate representing such Preferred Security Beneficial Owner's interests in

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such Global Certificates, except as provided in Section 9.07. Unless and until definitive, fully registered Preferred Security Certificates (the "Definitive Preferred Security Certificates") have been issued to the Preferred Security Beneficial Owners pursuant to Section 9.07:

(i) the provisions of this Section 9.04 shall be in full force and effect;

(ii) the Trust and the Trustees shall be entitled to deal with the Clearing Agency for all purposes of this Declaration (including the payment of Distributions on the Global Certificates and receiving approvals, votes or consents hereunder) as the Holder of the Preferred Securities and the sole holder of the Global Certificates and shall have no obligation to the Preferred Security Beneficial Owners;

(iii) to the extent that the provisions of this Section 9.04 conflict with any other provisions of this Declaration, the provisions of this Section 9.04 shall control; and

(iv) the rights of the Preferred Security Beneficial Owners shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreements between such Preferred Security Beneficial Owners and the Clearing Agency and/or the Clearing Agency Participants. DTC will make book entry transfers among the Clearing Agency Participants and receive and transmit payments of Distributions on the Global Certificates to such Clearing Agency Participants.

SECTION 9.05. NOTICES TO HOLDERS OF CERTIFICATES. Whenever a notice or other communication to the Holders is required to be given under this Declaration, unless and until Definitive Preferred Security Certificates shall have been issued pursuant to Section 9.07, the relevant Trustees shall give all such notices and communications, specified herein to be given to Preferred Securities Holders, to the Clearing Agency and, with respect to any Preferred Security Certificate registered in the name of a Clearing Agency or the nominee of a Clearing Agency, the Trustees shall, except as set forth herein, have no notice obligations to the Preferred Security Beneficial Owners.

SECTION 9.06. APPOINTMENT OF SUCCESSOR CLEARING AGENCY. If any Clearing Agency elects to discontinue its

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services as securities depository with respect to the Preferred Securities, the Regular Trustees may, in their sole discretion, appoint a successor Clearing Agency with respect to the Preferred Securities.

SECTION 9.07. DEFINITIVE PREFERRED SECURITIES CERTIFICATES. If (i) a Clearing Agency elects to discontinue its services as securities depository with respect to the Preferred Securities and a successor Clearing Agency is not appointed within 90 days after such discontinuance pursuant to Section 9.06 or (ii) the Regular Trustees elect after consultation with the Sponsor to terminate the book entry system through the Clearing Agency with respect to the Preferred Securities, then (x) Definitive Preferred Security Certificates shall be prepared by the Regular Trustees on behalf of the Trust with respect to such Preferred Securities and (y) upon surrender of the Global Certificates by the Clearing Agency, accompanied by registration instructions, the Regular Trustees shall cause definitive Preferred Security Certificates to be delivered to Preferred Security Beneficial Owners in accordance with the instructions of the Clearing Agency. Neither the Trustees nor the Trust shall be liable for any delay in delivery of such instructions and each of them may conclusively rely on, and shall be protected in relying on, such instructions.

SECTION 9.08. MUTILATED, DESTROYED, LOST OR STOLEN CERTIFICATES. If (a) any mutilated Certificates should be surrendered to the Registrar, or if the Registrar shall receive evidence to its satisfaction of the destruction, loss or theft of any Certificate and (b) there shall be delivered to the Trustees such security or indemnity as may be required by them to keep each of them harmless, then in the absence of notice that such Certificate shall have been acquired by a bona fide purchaser, any two Regular Trustees on behalf of the Trust shall execute and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Certificate, a new Certificate of like denomination. In connection with the issuance of any new Certificate under this Section 9.08, the Regular Trustees may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith. Any duplicate Certificate issued pursuant to this Section shall constitute conclusive evidence of an ownership interest in the relevant Securities, as if originally issued, whether or not the lost, stolen or destroyed Certificate shall be found at any time.

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## ARTICLE X

### LIMITATION OF LIABILITY; INDEMNIFICATION

SECTION 10.01 EXCULPATION. (a) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Trust or any Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Declaration or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's gross negligence (or, in the case of the Property Trustee, negligence) or willful misconduct with respect to such acts or omissions.

(b) An Indemnified Person shall be fully protected in relying in good faith upon the records of the Trust and upon such information, opinions, reports or statements presented to the Trust by any Person as to matters the Indemnified Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Trust, including information, opinions, reports or statements as to the value and amount of assets, liabilities, profits, losses or any other facts pertinent to the existence and amount of assets from which Distributions to Holders of Securities might properly be paid.

(c) Pursuant to Section 3803(a) of the Business Trust Act, the Holders of Securities, in their capacities as Holders, shall be entitled to the same limitation of liability that is extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

SECTION 10.02. INDEMNIFICATION AND COMPENSATION. (a) To the fullest extent permitted by applicable law, the Sponsor shall indemnify and hold harmless each Indemnified Person from and against any loss, damage or claim incurred by such Indemnified Person by reason of any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of authority conferred on such Indemnified Person by this Declaration, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such

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Indemnified Person by reason of gross negligence (or, in the case of the Property Trustee, negligence) or willful misconduct with respect to such acts or omissions.

(b) To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by an Indemnified Person in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Sponsor prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Sponsor of an undertaking by or on behalf of the Indemnified Person to repay such amount if it shall be determined that the Indemnified Person is not entitled to be indemnified as authorized in Section 10.02(a).

(c) The Sponsor agrees to pay the Property Trustee and the Delaware Trustee from time to time such compensation for all services rendered by the Property Trustee and the Delaware Trustee hereunder as may be mutually agreed upon in writing by the Sponsor and the Property Trustee or the Delaware Trustee, as the case may be, and, except as otherwise expressly provided herein, to reimburse the Property Trustee and the Delaware Trustee upon its or their request for all reasonable expenses, disbursements and advances incurred or made by the Property Trustee or the Delaware Trustee, as the case may be, in accordance with the provisions of this Declaration, except any such expense, disbursement or advance as may be attributable to its or their negligence (or in the case of the Delaware Trustee, its gross negligence) or bad faith.

SECTION 10.03. OUTSIDE BUSINESSES. Any Covered Person, the Sponsor, the Delaware Trustee and the Property Trustee may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Trust, and the Trust and the Holders of Securities shall have no rights by virtue of this Declaration in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Trust, shall not be deemed wrongful or improper. None of the Covered Persons, the Sponsor, the Delaware Trustee or the Property Trustee shall be obligated to present any particular investment or other opportunity to the Trust even if such opportunity is of a character that, if presented to the Trust, could be taken by the Trust, and any Covered Person, the Sponsor, the Delaware Trustee and the Property Trustee shall have the right to take for its own account (individually or as a partner or

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fiduciary) or to recommend to others any such particular investment or other opportunity. Any Covered Person, the Delaware Trustee and the Property Trustee may engage or be interested in any financial or other transaction with the Sponsor or any Affiliate of the Sponsor, or may act as depository for, trustee or agent for, or act on any committee or body of holders of, securities or other obligations of the Sponsor or its Affiliates.

#### ARTICLE XI

#### ACCOUNTING

SECTION 11.01. FISCAL YEAR. The fiscal year ("Fiscal Year") of the Trust shall be the calendar year, or such other year as is required by the Code.

SECTION 11.02. CERTAIN ACCOUNTING MATTERS. (a) At all times during the existence of the Trust, the Regular Trustees shall keep, or cause to be kept, full books of account, records and supporting documents, which shall reflect in reasonable detail each transaction of the Trust. The books of account shall be maintained on the accrual method of accounting, in accordance with generally accepted accounting principles consistently applied. The Trust shall use the accrual method of accounting for United States Federal income tax purposes. The books and records of the Trust, together with a copy of this Declaration and a certified copy of the Certificate of Trust, or any amendment thereto, shall at all times be maintained at the principal office of the Trust and shall be open for inspection by any Holder or its duly authorized representative for any purpose reasonably related to its interest in the Trust during normal business hours.

(b) The Regular Trustees shall, as soon as available after the end

of each Fiscal Year of the Trust, cause to be prepared and mailed to each Holder of Securities unaudited financial statements of the Trust for such Fiscal Year, prepared in accordance with generally accepted accounting principles; PROVIDED that if the Trust is required to comply with the periodic reporting requirements of Sections 13(a) or 15(d) of the Exchange Act, such financial statements for such Fiscal Year shall be examined and reported on by a firm of independent certified public accountants selected by the Regular Trustees (which firm may be the firm used by the Sponsor).

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(c) The Regular Trustees shall cause to be prepared and mailed to each Holder of Securities an annual United States Federal income tax information statement, on such form as is required by the Code, containing such information with regard to the Securities held by each Holder as is required by the Code and the Treasury Regulations. Notwithstanding any right under the Code to deliver any such statement at a later date, the Regular Trustees shall endeavor to deliver all such statements within 30 days after the end of each Fiscal Year of the Trust.

(d) The Regular Trustees shall cause to be prepared and filed with the appropriate taxing authority an annual United States Federal income tax return, on such form as is required by the Code, and any other annual income tax returns required to be filed by the Regular Trustees on behalf of the Trust with any state or local taxing authority, such returns to be filed as soon as practicable after the end of each Fiscal Year of the Trust.

SECTION 11.03. BANKING. The Regular Trustees shall maintain one or more bank accounts in the name and for the sole benefit of the Trust; PROVIDED, HOWEVER, that all payments of funds in respect of the Debentures held by the Property Trustee shall be made directly to the Property Account and no other funds from the Trust shall be deposited in the Property Account. The sole signatories for such accounts shall be designated by the Regular Trustees; PROVIDED, HOWEVER, that the Property Trustee shall designate the sole signatories for the Property Account.

SECTION 11.04. WITHHOLDING. The Trust and the Trustees shall comply with all withholding requirements under United States Federal, state and local law. The Trust shall request, and the Holders shall provide to the Trust, such forms or certificates as are necessary to establish an exemption from withholding with respect to each Holder, and any representations and forms as shall reasonably be requested by the Trust to assist it in determining the extent of, and in fulfilling, its withholding obligations. The [Property] Trustee shall file required forms with applicable jurisdictions and, unless an exemption from withholding is properly established by a Holder, the Property Trustee shall remit amounts withheld with respect to the Holder to applicable jurisdictions. To the extent that the Trust is required to withhold and pay over any amounts to any authority with respect to distributions or allocations to any Holder, the amount withheld shall be deemed to be a

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distribution in the amount of the withholding to the Holder. In the event of any claimed overwithholding, Holders shall be limited to an action against the applicable jurisdiction. If the amount to be withheld was not withheld from a Distribution, the Property Trustee may reduce subsequent Distributions by the amount of such withholding.

## ARTICLE XII

### AMENDMENTS AND MEETINGS

SECTION 12.01. AMENDMENTS. (a) Except as otherwise provided in this Declaration or by any applicable terms of the Securities, this Declaration may be amended by, and only by, a written instrument executed by a majority of the Regular Trustees (or, if there are only two Regular Trustees, both Regular Trustees); PROVIDED, HOWEVER, that (i) no amendment to this Declaration shall be made unless the Regular Trustees shall have obtained (A) either a ruling from the Internal Revenue Service or a written unqualified opinion of nationally recognized independent tax counsel experienced in such matters to the effect that such amendment will not cause the Trust to be classified for United States Federal income tax purposes as an association taxable as a corporation or a partnership and to the effect that the Trust will continue to be treated as a grantor trust for purposes of United States Federal income taxation and (B) a written unqualified opinion of nationally recognized independent counsel experienced in such matters to the effect that such amendment will not cause the Trust to be an Investment Company which is required to be registered under the Investment Company Act, (ii) if Securities are outstanding, any amendment which would adversely affect the rights, privileges or preferences of any Holder of Securities may be effected only after satisfaction of such additional requirements as may be set forth in the terms of such Securities, (iii) Section 4.02, Section 9.01(c) and this Section 12.01 shall not be amended without the consent of all Holders of the Securities, (iv) no amendment which adversely affects the rights, powers and privileges of the Property Trustee or the Delaware Trustee shall be made without the consent of the Property Trustee or the Delaware Trustee, as the case may be, (v) Article IV shall not be amended without the consent of the Sponsor, and (vi) the rights of Holders of Common Securities under Article V to increase or decrease the number of, and to appoint, replace or remove, Trustees shall not be amended without the consent of

(b) Notwithstanding Section 12.02(a)(ii), this Declaration may be amended without the consent of the Holders of the Securities to (i) cure any ambiguity, (ii) correct or supplement any provision in this Declaration that may be defective or inconsistent with any other provision of this Declaration, (iii) to add to the covenants, restrictions or obligations of the Sponsor, and (iv) to conform to any changes in Rule 3a-7 or any change in interpretation or application of Rule 3a-7 by the Commission, which amendment does not adversely affect the rights, preferences or privileges of the Holders.

(c) The Regular Trustees shall promptly furnish to each of the Property Trustee and the Delaware Trustee a copy of each amendment to this Declaration.

SECTION 12.02. MEETINGS OF THE HOLDERS OF SECURITIES; ACTION BY WRITTEN CONSENT. (a) Meetings of the Holders of Preferred Securities and/or Common Securities may be called at any time by the Regular Trustees (or as provided in the terms of the Securities) to consider and act on any matter on which Holders of such class of Securities are entitled to act under the terms of this Declaration, the terms of the Securities or the rules of any stock exchange on which the Preferred Securities are listed or admitted for trading. The Regular Trustees shall call a meeting of Holders of Preferred Securities or Common Securities if directed to do so by Holders of at least 10% in liquidation amount of such class of Securities. Such direction shall be given by delivering to the Regular Trustees one or more notices in writing stating that the signing Holders of Securities wish to call a meeting and indicating the general or specific purpose for which the meeting is to be called. Any Holders of Securities calling a meeting shall specify in writing the Certificates held by the Holders of Securities exercising the right to call a meeting and only those specified Certificates shall be counted for purposes of determining whether the required percentage set forth in the second sentence of this paragraph has been met.

(b) Except to the extent otherwise provided in the terms of the Securities, the following provision shall apply to meetings of Holders of Securities:

(i) Notice of any such meeting shall be given by mail to each Trustee and all the Holders of Securities having a right to vote thereat not less than seven days nor more than 60 days prior to the date of such meeting. Whenever a vote, consent or

approval of the Holders of Securities is permitted or required under this Declaration or the rules of any stock exchange on which the Preferred Securities are listed or admitted for trading, such vote, consent or approval may be given at a meeting of the Holders of Securities. Any action that may be taken at a meeting of the Holders of Securities may be taken without a meeting if a consent in writing setting forth the action so taken is signed by Holders of Securities owning not less than the minimum aggregate liquidation amount of Securities that would be necessary to authorize or take such action at a meeting at which all Holders of Securities having a right to vote thereon were present and voting. Prompt notice of the taking of action without a meeting shall be given to the Holders of Securities entitled to vote who have not consented in writing. The Regular Trustees may specify that any written ballot submitted to the Holders of Securities for the purpose of taking any action without a meeting shall be returned to the Trust within the time specified by the Regular Trustees.

(ii) Each Holder of a Security may authorize any Person to act for it by proxy on all matters in which a Holder of a Security is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Holder of Security executing it. Except as otherwise provided herein or in the terms of the Securities, all matters relating to the giving, voting or validity of proxies shall be governed by the General Corporation Law of the State of Delaware relating to proxies and judicial interpretations thereunder as if the Trust were a Delaware corporation and the Holders of the Securities were stockholders of a Delaware corporation.

(iii) Each meeting of the Holders of the Securities shall be conducted by the Regular Trustees or by such other Person that the Regular Trustees may designate.

(iv) Unless otherwise provided in the Business Trust Act, this Declaration or the rules of any stock exchange on which the Preferred Securities are then listed or admitted for trading, the Regular

Trustees, in their sole discretion, shall establish all other provisions

relating to meetings of Holders of Securities, including notice of the time, place or purpose of any meeting at which any matter is to be voted on by any Holders of Securities, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy or any other matter with respect to the exercise of any such right to vote.

#### ARTICLE XIII

##### REPRESENTATIONS OF PROPERTY TRUSTEE AND DELAWARE TRUSTEE

###### SECTION 13.01. REPRESENTATIONS AND WARRANTIES OF PROPERTY TRUSTEE.

(a) The Trustee which acts as initial Property Trustee represents and warrants to the Trust and to the Sponsor at the date of this Declaration, and each Successor Property Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Property Trustee's acceptance of its appointment as Property Trustee that:

(i) The Property Trustee is a banking corporation with trust powers, duly organized, validly existing and in good standing under the laws of the State of its incorporation, with trust power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Declaration.

(ii) The execution, delivery and performance by the Property Trustee of this Declaration has been duly authorized by all necessary corporate action on the part of the Property Trustee. The Declaration has been duly executed and delivered by the Property Trustee, and constitutes a legal, valid and binding obligation of the Property Trustee, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency, and other similar laws affecting creditors' rights generally and to general principles of equity and the discretion of the court (regardless of whether the enforcement of such remedies is considered in a proceeding in equity or at law).

(iii) The execution, delivery and performance of this Declaration by the Property Trustee does not

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conflict with or constitute a breach of the charter or By-laws of the Property Trustee.

(iv) No consent, approval or authorization of, or registration with or notice to, any banking authority which supervises or regulates the Property Trustee is required for the execution, delivery or performance by the Property Trustee of this Declaration.

(v) The Property Trustee satisfies the qualifications set forth in Section 5.01(c).

(b) The Trustee which acts as initial Delaware Trustee represents and warrants to the Trust and the Sponsor at the date of this Declaration, and each Successor Delaware Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Delaware Trustee's acceptance of its appointment as Delaware Trustee, that it satisfies the qualifications set forth in Section 5.01(a)(3).

#### ARTICLE XIV

##### MISCELLANEOUS

SECTION 14.01. NOTICES. All notices provided for in this Declaration shall be in writing, duly signed by the party giving such notice, and shall be delivered, telecopied or mailed by first class mail, as follows:

(a) if given to the Trust, in care of the Regular Trustees at the Trust's mailing address set forth below (or such other address as the Regular Trustees on behalf of the Trust may give notice of to the Property Trustee, the Delaware Trustee and the Holders of the Securities):

Fund American Trust III  
In care of Fund American Companies, Inc.  
One Beacon Street  
Boston, Massachusetts 02108-3100  
Attention: [                    ]  
                  [                    ],  
                  Trustees  
Facsimile No: [ (            ) ]

(b) if given to the Property Trustee, at the mailing address of the Property Trustee set forth below (or such other address as the Property Trustee

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may give notice of to the Trust and the Holders of the Securities):

[                    ]

[ ]  
[ ]  
[ ]  
Attention: [ ]  
Facsimile No: [( ) ]

(c) if given to the Delaware Trustee, at the mailing address of the Delaware Trustee set forth below (or such other address as the Delaware Trustee may give notice of to the Trust and the Holders of the Securities):

[ ]  
[ ]  
[ ]  
Attention: [ ]  
Facsimile No: [( ) ]

with a copy to:

[ ]  
[ ]  
[ ]  
[ ]  
Attention: [ ]  
Facsimile No: [( ) ]

(d) if given to the Holder of the Common Securities, at the mailing address of the Sponsor set forth below (or such other address as the Holder of the Common Securities may give notice to the Property Trustee, the Delaware Trustee and the Trust):

Fund American Companies, Inc.  
One Beacon Street  
Boston, Massachusetts 02108-3100  
Attention: [ ]  
Facsimile No: [( ) ]

(e) if given to any other Holder, at the address set forth on the books and records of the Trust.

A copy of any notice to the Property Trustee or the Delaware Trustee shall also be sent to the Trust. All notices shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid except that

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if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

**SECTION 14.02. UNDERTAKING FOR COSTS.** All parties to this Declaration agree, and each Holder of any Securities by his or her acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Declaration, or in any suit against the Property Trustee for any action taken or omitted by it as Property Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 14.02 shall not apply to any suit instituted by the Property Trustee, to any suit instituted by any Holder of Preferred Securities, or group of Holders of Preferred Securities, holding more than 10% in aggregate liquidation amount of the outstanding Preferred Securities, or to any suit instituted by any Holder of Preferred Securities for the enforcement of the payment of the principal of (or premium, if any) or interest on the Debentures, on or after the respective due dates expressed in such Debentures.

**SECTION 14.03. GOVERNING LAW.** This declaration and the Rights of the Parties hereunder shall be governed by and interpreted in accordance with the laws of the state of Delaware and all rights and remedies shall be governed by such laws without regard to the principles of conflict of laws of the state of Delaware or any other jurisdiction that would call for the application of the law of any jurisdiction other than the state of Delaware; PROVIDED, HOWEVER, that there shall not be applicable to the parties hereunder or this declaration any provision of the laws (statutory or common) of the state of Delaware pertaining to trusts that relate to or regulate, in a manner inconsistent with the terms hereof (A) the filing with any court or governmental body or agency of trustee accounts or schedules of trustee fees and charges, (B) affirmative requirements to post bonds for trustees, officers, agents or employees of a trust, (C) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property (D) fees or

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other sums payable to trustees, officers, agents or employees of a trust, (E) the allocation of receipts and expenditures to income or principal, (F)



restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding or investing trust storage or (G) the establishment of fiduciary or other standards of responsibility or limitations on the acts or powers of trustees that are inconsistent with the limitations or liabilities or authorities and powers of the trustees hereunder as set forth or referenced in this declaration. Section 3540 of title 12 of the Delaware code shall not apply to the Trust.

SECTION 14.04. HEADINGS. Headings contained in this Declaration are inserted for convenience of reference only and do not affect the interpretation of this Declaration or any provision hereof.

SECTION 14.05. PARTIAL ENFORCEABILITY. If any provision of this Declaration, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this Declaration, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

SECTION 14.06. COUNTERPARTS. This Declaration may contain more than one counterpart of the signature pages and this Declaration may be executed by the affixing of the signature of the Sponsor and each of the Trustees to one of such counterpart signature pages. All of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

SECTION 14.07. INTENTION OF THE PARTIES. It is the intention of the parties hereto that the Trust not be classified for United States Federal income tax purposes as an association taxable as a corporation or partnership but that the Trust be treated as a grantor trust for United States Federal income tax purposes. The provisions of this Declaration shall be interpreted to further this intention of the parties.

SECTION 14.08. SUCCESSORS AND ASSIGNS. Whenever in this Declaration any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included, and all covenants and agreements in this Declaration by the Sponsor and the

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Trustees shall bind and inure to the benefit of their respective successors and assigns, whether so expressed.

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IN WITNESS WHEREOF, the undersigned have caused these presents to be executed as of the day and year first above written.

FUND AMERICAN COMPANIES,  
INC., as Sponsor,

by

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Name:  
Title:

REGULAR TRUSTEES:

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as Regular Trustee

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as Regular Trustee

BANK ONE, NATIONAL  
ASSOCIATION  
as Property Trustee,

by

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Name:  
Title:

BANK ONE, DELAWARE, INC.  
as Delaware Trustee,

by

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Name:  
Title:

CERTIFICATE OF TRUST OF Fund American Trust III

THIS Certificate of Trust of Fund American Trust III (the "Trust"), dated October 30, 2001, is being duly executed and filed by Reid T. Campbell and Dennis R. Smith, and Bank One Delaware, Inc., a Delaware corporation, as trustees, to form a business trust under the Delaware Business Trust Act (12 Del. C. Section 3801 ET SEQ.)(the "Act").

- 1. NAME. The name of the business trust formed hereby is Fund American Trust III.
- 2. DELAWARE TRUSTEE. The name and business address of the trustee of the Trust in the State of Delaware is Bank One Delaware, Inc., 3 Christiana Center, 201 North Walnut Street, Wilmington, Delaware 19801.
- 3. EFFECTIVE DATE. This Certificate of Trust shall be effective upon filing with the Secretary of State.

IN WITNESS WHEREOF, the undersigned, being all of the trustees of the Trust, have executed this Certificate of Trust in accordance with Section 3811(a) of the Act.

Bank One Delaware, Inc.,  
as Trustee

By:

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Name: Melissa G. Weisman  
Title: Vice President

-----  
as Trustee  
Name: Reid T. Campbell

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as Trustee  
Name: Dennis R. Smith

EXHIBIT B

TERMS OF THE  
Preferred Securities

Pursuant to Section 7.01 of the Amended and Restated Declaration of Trust of Fund American Trust III dated as of [ ] (as amended from time to time, the "Declaration"), the designations, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Securities are set forth below (each capitalized term used but not defined herein having the meaning set forth in the Declaration):

1. DESIGNATION AND NUMBER. Preferred Securities of the Trust with an aggregate liquidation amount in the assets of the Trust of up to [ ] Dollars (\$[ ]) (including up to [ ] Dollars (\$[ ]) issuable upon exercise of the over-allotment option set forth in the Underwriting Agreement) and a liquidation amount in the assets of the Trust of \$[ ] per Preferred Security are hereby designated as "[ ]% Preferred Trust Securities". The Preferred Security Certificates evidencing the Preferred Securities shall be substantially in the form attached hereto as Annex I, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice or to conform to the rules of any stock exchange on which the Preferred Securities are listed. In connection with the issuance and sale of the Preferred Securities and the Common Securities, the Trust will purchase, as trust assets, Debentures of the Sponsor having an aggregate principal amount equal to the aggregate liquidation amount of the Preferred Securities and the Common Securities so issued and bearing interest at an annual rate equal to the annual Distribution rate on the Preferred Securities and the Common Securities and having payment and redemption provisions which correspond to the payment and redemption provisions of the Preferred Securities and the Common Securities.

2. DISTRIBUTIONS. (a) Distributions payable on each Preferred Security will be payable [at a fixed rate per annum of [ ]%] [floating rate] (the "Coupon Rate") of the stated liquidation amount of \$[ ] per Preferred Security. Distributions in arrears for more than one month will bear interest at the Coupon Rate (to the extent permitted by law), compounded monthly. The term "Distributions" as used in these terms means such periodic cash distributions and any such interest payable

unless otherwise stated. A Distribution will be made by the Property Trustee only to the extent that interest payments are made in respect of the Debentures held by the Property Trustee. The amount of Distributions payable for any period will be computed on the basis of a 360-day year of twelve 30-day months, and for

any period shorter than a 30-day period for which Distributions are computed, Distributions will be computed on the basis of the actual number of days elapsed.

(b) Distributions on the Preferred Securities will be cumulative, will accrue from [ ], and will be payable [monthly] [quarterly] [semi-annually] in arrears, on the first day of each period commencing on [ ], except as otherwise described below, but only if and to the extent that interest payments are made in respect of the Debentures held by the Property Trustee. So long as the Sponsor is not in default in the payment of interest on the Debentures, the Sponsor shall have the right under the Indenture for the Debentures to defer payments of interest by extending the interest payment period from time to time on the Debentures for a period not to exceed [60] [20] [10] consecutive [monthly] [quarterly] [semi-annually] interest periods (an "Extension Period"), PROVIDED, HOWEVER, that an Extension Period may not extend beyond the maturity of the Debentures. During any such Extension Period, monthly Distributions will continue to accrue with interest thereon (to the extent permitted by applicable law) at the Coupon Rate, compounded [monthly] [quarterly] [semi-annually]. Prior to the termination of any such Extension Period, the Sponsor may further extend such Extension Period; PROVIDED that such Extension Period together with all such previous and further extensions thereof may not exceed 60 consecutive monthly interest periods. Upon the termination of any Extension Period and the payment of all amounts then due, the Sponsor may commence a new Extension Period, subject to the above requirements. Payments of accrued Distributions will be payable to Holders of Preferred Securities as they appear on the books and records of the Trust on the record date for the first interest payment date occurring at or after the end of the Extension Period.

(c) Distributions on the Preferred Securities will be payable promptly by the Property Trustee (or other Paying Agent) upon receipt of immediately available funds to the Holders thereof as they appear on the books and records of the Trust on the relevant record dates.

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While the Preferred Securities remain in book-entry only form, the relevant record dates shall be one Business Day prior to the relevant Distribution date, and if the Preferred Securities are no longer in book-entry only form, the relevant record dates will be the fifteenth (15th) day of the month immediately preceding the month in which the relevant Distribution date occurs, which record and payment dates correspond to the record and interest payment dates for the Debentures. Distributions payable on any Preferred Securities that are not punctually paid on any Distribution payment date as a result of the Sponsor having failed to make the corresponding interest payment on the Debentures will forthwith cease to be payable to the Person in whose name such Preferred Security is registered on the relevant record date, and such defaulted Distribution will instead be payable to the Person in whose name such Preferred Security is registered on the special record date established by the Regular Trustees, which record date shall correspond to the special record date or other specified date determined in accordance with the Indenture; PROVIDED, HOWEVER, that Distributions shall not be considered payable on any Distribution payment date falling within an Extension Period unless the Sponsor has elected to make a full or partial payment of interest accrued on the Debentures on such Distribution payment date. Subject to any applicable laws and regulations and the provisions of the Declaration, each payment in respect of the Preferred Securities will be made as described in paragraph 9 hereof. If any date on which Distributions are payable on the Preferred Securities is not a Business Day, then payment of the Distribution payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date.

(d) All Distributions paid with respect to the Preferred Securities and the Common Securities will be paid pro rata to the Holders thereof entitled thereto. If an Event of Default has occurred and is continuing, the Preferred Securities shall have a priority over the Common Securities with respect to Distributions.

(e) In the event that there is any money or other property held by or for the Trust that is not

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accounted for under the Declaration, such money or property shall be distributed pro rata among the Holders of the Preferred Securities and the Common Securities.

3. LIQUIDATION DISTRIBUTION UPON DISSOLUTION. In the event of any voluntary or involuntary dissolution, winding-up or termination of the Trust, the Holders of the Preferred Securities and the Common Securities at the date of the dissolution, winding-up or termination, as the case may be, will be entitled to receive pro rata solely out of the assets of the Trust available for distribution to Holders of Preferred Securities and Common Securities, after satisfaction of liabilities to creditors, an amount equal to the aggregate of the stated liquidation amount of \$[ ] per Preferred Security and Common Security plus accrued and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"), unless, in connection with such dissolution, winding-up or termination after satisfaction of liabilities to

creditors, Debentures in an aggregate principal amount equal to the aggregate stated liquidation amount of such Preferred Securities and Common Securities, and bearing accrued and unpaid interest in an amount equal to the accrued and unpaid Distributions on such Preferred Securities and Common Securities, shall be distributed pro rata to the Holders of the Preferred Securities and Common Securities in exchange for such Securities.

If, upon any such dissolution, the Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then the amounts payable directly by the Trust on the Preferred Securities and the Common Securities shall be paid, subject to the next paragraph, on a pro rata basis.

Holders of Common Securities will be entitled to receive Liquidation Distributions upon any such dissolution pro rata with Holders of Preferred Securities, except that, if an Event of Default has occurred and is continuing, the Preferred Securities shall have a priority over the Common Securities with respect to such Liquidation Distribution.

4. REDEMPTION AND DISTRIBUTION OF DEBENTURES. The Preferred Securities and the Common Securities may only be redeemed if Debentures having an aggregate principal amount equal to the aggregate liquidation

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amount of the Preferred Securities and the Common Securities are repaid, redeemed or distributed as set forth below:

[(a) Upon the repayment of the Debentures, in whole or in part, whether at maturity or upon redemption at any time or from time to time on or after [ ], the proceeds of such repayment will be promptly applied to redeem pro rata Preferred Securities and Common Securities having an aggregate liquidation amount equal to the aggregate principal amount of the Debentures so repaid, upon not less than 30 nor more than 60 days notice, at a redemption price of \$[ ] per Preferred Security and Common Security plus an amount equal to accrued and unpaid Distributions thereon to the date of redemption, payable in cash (the "Redemption Price"). The date of any such repayment of Preferred Securities and Common Securities shall be established to coincide with the repayment date of the Debentures.] [Additional Redemption provisions to be provided.]

(b) If fewer than all the outstanding Preferred Securities and Common Securities are to be so redeemed, the Preferred Securities and the Common Securities will be redeemed pro rata, it being understood that Preferred Securities held of record by a Clearing Agency or nominee will be redeemed as described in paragraph 4(f)(ii) below. If a partial redemption would result in the delisting of the Preferred Securities by any national securities exchange or other organization on which the Preferred Securities are then listed, the Sponsor, pursuant to the Indenture, will only redeem Debentures in whole and the Trust will only redeem the Preferred Securities in whole.

(c) If, at any time, a Tax Event or an Investment Company Event (each as hereinafter defined, and each a "Special Event") shall occur and be continuing, the Regular Trustees shall, unless the Debentures are redeemed in the limited circumstances described below, dissolve the Trust and, after satisfaction of creditors, cause Debentures held by the Property Trustee having an aggregate principal amount equal to the aggregate stated liquidation amount of, and bearing accrued and unpaid interest equal to accrued and unpaid Distributions on, and having the same record date for payment as, the Preferred Securities and the Common Securities, to be distributed to the Holders of the Preferred Securities and the Common Securities on a pro

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rata basis in liquidation of such Holders' interests in the Trust, within 90 days following the occurrence of such Special Event (the "90 Day Period"); PROVIDED, HOWEVER, that in the case of the occurrence of a Tax Event, as a condition of such dissolution and distribution, the Regular Trustees shall have received an opinion of a nationally recognized independent tax counsel experienced in such matters (a "No Recognition Opinion"), which opinion may rely on any then applicable published revenue rulings of the Internal Revenue Service, to the effect that the Holders of the Preferred Securities will not recognize any gain or loss for United States Federal income tax purposes as a result of the dissolution of the Trust and distribution of Debentures; and PROVIDED FURTHER that, if at the time there is available to the Sponsor or the Regular Trustees, on behalf of the Trust, the opportunity to eliminate, within the 90 Day Period, the Special Event by taking some ministerial action, such as filing a form or making an election, or pursuing some other similar reasonable measure that has no adverse effect on the Trust, the Sponsor or the Holders of the Preferred Securities (a "Ministerial Action"), the Sponsor or the Regular Trustees, on behalf of the Trust, will pursue such Ministerial Action in lieu of dissolution.

If in the case of the occurrence of a Tax Event, (i) the Regular Trustees have received an opinion (a "Redemption Tax Opinion") of nationally recognized independent tax counsel experienced in such matters that, as a result of a Tax Event, there is more than an insubstantial risk that the Sponsor would be precluded from deducting the interest on the Debentures for United States Federal income tax purposes even if the Debentures were distributed to the Holders of Preferred Securities and Common Securities in liquidation of such

Holder's interest in the Trust as described in this paragraph 4(c) or (ii) the Regular Trustees shall have been informed by such tax counsel that a No Recognition Opinion cannot be delivered to the Trust, the Sponsor shall have the right at any time, upon not less than 30 nor more than 60 days notice, to redeem the Debentures in whole or in part for cash at the Redemption Price within 90 days following the occurrence of such Tax Event, and, promptly following such redemption, Preferred Securities and Common Securities with an aggregate liquidation amount equal to the aggregate principal amount of the Debentures so redeemed will be redeemed by the Trust at the Redemption Price on a pro rata basis; PROVIDED, HOWEVER, that, if at

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the time there is available to the Sponsor or the Regular Trustees, on behalf of the Trust, the opportunity to eliminate, within such 90 day period, the Tax Event by taking some Ministerial Action, the Sponsor, or, the Regular Trustees, on behalf of the Trust, will pursue such measure in lieu of redemption; and PROVIDED FURTHER that the Sponsor shall have no right to redeem the Debentures while the Regular Trustees, on behalf of the Trust, are pursuing such Ministerial Action. The Common Securities will be redeemed pro rata with the Preferred Securities, except that if an Event of Default under the Indenture has occurred and is continuing, the Preferred Securities will have a priority over the Common Securities with respect to payment of the Redemption Price.

"Tax Event" means that the Regular Trustees shall have obtained an opinion of nationally recognized independent tax counsel experienced in such matters (a "Dissolution Tax Opinion") to the effect that [ , on or after [ ] ,] as a result of (a) any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein, (b) any amendment to, or change in, an interpretation or application of any such laws or regulations by any legislative body, court, governmental agency or regulatory authority (including the enactment of any legislation and the publication of any judicial decision or regulatory determination), (c) any interpretation or pronouncement that provides for a position with respect to such laws or regulations that differs from the theretofore generally accepted position or (d) any action taken by any governmental agency or regulatory authority, which amendment or change is enacted, promulgated, issued or effective or which interpretation or pronouncement is issued or adopted or which action is taken, in each case after [ ] , (collectively, a "Change in Tax Law") there is more than an insubstantial risk that (i) the Trust is, or will be within 90 days of the date thereof, subject to United States Federal income tax with respect to income accrued or received on the Debentures, (ii) the Trust is, or will be within 90 days of the date thereof, subject to more than a DE MINIMIS amount of other taxes, duties or other governmental charges or (iii) interest payable by the Sponsor to the Trust on the Debentures is not, or within 90 days of the date thereof will not be, deductible by the Sponsor for United States Federal income tax purposes

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(determined without regard to the use made by the Company of the proceeds of the Debentures). Notwithstanding anything in the previous sentence to the contrary, a Tax Event shall not include any Change in Tax Law that requires the Company for Federal income tax purposes to defer taking a deduction for any OID that accrues with respect to the Debentures until the interest payment related to such OID is paid by the Company in money; PROVIDED that such Change in Tax Law does not create more than an insubstantial risk that the Company will be prevented from taking a deduction for OID accruing with respect to the Debentures at a date that is no later than the date the interest payment related to such OID is actually paid by the Company in money.

"Investment Company Event" means that the Regular Trustees shall have received an opinion of nationally recognized independent counsel experienced in practice under the Investment Company Act that, as a result of the occurrence of a change in law or regulation or a change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority (a "Change in 1940 Act Law"), there is more than an insubstantial risk that the Trust is or will be considered an "investment company" which is required to be registered under the Investment Company Act, which Change in 1940 Act Law becomes effective on or after [ ] .

On the date fixed for any distribution of Debentures, upon dissolution of the Trust, (i) the Preferred Securities will no longer be deemed to be outstanding, and (ii) certificates representing Preferred Securities will be deemed to represent beneficial interests in the Debentures having an aggregate principal amount equal to the stated liquidation amount of, and bearing accrued and unpaid interest equal to accrued and unpaid Distributions on, such Preferred Securities until such certificates are presented to the Sponsor or its agent for transfer or reissuance.

(d) The Trust may not redeem fewer than all the outstanding Preferred Securities unless all accrued and unpaid Distributions have been paid on all Preferred Securities for all monthly Distribution periods terminating on or prior to the date of redemption.

(e) If Debentures are distributed to Holders of the Preferred Securities, the Sponsor, pursuant to the

terms of the Indenture, will use its best efforts to have the Debentures listed on the New York Stock Exchange or on such other exchange as the Preferred Securities were listed immediately prior to the distribution of the Debentures.

(f)(i) Notice of any redemption of, or notice of distribution of Debentures in exchange for, the Preferred Securities and the Common Securities (a "Redemption/ Distribution Notice") will be given by the Regular Trustees on behalf of the Trust by mail to each Holder of Preferred Securities and Common Securities to be redeemed or exchanged not less than 30 nor more than 60 days prior to the date fixed for redemption or exchange thereof. For purposes of the calculation of the date of redemption or exchange and the dates on which notices are given pursuant to this paragraph (f)(i), a Redemption/Distribution Notice shall be deemed to be given on the day such notice is first mailed by first class mail, postage prepaid, to Holders of Preferred Securities and Common Securities. Each Redemption/ Distribution Notice shall be addressed to the Holders of Preferred Securities and Common Securities at the address of each such Holder appearing in the books and records of the Trust. No defect in the Redemption/Distribution Notice or in the mailing of either thereof with respect to any Holder shall affect the validity of the redemption or exchange proceedings with respect to any other Holder.

(ii) In the event that fewer than all the outstanding Preferred Securities are to be redeemed, the Preferred Securities to be redeemed will be redeemed pro rata from each Holder of Preferred Securities, it being understood that, in respect of Preferred Securities registered in the name of and held of record by DTC (or a successor Clearing Agency) or any other nominee, the Preferred Securities will be redeemed from, and the distribution of the proceeds of such redemption will be made to, each Clearing Agency Participant (or person on whose behalf such nominee holds such securities) in accordance with the procedures applied by such agency or nominee.

(iii) Subject to paragraph 9 hereof, if the Trust gives a Redemption/Distribution Notice in respect of a redemption of Preferred Securities as provided in this paragraph 4 (which notice will be irrevocable) then (A) while the Preferred Securities are in book-entry only form, by 12:00 noon, New York City time, on the

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redemption date, provided that the Sponsor has paid the Property Trustee in immediately available funds a sufficient amount of cash in connection with the related redemption or maturity of the Debentures, the Property Trustee will deposit irrevocably with DTC (or any successor Clearing Agency) funds sufficient to pay the applicable Redemption Price with respect to the Preferred Securities and will give DTC (or any successor Clearing Agency) irrevocable instructions and authority to pay the Redemption Price to the Holders of the Preferred Securities and (B) if the Preferred Securities are issued in definitive form, and provided that the Sponsor has paid the Property Trustee in immediately available funds a sufficient amount of cash in connection with the related redemption or maturity of the Debentures, the Property Trustee will pay the relevant Redemption Price to the Holders of such Preferred Securities by check mailed to the address of the relevant Holder appearing on the books and records of the Trust on the redemption date. If a Redemption/Distribution Notice shall have been given and funds deposited as required, if applicable, then immediately prior to the close of business on the redemption date, Distributions will cease to accrue on the Preferred Securities called for redemption, such Preferred Securities will no longer be deemed to be outstanding and all rights of Holders of such Preferred Securities so called for redemption will cease, except the right of the Holders of such Preferred Securities to receive the Redemption Price, but without interest on such Redemption Price. Neither the Trustees nor the Trust shall be required to register or cause to be registered the transfer of any Preferred Securities which have been so called for redemption. If any date fixed for redemption of Preferred Securities is not a Business Day, then payment of the Redemption Price payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day falls in the next calendar year, such payment will be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date fixed for redemption. If the Sponsor fails to repay Debentures on maturity or on the date fixed for redemption or if payment of the Redemption Price in respect of Preferred Securities is improperly withheld or refused and not paid either by the Property Trustee or, pursuant to the Preferred Securities Guarantee, by White Mountains, Distributions on such Preferred Securities will continue to accrue, from the

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original redemption date to the date of payment, in which case the actual payment date will be considered the date fixed for redemption for purposes of calculating the Redemption Price.

(iv) Redemption/Distribution Notices shall be sent by the Regular Trustees on behalf of the Trust to DTC or its nominee (or any successor Clearing Agency or its nominee) if the Global Certificates have been issued or, if Definitive Preferred Security Certificates have been issued, to the Holders of the Preferred Securities.

(v) Upon the date of dissolution of the Trust and distribution of Debentures as a result of the occurrence of a Special Event, Preferred Security Certificates shall be deemed to represent beneficial interests in the Debentures so distributed, and the Preferred Securities will no longer be deemed outstanding and may be canceled by the Regular Trustees. The Debentures so distributed shall have an aggregate principal amount equal to the aggregate liquidation amount of the Preferred Securities so distributed.

(vi) If a partial redemption of the Preferred Securities would result in the delisting of the Preferred Securities by any national securities exchange or other organization on which the Preferred Securities are then listed, the Company pursuant to the Indenture will only redeem Debentures in whole and, as a result, the Trust would only redeem the Preferred Securities in whole.

(vii) Subject to the foregoing and applicable law (including, without limitation, United States Federal and state securities laws), the Sponsor or any of its subsidiaries may at any time and from time to time purchase outstanding Preferred Securities by tender, in the open market or by private agreement.

5. VOTING RIGHTS. (a) Except as provided under paragraph 5(b) below and as otherwise required by law and the Declaration, the Holders of the Preferred Securities will have no voting rights.

(b) If any proposed amendment to the Declaration provides for, or the Regular Trustees otherwise propose to effect, (i) any action that would adversely affect the powers, preferences or special rights of the Securities, whether by way of amendment to the Declaration or otherwise, or (ii) the dissolution,

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winding-up or termination of the Trust, other than in connection with the distribution of Debentures held by the Property Trustee, upon the occurrence of a Special Event or in connection with the redemption of Preferred Securities as a consequence of a redemption of Debentures, then the Holders of outstanding Securities will be entitled to vote on such amendment or proposal as a class and such amendment or proposal shall not be effective except with the approval of the Holders of Securities representing 66-2/3% in liquidation amount of such Securities; PROVIDED, HOWEVER, that (A) if any amendment or proposal referred to in clause (i) above would adversely affect only the Preferred Securities or the Common Securities, then only the affected class will be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of 66-2/3% in liquidation amount of such class of Securities and (B) amendments to the Declaration shall be subject to such further requirements as are set forth in Sections 12.01 and 12.02 of the Declaration.

In the event the consent of the Property Trustee, as the holder of the Debentures, is required under the Indenture with respect to any amendment, modification or termination of the Indenture or the Debentures, the Property Trustee shall request the written direction of the Holders of the Securities with respect to such amendment, modification or termination. The Property Trustee shall vote with respect to such amendment, modification or termination as directed by a Majority in liquidation amount of the Securities voting together as a single class; PROVIDED that where such amendment, modification or termination of the Indenture requires the consent or vote of (1) holders of Debentures representing a specified percentage greater than a majority in principal amount of the Debentures or (2) each holder of Debentures affected thereby, the Property Trustee may only vote with respect to that amendment, modification or termination as directed by, in the case of clause (1) above, the vote of Holders of Securities representing such specified percentage of the aggregate liquidation amount of the Securities, or, in the case of clause (2) above, each Holder of Securities affected thereby; and PROVIDED FURTHER that the Property Trustee shall be under no obligation to take any action in accordance with the directions of the Holders of Securities unless the Property Trustee shall have received, at the expense of the Sponsor, an opinion of

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nationally recognized independent tax counsel recognized as expert in such matters to the effect that the Trust will not be classified for United States Federal income tax purposes as an association taxable as a corporation or a partnership on account of such action and will be treated as a grantor trust for United States Federal income tax purposes following such action.

Subject to Section 2.06 of the Declaration, and the provisions of this and the next succeeding paragraph, the Holders of a Majority in liquidation amount of the Preferred Securities, voting separately as a class, shall have the right to (A) on behalf of all Holders of Preferred Securities, waive any past default that is waivable under the Declaration (subject to, and in accordance with, the Declaration) and (B) direct the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon the Property Trustee under the Declaration, including the right to direct the Property Trustee, as the holder of the Debentures, to (i) direct the time, method and place of conducting any proceeding for any remedy available to the Debenture Trustee, or exercising any trust or power conferred on the Debenture Trustee with respect to the Debentures, (ii) waive any past default that is waivable under Section 6.06 of

the Indenture, or (iii) exercise any right to rescind or annul a declaration that the principal of all the Debentures shall be due and payable; PROVIDED that where the taking of any action under the Indenture requires the consent or vote of (1) holders of Debentures representing a specified percentage greater than a majority in principal amount of the Debentures or (2) each holder of Debentures affected thereby, the Property Trustee may only take such action if directed by, in the case of clause (1) above, the vote of Holders of Preferred Securities representing such specified percentage of the aggregate liquidation amount of the Preferred Securities, or, in the case of clause (2) above, each Holder of Preferred Securities affected thereby. The Property Trustee shall not revoke any action previously authorized or approved by a vote of the Holders of the Preferred Securities. Other than with respect to directing the time, method and place of conducting any proceeding for any remedy available to the Property Trustee or the Debenture Trustee as set forth above, the Property Trustee shall be under no obligation to take any of the foregoing actions at the direction of the Holders of Preferred Securities unless the Property

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Trustee shall have received, at the expense of the Sponsor, an opinion of nationally recognized independent tax counsel recognized as expert in such matters to the effect that the Trust will not be classified for United States Federal income tax purposes as an association taxable as a corporation or a partnership on account of such action and will be treated as a grantor trust for United States Federal income tax purposes following such action. If the Property Trustee fails to enforce its rights under the Declaration (including, without limitation, its rights, powers and privileges as a holder of the Debentures under the Indenture), any Holder of Preferred Securities may, to the extent permitted by law, after a period of 30 days has elapsed from such Holder's written request to the Property Trustee to enforce such rights, institute a legal proceeding directed against the Sponsor to enforce the Property Trustee's rights under the Declaration, without first instituting a legal proceeding against the Property Trustee or any other Person. Notwithstanding the foregoing, if an Event of Default has occurred and is continuing and such event is attributable to the failure of the Sponsor to pay interest or principal on the Debentures on the date such interest or principal is otherwise payable (or in the case of redemption, the redemption date), then a Holder of Preferred Securities may directly institute suit against the Sponsor for enforcement of payment to such Holder of the principal of or interest on Debentures having a principal amount equal to the aggregate liquidation amount of the Preferred Securities held by such Holder on or after the respective due date specified in the Debentures. The Holders of Preferred Securities will not be able to exercise directly against the Sponsor any other remedy available to the Holders of the Debentures unless the Property Trustee first fails to do so.

A waiver of an Indenture Event of Default by the Property Trustee at the direction of the Holders of the Preferred Securities will constitute a waiver of the corresponding Event of Default under the Declaration in respect of the Securities.

Any required approval or direction of Holders of Preferred Securities may be given at a separate meeting of Holders of Preferred Securities convened for such purpose, at a meeting of all of the Holders of Securities of the Trust or pursuant to written consent. The Regular Trustees will cause a notice of any meeting at which

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Holders of Preferred Securities are entitled to vote, or of any matter upon which action by written consent of such Holders is to be taken, to be mailed to each Holder of record of Preferred Securities. Each such notice will include a statement setting forth (i) the date of such meeting or the date by which such action is to be taken, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote or of such matter upon which written consent is sought and (iii) instructions for the delivery of proxies or consents.

No vote or consent of the Holders of Preferred Securities will be required for the Trust to redeem and cancel Preferred Securities in accordance with the Declaration.

Notwithstanding that Holders of Preferred Securities are entitled to vote or consent under any of the circumstances described above, any of the Preferred Securities at such time that are owned by the Sponsor or by any entity directly or indirectly controlling or controlled by or under direct or indirect common control with the Sponsor shall not be entitled to vote or consent and shall, for purposes of such vote or consent, be treated as if they were not outstanding.

Holders of the Preferred Securities will have no rights to increase or decrease the number of Trustees or to appoint, remove or replace a Trustee, which voting rights are vested exclusively in the Holders of the Common Securities.

[6. CONVERSION RIGHTS. To be provided if applicable.]

7. PRO RATA TREATMENT. A reference in these terms of the Preferred Securities to any payment, distribution or treatment as being "pro rata" shall mean pro rata to each Holder of Securities according to the aggregate liquidation amount of the Securities held by the relevant Holder in relation to



the aggregate liquidation amount of all Securities outstanding unless, in relation to a payment, an Event of Default has occurred and is continuing, in which case any funds available to make such payment shall be paid first to each Holder of the Preferred Securities pro rata according to the aggregate liquidation amount of Preferred Securities held by the relevant Holder relative

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to the aggregate liquidation amount of all Preferred Securities outstanding, and only after satisfaction of all amounts owed to the Holders of the Preferred Securities, to each Holder of Common Securities pro rata according to the aggregate liquidation amount of Common Securities held by the relevant Holder relative to the aggregate liquidation amount of all Common Securities outstanding.

8. RANKING. The Preferred Securities rank pari passu and payment thereon will be made pro rata with the Common Securities except that where an Event of Default occurs and is continuing, the rights of Holders of Preferred Securities to payment in respect of Distributions and payments upon liquidation, redemption or otherwise rank in priority to the rights of Holders of the Common Securities.

9. MERGERS, CONSOLIDATIONS OR AMALGAMATIONS. The Trust may not consolidate, amalgamate, merge with or into, or be replaced by, or sell, transfer or lease all or substantially all its properties and assets to, any Person.

10. TRANSFER, EXCHANGE, METHOD OF PAYMENTS. Payment of Distributions and payments on redemption of the Preferred Securities will be payable, the transfer of the Preferred Securities will be registrable, and Preferred Securities will be exchangeable for Preferred Securities of other denominations of a like aggregate liquidation amount, at the principal corporate trust office of the Property Trustee in The City of New York; PROVIDED that payment of Distributions may be made at the option of the Regular Trustees on behalf of the Trust by check mailed to the address of the Persons entitled thereto and that the payment on redemption of any Preferred Security will be made only upon surrender of such Preferred Security to the Property Trustee.

11. ACCEPTANCE OF INDENTURE AND PREFERRED GUARANTEE. Each Holder of Preferred Securities, by the acceptance thereof, agrees to the provisions of (i) the Preferred Guarantee, including the subordination provisions thereof and (ii) the Junior Subordinated Indenture and the Debentures, including the subordination provisions of the Indenture.

12. NO PREEMPTIVE RIGHTS. The Holders of Preferred Securities shall have no preemptive rights to

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subscribe to any additional Preferred Securities or Common Securities.

13. MISCELLANEOUS. These terms shall constitute a part of the Declaration. The Trust will provide a copy of the Declaration and the Indenture to a Holder without charge on written request to the Trust at its principal place of business.

ANNEX I

[IF THE PREFERRED SECURITY IS TO BE A GLOBAL CERTIFICATE  
INSERT--THIS PREFERRED SECURITY IS A GLOBAL CERTIFICATE WITHIN THE MEANING OF THE DECLARATION HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY ("DTC") OR A NOMINEE OF DTC. THIS PREFERRED SECURITY IS EXCHANGEABLE FOR PREFERRED SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN DTC OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE DECLARATION AND NO TRANSFER OF THIS PREFERRED SECURITY (OTHER THAN A TRANSFER OF THIS PREFERRED SECURITY AS A WHOLE BY DTC TO A NOMINEE OF DTC OR BY A NOMINEE OF DTC TO DTC OR ANOTHER NOMINEE OF DTC) MAY BE REGISTERED EXCEPT IN SUCH LIMITED CIRCUMSTANCES.

UNLESS THIS PREFERRED SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TO THE TRUST OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY PREFERRED SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC OR ANY SUCCESSOR DEPOSITORY AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC OR ANY SUCCESSOR DEPOSITORY, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY A PERSON IS WRONGFUL, SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

Preferred Securities:

Number:

CUSIP NO.:

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CERTIFICATE EVIDENCING PREFERRED SECURITIES

OF

FUND AMERICAN TRUST III

% PREFERRED SECURITIES

(LIQUIDATION AMOUNT \$[ ] PER PREFERRED SECURITY)

Fund American Trust III, a statutory business trust created under the laws of the State of Delaware (the "Trust"), hereby certifies that [ ] (the "Holder") is the registered owner of [ ] preferred securities of the Trust representing undivided beneficial interests in the assets of the Trust designated the [ ]% Preferred Securities (liquidation amount \$[ ] per Preferred Security) (the "Preferred Securities"). The transfer of Preferred Securities is registrable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for registration of transfer. The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Securities are set forth in, and this certificate and the Preferred Securities represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Amended and Restated Declaration of Trust of the Trust dated as of \_\_\_\_\_, 2001, as the same may be amended from time to time (the "Declaration"), including the designation of the terms of Preferred Securities as set forth in Exhibit B thereto. The Preferred Securities and the Common Securities issued by the Trust pursuant to the Declaration represent undivided beneficial interests in the assets of the Trust, including the Debentures (as defined in the Declaration) issued by Fund American Companies, Inc., a Delaware corporation (the "Sponsor"), to the Trust pursuant to the Indenture referred to in the Declaration. The Holder is entitled to the benefits of the Guarantee Agreement of White Mountains Insurance Group, Ltd., a corporation existing under the laws of Bermuda ("White Mountains"), dated as of [ ] (the "Guarantee"), to the extent provided therein. The Trust will furnish a copy of the Declaration, the Guarantee and the Indenture to the Holder without charge, upon written request to the Trust, at its principal place of business or registered office.

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The Holder of this Certificate, by accepting this Certificate, is deemed to have (i) agreed to the terms of the Indenture and the Debentures, including that the Debentures are subordinate and junior in right of payment to all Senior Indebtedness (as defined in the Indenture) as and to the extent provided in the Indenture and (ii) agreed to the terms of the Guarantee, including that the Guarantee is subordinate and junior in right of payment to all other indebtedness, liabilities and obligations of White Mountains, including the Debentures, except those made PARI PASSU or subordinate by their terms, and senior to all capital stock now or hereafter issued by the Sponsor and to any guarantee now or hereafter entered into by the Sponsor in respect of any of its capital stock.

Upon receipt of this certificate, the Holder is bound by the Declaration and is entitled to the benefits thereunder.

IN WITNESS WHEREOF, the Trustees of the Trust have executed this certificate this \_\_\_\_\_ day of \_\_\_\_\_.

Fund American Trust III,

by

-----  
Name:  
Title: Regular Trustee

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by

-----  
Name:  
Title: Regular Trustee

Dated:

Countersigned and Registered:

[ ], as  
Transfer Agent and Registrar

by  
-----  
Authorized Officer

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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Preferred

Security to:

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-----

(Insert assignee's social security or tax identification number)

-----  
-----

(Insert address and zip code of assignee)

and irrevocably appoints

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-----

agent to transfer this Preferred Security Certificate on the books of the Trust. The agent may substitute another to act for him or her.

Date: -----

Signature: -----

NOTICE: THE SIGNATURE(S) TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME(S) AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATEVER.

EXHIBIT C

TERMS OF  
COMMON SECURITIES

Pursuant to Section 7.01 of the Amended and Restated Declaration of Trust of Fund American Trust III dated as of [ ] (as amended from time to time, the "Declaration"), the designations, rights, privileges, restrictions, preferences and other terms and provisions of the Common Securities are set forth below (each capitalized term used but not defined herein having the meaning set forth in the Declaration):

1. DESIGNATION AND NUMBER. Common Securities of the Trust with an aggregate liquidation amount in the assets of the Trust of up to [ ] Dollars (\$[ ]) (including up to [ ] Dollars (\$[ ]) issuable upon exercise of the overallotment option set forth in the Underwriting Agreement) and a liquidation amount in the assets of the Trust of \$[ ] per Common Security are hereby designated as "[ ]% Common Trust Securities". The Common Security Certificates evidencing the Common Securities shall be substantially in the form attached hereto as Annex I, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice. The Common Securities are to be issued and sold to Fund American Companies, Inc. ("the Sponsor"). In connection with the issuance and sale of the Preferred Securities and the Common Securities, the Trust will purchase, as trust assets, Debentures of the Sponsor having an aggregate principal amount equal to the aggregate liquidation amount of the Preferred Securities and the Common Securities so issued, and bearing interest at an annual rate equal to the annual Distribution rate on the Preferred Securities and the Common Securities and having payment and redemption provisions which correspond to the payment and redemption provisions of the Preferred Securities and the Common Securities.

2. DISTRIBUTIONS. (a) Distributions payable on each Common Security will be payable at a [fixed rate per annum of [ ]] [floating rate] (the "Coupon Rate") of the stated liquidation amount of \$[ ] per Common Security. Distributions in arrears for more than one month will bear interest at the Coupon Rate (to the extent permitted by applicable law), compounded monthly. The term "Distributions" as used in these terms means such periodic cash distributions and any such interest payable unless otherwise stated. A Distribution will be

made by the Property Trustee only to the extent that interest payments are made in respect of the Debentures held by the Property Trustee. The amount of Distributions payable for any period will be computed on the basis of a 360-day year of twelve 30-day months, and for any Distribution period shorter than a 30-day period for which Distributions are computed, Distributions will be computed on the basis of the actual number of days elapsed.

(b) Distributions on the Common Securities will be cumulative, will accrue from [ ], and will be payable [monthly] [quarterly] [semi-annually] in arrears, on the first day of each period, commencing on [ ], except as otherwise described below, but only if and to the extent that interest payments are made in respect of the Debentures held by the Property Trustee. So long as the Sponsor is not in default in the payment of interest on the Debentures, the Sponsor shall have the right under the Indenture for the Debentures to defer payments of interest by extending the interest payment period from time to time

on the Debentures for a period not to exceed [60] [20] [10] consecutive [monthly] [quarterly] [semi-annual] interest periods (each, an "Extension Period"), PROVIDED, HOWEVER, that an Extension Period may not extend beyond the maturity of the Debentures. During any such Extension Period, [monthly] [quarterly] [semi-annually] Distributions will continue to accrue with interest thereon (to the extent permitted by applicable law) at the Coupon Rate, compounded [monthly] [quarterly] [semi-annually]. Prior to the termination of any such Extension Period, the Sponsor may further extend such Extension Period; PROVIDED that such Extension Period, together with all such previous and further extensions thereof, may not exceed [60] [20] [10] consecutive monthly interest periods. Upon the termination of any Extension Period and the payment of all amounts then due, the Sponsor may commence a new Extension Period, subject to the above requirements. Payments of accrued Distributions will be payable to Holders of Common Securities as they appear on the books and records of the Trust on the record date for the first interest payment date occurring at or after the end of the Extension Period.

(c) Distributions on the Common Securities will be payable promptly by the Property Trustee (or other Paying Agent) upon receipt of immediately available funds to the Holders thereof as they appear on the books and

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records of the Trust on the relevant record dates which will be one Business Day prior to the relevant Distribution date unless the Preferred Securities are no longer in book-entry only form, in which event the relevant record dates will be the fifteenth (15th) day of the month immediately preceding the month in which the relevant Distribution date occurs, which record and payment dates correspond to the record and interest payment dates for the Debentures. Distributions payable on any Common Securities that are not punctually paid on any Distribution date as a result of the Sponsor having failed to make the corresponding interest payment on the Debentures will forthwith cease to be payable to the Person in whose name such Common Security is registered on the relevant record date, and such defaulted Distribution will instead be payable to the Person in whose name such Common Security is registered on the special record date established by the Regular Trustees, which record date shall correspond to the special record date or other specified date determined in accordance with the Indenture; PROVIDED, HOWEVER, that Distributions shall not be considered payable on any Distribution payment date falling within an Extension Period unless the Sponsor has elected to make a full or partial payment of interest accrued on the Debentures on such Distribution payment date. Subject to any applicable laws and regulations and the provisions of the Declaration, each payment in respect of the Common Securities will be made as described in paragraph 9 hereof. If any date on which Distributions are payable on the Common Securities is not a Business Day, then payment of the Distribution payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date.

(d) All Distributions paid with respect to the Common Securities and the Preferred Securities will be paid pro rata to the Holders thereof entitled thereto. If an Event of Default has occurred and is continuing, the Preferred Securities shall have a priority over the Common Securities with respect to Distributions.

(e) In the event that there is any money or other property held by or for the Trust that is not

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accounted for under the Declaration, such money or property shall be distributed pro rata among the Holders of the Preferred Securities and the Common Securities.

3. LIQUIDATION DISTRIBUTION UPON DISSOLUTION. In the event of any voluntary or involuntary dissolution, winding-up or termination of the Trust, the Holders of the Preferred Securities and Common Securities at the date of the dissolution, winding-up or termination, as the case may be, will be entitled to receive pro rata solely out of the assets of the Trust available for distribution to Holders of Preferred Securities and the Common Securities, after satisfaction of liabilities to creditors, an amount equal to the aggregate of the stated liquidation amount of \$[ ] per Preferred Security and Common Security plus accrued and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"), unless, in connection with such dissolution, winding-up or termination, after paying after satisfaction of liabilities to creditors, Debentures in an aggregate principal amount equal to the aggregate stated liquidation amount of such Preferred Securities and Common Securities, and bearing accrued and unpaid interest in an amount equal to the accrued and unpaid Distributions on such Preferred Securities and Common Securities, shall be distributed pro rata to the Holders of the Preferred Securities and Common Securities in exchange for such Securities.

If, upon any such dissolution, the Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then the amounts payable directly by the Trust on the Preferred Securities and the Common Securities shall be paid, subject to the next paragraph, on a pro rata basis.

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Holders of Common Securities will be entitled to receive Liquidation Distributions upon any such dissolution pro rata with Holders of Preferred Securities, except that, if an Event of Default has occurred and is continuing, the Preferred Securities shall have a priority over the Common Securities with respect to such Liquidation Distribution.

4. REDEMPTION AND DISTRIBUTION OF DEBENTURES. The Preferred Securities and the Common Securities may only be redeemed if Debentures having an aggregate principal amount equal to the aggregate liquidation

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amount of the Preferred Securities and the Common Securities are repaid, redeemed or distributed as set forth below:

[(a) Upon the repayment of the Debentures, in whole or in part, whether at maturity or upon redemption at any time or from time to time on or after [ ], the proceeds of such repayment will be promptly applied to redeem pro rata Preferred Securities and Common Securities having an aggregate liquidation amount equal to the aggregate principal amount of the Debentures so repaid, upon not less than 30 nor more than 60 days notice, at a redemption price of \$[ ] per Preferred Security and Common Security plus an amount equal to accrued and unpaid Distributions thereon to the date of redemption, payable in cash (the "Redemption Price"). The date of any such repayment of Preferred Securities and Common Securities shall be established to coincide with the repayment or redemption date of the Debentures.] [Other applicable redemption provisions, if any.]

(b) If fewer than all the outstanding Preferred Securities and Common Securities are to be so redeemed, the Preferred Securities and the Common Securities will be redeemed pro rata and, with respect to the Common Securities to be redeemed, as described in paragraph 4(e)(ii) below. If a partial redemption would result in the delisting of the Preferred Securities by any national securities exchange or other organization on which the Preferred Securities are then listed, the Sponsor, pursuant to the Indenture, will only redeem Debentures in whole and the Trust will only redeem the Common Securities in whole.

(c) If, at any time, a Tax Event or an Investment Company Event (each, as hereinafter defined and, each, a "Special Event") shall occur and be continuing, the Regular Trustees shall, unless the Debentures are redeemed in the limited circumstances described below, dissolve the Trust and, after satisfaction of creditors, cause Debentures held by the Property Trustee having an aggregate principal amount equal to the aggregate stated liquidation amount of, and bearing accrued and unpaid interest equal to accrued and unpaid Distributions on, and having the same record date for payment as, the Preferred Securities and the Common Securities, to be distributed to the Holders of the Preferred Securities and the Common Securities on a pro

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rata basis in liquidation of such Holders' interests in the Trust, within 90 days following the occurrence of such Special Event (the "90 Day Period"); PROVIDED, HOWEVER, that in the case of the occurrence of a Tax Event, as a condition of such dissolution and distribution, the Regular Trustees shall have received an opinion of a nationally recognized independent tax counsel experienced in such matters (a "No Recognition Opinion"), which opinion may rely on any then applicable published revenue rulings of the Internal Revenue Service, to the effect that the Holders of the Preferred Securities will not recognize any gain or loss for United States Federal income tax purposes as a result of the dissolution of the Trust and distribution of Debentures; and PROVIDED FURTHER that, if at the time there is available to the Sponsor or the Regular Trustees, on behalf of the Trust, the opportunity to eliminate, within such 90 Day Period, the Special Event by taking some ministerial action, such as filing a form or making an election, or pursuing some other similar reasonable measure that has no adverse effect on the Trust, the Sponsor or the Holders of the Preferred Securities (a "Ministerial Action"), the Sponsor or the Regular Trustees, on behalf of the Trust, will pursue such Ministerial Action in lieu of dissolution.

If in the case of the occurrence of a Tax Event, (i) the Regular Trustees have received an opinion (a "Redemption Tax Opinion") of nationally recognized independent tax counsel experienced in such matters that, as a result of a Tax Event, there is more than an insubstantial risk that the Sponsor would be precluded from deducting the interest on the Debentures for United States Federal income tax purposes even if the Debentures were distributed to the Holders of Preferred Securities and Common Securities in liquidation of such Holders' interest in the Trust as described in this paragraph 4(c) or (ii) the Regular Trustees shall have been informed by such tax counsel that a No Recognition Opinion cannot be delivered to the Trust, the Sponsor shall have the right at any time, upon not less than 30 nor more than 60 days notice, to redeem the Debentures in whole or in part for cash at the Redemption Price within 90 days following the occurrence of such Tax Event, and, promptly following such redemption, Preferred Securities and Common Securities with an aggregate liquidation amount equal to the aggregate principal amount of the Debentures so redeemed will be redeemed by the Trust at the Redemption Price on a pro rata basis; PROVIDED, HOWEVER, that, if at

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the time there is available to the Sponsor or the Regular Trustees on behalf of the Trust, the opportunity to eliminate, within such 90 Day Period, the Tax Event by taking some Ministerial Action, the Sponsor or the Holders of the Preferred Securities, the Sponsor or the Regular Trustees, on behalf of the Trust, will pursue such measure in lieu of redemption; and PROVIDED FURTHER, that the Sponsor shall have no right to redeem the Debentures while the Regular Trustees, on behalf of the Trust, are pursuing such Ministerial Action. The Common Securities will be redeemed pro rata with the Preferred Securities, except that if an Event of Default under the Indenture has occurred and is continuing, the Preferred Securities will have a priority over the Common Securities with respect to payment of the Redemption Price.

"Tax Event" means that the Regular Trustees shall have obtained an opinion of nationally recognized independent tax counsel experienced in such matters (a "Dissolution Tax Opinion") to the effect that, on or after [ ], as a result of (a) any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein, (b) any amendment to, or change (including any announced prospective change) in, an interpretation or application of any such laws or regulations by any legislative body, court, governmental agency or regulatory authority (including the enactment of any legislation and the publication of any judicial decision or regulatory determination), (c) any interpretation or pronouncement that provides for a position with respect to such laws or regulations that differs from the theretofore generally accepted position or (d) any action taken by any governmental agency or regulatory authority, which amendment or change is enacted, promulgated, issued or effective or which interpretation or pronouncement is issued or announced or which action is taken, in each case on or after [ ], there is more than an insubstantial risk that (i) the Trust is, or will be within 90 days of the date thereof, subject to United States Federal income tax with respect to income accrued or received on the Debentures, (ii) the Trust is, or will be within 90 days of the date thereof, subject to more than a DE MINIMIS amount of taxes, duties or other governmental charges or (iii) interest payable by the Sponsor to the Trust on the Debentures is not, or within 90 days of the date thereof

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will not be, deductible by the Sponsor for United States Federal income tax purposes.

"Investment Company Event" means that the Regular Trustees shall have received an opinion of nationally recognized independent counsel experienced in practice under the Investment Company Act that, as a result of the occurrence of a change in law or regulation or a change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority (a "Change in 1940 Act Law"), there is more than an insubstantial risk that the Trust is or will be considered an Investment Company which is required to be registered under the Investment Company Act, which Change in 1940 Act Law becomes effective on or after [ ].

On the date fixed for any distribution of Debentures, upon dissolution of the Trust, (i) the Common Securities will no longer be deemed to be outstanding and (ii) any certificates representing Common Securities will be deemed to represent beneficial interests in the Debentures having an aggregate principal amount equal to the stated liquidation amount of, and bearing accrued and unpaid interest equal to accrued and unpaid Distributions on, such Common Securities until such certificates are presented to the Sponsor or its agent for transfer or reissuance.

(d) The Trust may not redeem fewer than all the outstanding Common Securities unless all accrued and unpaid Distributions have been paid on all Common Securities for all monthly Distribution periods terminating on or prior to the date of redemption.

(e)(i) Notice of any redemption of, or notice of distribution of Debentures in exchange for, the Preferred Securities and the Common Securities (a "Redemption/ Distribution Notice") will be given by the Regular Trustees on behalf of the Trust by mail to each Holder of Preferred Securities and Common Securities to be redeemed or exchanged not less than 30 nor more than 60 days prior to the date fixed for redemption or exchange thereof. For purposes of the calculation of the date of redemption or exchange and the dates on which notices are given pursuant to this paragraph (e)(i), a Redemption/Distribution Notice shall be deemed to be given on the day such notice is first mailed by first-class mail, postage prepaid, to Holders of Preferred

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Securities and Common Securities. Each Redemption/ Distribution Notice shall be addressed to the Holders of Preferred Securities and Common Securities at the address of each such Holder appearing in the books and records of the Trust. No defect in the Redemption/Distribution Notice or in the mailing of either thereof with respect to any Holder shall affect the validity of the redemption or exchange proceedings with respect to any other Holder.

(ii) In the event that fewer than all the outstanding Common Securities are to be redeemed, the Common Securities to be redeemed will be redeemed pro rata from each Holder of Common Securities (subject to adjustment

to eliminate fractional Common Securities).

(iii) If the Trust gives a Redemption/Distribution Notice in respect of a redemption of Common Securities as provided in this paragraph 4 (which notice will be irrevocable), then immediately prior to the close of business on the redemption date, PROVIDED that the Sponsor has paid to the Property Trustee in immediately available funds a sufficient amount of cash in connection with the related redemption or maturity of the Debentures, Distributions will cease to accrue on the Common Securities called for redemption, such Common Securities will no longer be deemed to be outstanding and all rights of Holders of such Common Securities so called for redemption will cease, except the right of the Holders of such Common Securities to receive the Redemption Price, but without interest on such Redemption Price. Neither the Trustees nor the Trust shall be required to register or cause to be registered the transfer of any Common Securities which have been so called for redemption. If any date fixed for redemption of Common Securities is not a Business Day, then payment of the Redemption Price payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay), except that, if such Business Day falls in the next calendar year, such payment will be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date fixed for redemption. If payment of the Redemption Price in respect of Common Securities is improperly withheld or refused and not paid by the Property Trustee, Distributions on such Common Securities will continue to accrue, from the original redemption date to the date of payment, in which case the actual payment date will be considered the date fixed for

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redemption for purposes of calculating the Redemption Price.

(iv) Redemption/Distribution Notices shall be sent by the Regular Trustees on behalf of the Trust to the Holders of the Common Securities.

(v) Upon the date of dissolution of the Trust and distribution of Debentures as a result of the occurrence of a Special Event, Common Security Certificates shall be deemed to represent beneficial interests in the Debentures so distributed, and the Common Securities will no longer be deemed outstanding and may be canceled by the Regular Trustees. The Debentures so distributed shall have an aggregate principal amount equal to the aggregate liquidation amount of the Common Securities so distributed.

5. VOTING RIGHTS. (a) Except as provided under paragraph 5(b) below and as otherwise required by law and the Declaration, the Holders of the Common Securities will have no voting rights.

(b) Holders of Common Securities have the sole right under the Declaration to increase or decrease the number of Trustees, and to appoint, remove or replace a Trustee, any such increase, decrease, appointment, removal or replacement to be approved by Holders of Common Securities representing a Majority in liquidation amount of the Common Securities.

If any proposed amendment to the Declaration provides for, or the Regular Trustees otherwise propose to effect, (i) any action that would adversely affect the powers, preferences or special rights of the Securities, whether by way of amendment to the Declaration or otherwise, or (ii) the dissolution, winding-up or termination of the Trust, other than in connection with the distribution of Debentures held by the Property Trustee, upon the occurrence of a Special Event or in connection with the redemption of Common Securities as a consequence of a redemption of Debentures, then the Holders of outstanding Securities will be entitled to vote on such amendment or proposal as a class and such amendment or proposal shall not be effective except with the approval of the Holders of Securities representing 66-2/3% in liquidation amount of such Securities; PROVIDED, HOWEVER, that (A) if any amendment or proposal referred to in clause (i) above would adversely affect

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only the Preferred Securities or the Common Securities, then only the affected class will be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of 66-2/3% in liquidation amount of such class of Securities, (B) the rights of Holders of Common Securities under Article V of the Declaration to increase or decrease the number of, and to appoint, replace or remove, Trustees shall not be amended without the consent of each Holder of Common Securities, and (C) amendments to the Declaration shall be subject to such further requirements as are set forth in Sections 12.01 and 12.02 of the Declaration.

In the event the consent of the Property Trustee as the holder of the Debentures, is required under the Indenture with respect to any amendment, modification or termination of the Indenture or the Debentures, the Property Trustee shall request the written direction of the Holders of the Securities with respect to such amendment, modification or termination. The Property Trustee shall vote with respect to such amendment, modification or termination as directed by a Majority in liquidation amount of the Securities voting together as a single class; PROVIDED that where such amendment, modification or termination of the Indenture requires the consent or vote of (1) holders of Debentures representing a specified percentage greater than a majority in principal amount of the Debentures or (2) each holder of Debentures affected thereby, the Property Trustee may vote only with respect to that amendment,

modification or termination as directed by, in the case of clause (1) above, the vote of Holders of Securities representing such specified percentage of the aggregate liquidation amount of the Securities, or, in the case of clause (2) above, each Holder of Securities affected thereby; and PROVIDED, FURTHER, that the Property Trustee shall be under no obligation to take any action in accordance with the directions of the Holders of the Securities unless the Property Trustee shall have received, at the expense of the Sponsor, an opinion of nationally recognized independent tax counsel recognized as an expert in such matters to the effect that the Trust will not be classified for United States Federal income tax purposes as an association taxable as a corporation or a partnership on account of such action and will be treated as a grantor trust for United States Federal income tax purposes following such action.

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Subject to Section 2.06 of the Declaration and the provisions of this and the next succeeding paragraph, the Holders of a Majority in liquidation amount of the Common Securities, voting separately as a class, shall have the right to (A) on behalf of all Holders of Common Securities, waive any past default that is waivable under the Declaration (subject to, and in accordance with, the Declaration) and (B) direct the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon the Property Trustee under the Declaration, including the right to direct the Property Trustee, as holder of the Debentures, to (i) direct the time, method and place of conducting any proceeding for any remedy available to the Debenture Trustee, or exercising any trust or power conferred on the Debenture Trustee with respect to the Debentures, (ii) waive any past default and its consequences that is waivable under Section 6.06 of the Indenture, or (iii) exercise any right to rescind or annul a declaration that the principal of all the Debentures shall be due and payable; PROVIDED that where the taking of any action under the Indenture requires the consent or vote of (1) holders of Debentures representing a specified percentage greater than a majority in principal amount of the Debentures or (e) each holder of Debentures affected thereby, the Property Trustee may take such action only if directed by, in the case of clause (1) above, the vote of Holders of Common Securities representing such specified percentage of the aggregate liquidation amount of the Common Securities, or, in the case of clause (2) above, each Holder of Common Securities affected thereby. Pursuant to this paragraph, the Property Trustee shall not revoke, or take any action inconsistent with, any action previously authorized or approved by a vote of the Holders of the Preferred Securities, and shall not take any action in accordance with the direction of the Holders of the Common Securities under this paragraph if the action is prejudicial to the Holders of Preferred Securities. Other than with respect to directing the time, method and place of conducting any proceeding for any remedy available to the Property Trustee or the Debenture Trustee as set forth above, the Property Trustee shall be under no obligation to take any of the foregoing actions at the direction of the Holders of Common Securities unless the Property Trustee shall have received, at the expense of the Sponsor, an opinion of nationally recognized independent tax counsel recognized as expert in such matters to the effect that the Trust

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will not be classified for United States Federal income tax purposes as an association taxable as a corporation or a partnership on account of such action and will be treated as a grantor trust for United States income tax purposes following such action.

Notwithstanding any other provision of these terms, each Holder of Common Securities will be deemed to have waived any Event of Default with respect to the Common Securities and its consequences until all Events of Default with respect to the Preferred Securities have been cured, waived by the Holders of Preferred Securities as provided in the Declaration or otherwise eliminated, and until all Events of Default with respect to the Preferred Securities have been so cured, waived by the Holders of Preferred Securities or otherwise eliminated, the Property Trustee will be deemed to be acting solely on behalf of the Holders of Preferred Securities and only the Holders of the Preferred Securities will have the right to direct the Property Trustee in accordance with the terms of the Declaration or of the Securities. In the event that any Event of Default with respect to the Preferred Securities is waived by the Holders of Preferred Securities as provided in the Declaration, the Holders of Common Securities agree that such waiver shall also constitute the waiver of such Event of Default with respect to the Common Securities for all purposes under the Declaration without any further act, vote or consent of the Holders of the Common Securities.

A waiver of an Indenture Event of Default by the Property Trustee at the direction of the Holders of the Preferred Securities will constitute a waiver of the corresponding Event of Default under the Declaration in respect of the Securities.

Any required approval of Holders of Common Securities may be given at a separate meeting of Holders of Common Securities convened for such purpose, at a meeting of all of the Holders of Securities of the Trust or pursuant to written consent. The Regular Trustees will cause a notice of any meeting at which Holders of Common Securities are entitled to vote, or of any matter upon which action by written consent of such Holders is to be taken, to be mailed to each Holder of record of Common Securities. Each such notice will include a statement setting forth (i) the date of such meeting or the date by which such action is to be taken, (ii) a description of any resolution proposed for



such meeting on which such Holders are entitled to vote or of such matter upon which written consent is sought and (iii) instructions for the delivery of proxies or consents.

No vote or consent of the Holders of Common Securities will be required for the Trust to redeem and cancel Common Securities in accordance with the Declaration.

6. CONVERSION RIGHTS. [to be provided if applicable.]

7. PRO RATA TREATMENT. A reference in these terms of the Common Securities to any payment, distribution or treatment as being "pro rata" shall mean pro rata to each Holder of Securities according to the aggregate liquidation amount of the Securities held by the relevant Holder in relation to the aggregate liquidation amount of all Securities outstanding unless, in relation to a payment, an Event of Default has occurred and is continuing, in which case any funds available to make such payment shall be paid first to each Holder of the Preferred Securities pro rata according to the aggregate liquidation amount of Preferred Securities held by the relevant Holder relative to the aggregate liquidation amount of all Preferred Securities outstanding, and only after satisfaction of all amounts owed to the Holders of the Preferred Securities, to each Holder of Common Securities pro rata according to the aggregate liquidation amount of Common Securities held by the relevant Holder relative to the aggregate liquidation amount of all Common Securities outstanding.

8. RANKING. The Common Securities rank PARI PASSU and payment thereon will be made pro rata with the Preferred Securities except that where an Event of Default occurs and is continuing, the rights of Holders of Common Securities to payment in respect of Distributions and payments upon liquidation, redemption or otherwise are subordinate to the rights of Holders of the Preferred Securities.

9. MERGERS, CONSOLIDATIONS OR AMALGAMATIONS. The Trust may not consolidate, amalgamate, merge with or into, or be replaced by, or sell, transfer or lease all or substantially all its properties and assets to, any Person.

10. TRANSFERS, EXCHANGES, METHOD PAYMENTS. Payment of Distributions and payments on redemption of the Common Securities will be payable, the transfer of the Common Securities will be registrable, and Common Securities will be exchangeable for Common Securities of other denominations of a like aggregate liquidation amount, at the principal corporate trust office of the Property Trustee in The City of New York; PROVIDED that payment of Distributions may be made at the option of the Regular Trustees on behalf of the Trust by check mailed to the address of the Persons entitled thereto and that the payment on redemption of any Common Security will be made only upon surrender of such Common Security to the Property Trustee. Notwithstanding the foregoing, transfers of Common Securities are subject to conditions set forth in Section 9.01(c) of the Declaration.

11. ACCEPTANCE OF INDENTURE. Each Holder of Common Securities, by the acceptance thereof, agrees to the provisions of the Indenture and the Debentures, including the subordination provisions thereof.

12. NO PREEMPTIVE RIGHTS. The Holders of Common Securities shall have no preemptive rights to subscribe to any additional Common Securities or Preferred Securities.

13. MISCELLANEOUS. These terms shall constitute a part of the Declaration. The Trust will provide a copy of the Declaration and the Indenture to a Holder without charge on written request to the Trust at its principal place of business.

Annex I

TRANSFER OF THIS CERTIFICATE  
IS SUBJECT TO THE CONDITIONS  
SET FORTH IN THE DECLARATION  
REFERRED TO BELOW

Number: Common Securities:

CERTIFICATE EVIDENCING COMMON SECURITIES

OF

FUND AMERICAN TRUST III

[ ]% COMMON TRUST SECURITIES  
(LIQUIDATION AMOUNT \$[ ] PER COMMON SECURITY)

Fund American Trust III, a business trust formed under the laws of the State of Delaware (the "Trust"), hereby certifies that Fund American Companies, Inc. (the "Holder"), is the registered owner of [ ] common securities of the Trust representing undivided beneficial interests in the assets of the Trust designated the "[ ]% Common Trust Securities" (liquidation amount \$[ ] per Common Security) (the "Common Securities"). The transfer of Common Securities is registrable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for registration of transfer and satisfaction of the other conditions set forth in the Declaration (as defined below) including, without limitation, Section 9.01(c) thereof. The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Common Securities are set forth in, and this certificate and the Common Securities represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Amended and Restated Declaration of Trust of the Trust dated as of [ , 2001], as the same may be amended from time to time (the "Declaration"), including the designation of the terms of Common Securities as set forth in Exhibit C thereto. The Common Securities and the Preferred Securities issued by the Trust pursuant to the Declaration represent undivided beneficial interests in the assets of the Trust, including the Debentures (as defined in the Declaration) issued by Fund American

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Companies, Inc., a Delaware corporation, to the Trust pursuant to the Indenture referred to in the Declaration. The Trust will furnish a copy of the Declaration and the Indenture to the Holder without charge upon written request to the Trust at its principal place of business or registered office.

The Holder of this Certificate, by accepting this Certificate, is deemed to have agreed to the terms of the Indenture and the Debentures, including that the Debentures are subordinate and junior in right of payment to all Senior Indebtedness (as defined in the Indenture) as and to the extent provided in the Indenture.

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Upon receipt of this certificate, the Holder is bound by the Declaration and is entitled to the benefits thereunder.

IN WITNESS WHEREOF, the Trustees of the Trust have executed this certificate this [ ] day of [ ].

Fund American Trust III,

by -----  
Name:  
Title: Regular Trustee

by -----  
Name:  
Title: Regular Trustee

Dated:

Countersigned and Registered:

[ ], as  
Transfer Agent and Registrar

by -----  
Authorized Officer

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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Common Security Certificate to:

-----  
-----  
-----

(Insert assignee's social security or tax identification number)

-----  
-----  
-----

(Insert address and zip code of assignee)

and irrevocably appoints

- .....  
- .....  
- .....

agent to transfer this Common Security Certificate on the books of the Trust.  
The agent may substitute another to act for him or her.

Date: .....

Signature: .....

(Sign exactly as your name appears on the other side of this Common Security Certificate) [ ]

=====

FORM OF  
GUARANTEE AGREEMENT  
OF  
Fund American Trust I

-----

Dated as of [                    ]

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GUARANTEE AGREEMENT dated as of [ ], between White Mountains Insurance Group, Ltd., a company existing under the laws of Bermuda (the "Guarantor"), and Bank One, National Association, as the initial Guarantee Trustee (as defined herein) for the benefit of the Holders (as defined herein) from time to time of the Preferred Securities (as defined herein) of Fund American Trust I, a Delaware business trust (the "Issuer").

WHEREAS, pursuant to an Amended and Restated Declaration of Trust (the "Declaration") dated as of [ ], among the trustees named therein, Fund American Companies, Inc., as Sponsor, and the Holders from time to time of undivided beneficial interests in the assets of the Issuer, the Issuer may issue up to \$[ ] aggregate liquidation amount of its [ ]% Trust Preferred Securities (the "Preferred Securities") representing preferred undivided beneficial interests in the assets of the Issuer and having the terms set forth in Exhibit B to the Declaration, of which \$[ ] aggregate liquidation amount of Preferred Securities are being issued as of the date hereof by the Issuer pursuant to the Underwriting Agreement (as defined in the Declaration); and

WHEREAS, as incentive for the Holders to purchase Preferred Securities, the Guarantor desires to irrevocably and unconditionally agree, to the extent set forth herein, to pay to the Holders the Guarantee Payments (as defined herein) and to make certain other payments on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the purchase by the initial purchasers thereof of Preferred Securities, which purchase the Guarantor hereby agrees shall benefit the Guarantor, the Guarantor executes and delivers this Guarantee Agreement for the benefit of the Holders from time to time.

ARTICLE I

DEFINITIONS

(a) Capitalized terms used in this Guarantee Agreement but not defined in the preamble above have the respective meanings assigned to them in this Article I.

(b) A term defined anywhere in this Guarantee

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Agreement has the same meaning throughout.

(c) All references to "this Guarantee Agreement" are to this Guarantee Agreement as modified, supplemented or amended from time to time.

(d) All references in this Guarantee Agreement to Articles and Sections are to Articles and Sections of this Guarantee Agreement unless otherwise specified.

(e) A term defined in the Trust Indenture Act has the same meaning when used in this Guarantee Agreement unless otherwise defined in this Guarantee Agreement or unless the context otherwise requires.

(f) A reference to the singular includes the plural and vice versa.

"Affiliate" has the same meaning as given to that term in Rule 405 under the Securities Act of 1933, as amended, or any successor rule thereunder.

"Commission" means the Securities and Exchange Commission.

"Common Securities" means the securities representing common

undivided beneficial interests in the assets of the Issuer, having the terms set forth in Exhibit C to the Declaration.

"Covered Person" means any Holder.

"Debentures" means the series of Junior Subordinated Debentures issued by the Guarantor under the Indenture to the Property Trustee and entitled the "[ ]% Junior Subordinated Debentures due [ ]".

"Distributions" has the meaning set forth in Exhibit B to the Declaration.

"Event of Default" means a default by the Guarantor on any of its payment or other obligations under

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this Guarantee Agreement; PROVIDED, HOWEVER, that except with respect to such a default resulting from a failure to pay any Guarantee Payment, such default shall have continued for more than 30 days.

"Guarantee Payments" shall mean the following Distributions and other payments, without duplication, with respect to the Preferred Securities, to the extent not made or paid by the Issuer: (i) any accrued and unpaid Distributions that are required to be paid on the Preferred Securities, but only if and to the extent that in each case the Guarantor has made a payment to the Property Trustee of interest on the Debentures, (ii) the redemption price, including all accrued and unpaid Distributions to the date of redemption (the "Redemption Price"), with respect to any Preferred Securities called for redemption by the Issuer, but only if and to the extent that in each case the Guarantor has made a payment to the Property Trustee of interest or principal on the Debentures, and (iii) upon a voluntary or involuntary dissolution, winding-up or termination of the Issuer (other than in connection with the distribution of Debentures to Holders or the redemption of all the Preferred Securities upon the maturity or redemption of the Debentures as provided in the Declaration), the lesser of (a) the aggregate of the liquidation amount and all accrued and unpaid Distributions on the Preferred Securities to the date of payment, to the extent the Issuer has funds available therefor, and (b) the amount of assets of the Issuer remaining available for distribution to Holders upon liquidation of the Issuer (in either case, the "Liquidation Distribution").

"Guarantee Trustee" means Bank One, National Association, until a Successor Guarantee Trustee has been appointed and accepted such appointment pursuant to the terms of this Guarantee Agreement and thereafter means each such Successor Guarantee Trustee.

"Holder" shall mean any holder, as registered on the books and records of the Issuer, of any Preferred Securities; PROVIDED, HOWEVER, that in determining whether the holders of the requisite percentage of Preferred

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Securities have given any request, notice, consent or waiver hereunder, "Holder" shall not include the Guarantor or any entity directly or indirectly controlling or controlled by or under direct or indirect common control with the Guarantor.

"Indemnified Person" means the Guarantee Trustee, any Affiliate of the Guarantee Trustee, and any officers, directors, shareholders, members, partners, employees, representatives or agents of the Guarantee Trustee.

"Indenture" means the Junior Subordinated Debenture Indenture dated as of [ ], between the Guarantor and Bank One, National Association, as trustee, as amended and supplemented from time to time, pursuant to which the Debentures are to be issued.

"Investment Company" means an investment company as defined in the Investment Company Act.

"Investment Company Act" means the Investment Company Act of 1940, as amended from time to time, or any successor legislation.

"Liquidation Distribution" has the meaning set forth in the definition of Guarantee Payments.

"Majority in liquidation amount of the Preferred Securities" means, except as otherwise required by the Trust Indenture Act, Holder(s) of outstanding Preferred Securities voting together as a single class who are the record owners of Preferred Securities whose aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) represents more than 50% of the aggregate liquidation amount of all outstanding Preferred Securities.

"Person" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

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"Preferred Securities" has the meaning set forth in the first WHEREAS clause above.

"Property Trustee" means the Person acting as Property Trustee under the Declaration.

"Redemption Price" has the meaning set forth in the definition of Guarantee Payments.

"Responsible Officer" means, with respect to the Guarantee Trustee, any officer of the Guarantee Trustee with responsibility for the administration of this Guarantee Agreement and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer's knowledge of, and familiarity with, the particular subject.

"66-2/3% in liquidation amount of the Preferred Securities" means, except as otherwise required by the Trust Indenture Act, Holder(s) of outstanding Preferred Securities voting together as a single class who are the record owners of Preferred Securities whose aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) represents 66-2/3% or more of the aggregate liquidation amount of all outstanding Preferred Securities.

"Successor Guarantee Trustee" means a successor Guarantee Trustee possessing the qualifications to act as a Guarantee Trustee under Section 4.01.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended.

## ARTICLE II

### TRUST INDENTURE ACT

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SECTION 2.01. TRUST INDENTURE ACT; APPLICATION. (a) This Guarantee Agreement is subject to the provisions of the Trust Indenture Act that are required to be part of this Guarantee Agreement and shall, to the extent applicable, be governed by such provisions.

(b) If and to the extent that any provision of this Guarantee Agreement limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control.

(c) The application of the Trust Indenture Act to this Guarantee Agreement shall not affect the nature of the Preferred Securities as equity securities representing preferred undivided beneficial interests in the assets of the Issuer.

SECTION 2.02. LISTS OF HOLDERS OF PREFERRED SECURITIES. (a) The Guarantor shall provide the Guarantee Trustee with such information as is required under Section 312(a) of the Trust Indenture Act at the times and in the manner provided in Section 312(a).

(b) The Guarantee Trustee shall comply with its obligations under Sections 310(b), 311 and 312(b) of the Trust Indenture Act.

SECTION 2.03. REPORTS BY THE GUARANTEE TRUSTEE. Within 60 days after May 15 of each year, the Guarantee Trustee shall provide to the Holders such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form, in the manner and at the times provided by Section 313 of the Trust Indenture Act. The Guarantee Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

SECTION 2.04. PERIODIC REPORTS TO THE GUARANTEE TRUSTEE. The Guarantor shall provide to the Guarantee Trustee, the Commission and the Holders, as applicable, such documents, reports and information as required by Section 314(a)(1)-(3) (if any) of the Trust Indenture Act and the compliance certificates required by

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Section 314(a)(4) and (c) of the Trust Indenture Act, any such certificates to be provided in the form, in the manner and at the times required by Section 314(a)(4) and (c) of the Trust Indenture Act (PROVIDED that any certificate to be provided pursuant to Section 314(a)(4) of the Trust Indenture Act shall be provided within 120 days of the end of each fiscal year of the Issuer).

SECTION 2.05. EVIDENCE OF COMPLIANCE WITH CONDITIONS PRECEDENT. The Guarantor shall provide the Guarantee Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Guarantee Agreement which relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given pursuant to Section 314(c) of the Trust Indenture Act shall comply with Section 314(e) of the Trust Indenture Act.

SECTION 2.06. EVENTS OF DEFAULT; WAIVER. (a) Subject to Section 2.06(b), Holders may, by vote of at least a Majority in liquidation amount of the Preferred Securities, (A) direct the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee, or exercising any trust or power conferred upon the Guarantee Trustee, or (B) on behalf of the Holders of all Preferred Securities, waive any past Event of Default and its consequences. Upon such waiver, any such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Guarantee Agreement, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

(b) The right of any Holder to receive payment of the Guarantee Payments in accordance with this Guarantee Agreement, or to institute suit for the enforcement of any such payment, shall not be impaired without the consent of each such Holder.

SECTION 2.07. DISCLOSURE OF INFORMATION. The disclosure of information as to the names and addresses of the Holders in accordance with Section 312 of the Trust Indenture Act, regardless of the source from which such information was derived, shall not be deemed to be a violation of any existing law or any law hereafter enacted

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which does not specifically refer to Section 312 of the Trust Indenture Act, nor shall the Guarantee Trustee be held accountable by reason of mailing any material pursuant to a request made under Section 312(b) of the Trust Indenture Act.

SECTION 2.08. CONFLICTING INTEREST. The Declaration shall be deemed to be specifically described in this Guarantee Agreement for the purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

### ARTICLE III

#### POWERS, DUTIES AND RIGHTS OF GUARANTEE TRUSTEE

SECTION 3.01. POWERS AND DUTIES OF THE GUARANTEE TRUSTEE. (a) This Guarantee Agreement shall be held by the Guarantee Trustee in trust for the benefit of the Holders. The Guarantee Trustee shall not transfer its right, title and interest in this Guarantee Agreement to any Person except a Successor Guarantee Trustee on acceptance by such Successor Guarantee Trustee of its appointment to act as Guarantee Trustee or to a Holder exercising his or her rights pursuant to Section 5.04. The right, title and interest of the Guarantee Trustee to this Guarantee Agreement shall vest automatically in each Person who may hereafter be appointed as Guarantee Trustee in accordance with Article IV. Such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered.

(b) If an Event of Default occurs and is continuing, the Guarantee Trustee shall enforce this Guarantee Agreement for the benefit of the Holders.

(c) This Guarantee Agreement and all moneys received by the Property Trustee hereunder in respect of the Guarantee Payments will not be subject to any right, charge, security interest, lien or claim of any kind in favor of or for the benefit of the Guarantee Trustee or its agents or

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their creditors.

(d) The Guarantee Trustee shall, within 90 days after the occurrence of an Event of Default, transmit by mail, first class postage prepaid, to the Holders, as their names and addresses appear upon the register, notice of all Events of Default known to the Guarantee Trustee, unless such Events of Default shall have been cured before the giving of such notice; PROVIDED that, the Guarantee Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Guarantee Trustee in good faith determines that the withholding of such notice is in the interests of the Holders. The Guarantee Trustee shall not be deemed to have knowledge of any Event of Default except any Event of Default as to which the Guarantee Trustee shall have received written notice or a Responsible Officer charged with the administration of this Guarantee Agreement shall have obtained written notice.

(e) The Guarantee Trustee shall not resign as a Trustee unless a Successor Guarantee Trustee has been appointed and accepted that appointment in accordance with Article IV.

#### SECTION 3.02. CERTAIN RIGHTS AND DUTIES OF THE GUARANTEE TRUSTEE.

(a) The Guarantee Trustee, before the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Guarantee Agreement, and no implied covenants shall be read into this Guarantee Agreement against the Guarantee Trustee. In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.06(a)), the Guarantee Trustee shall exercise such of the rights and powers vested in it by this Guarantee Agreement, and use the same degree of care and skill in their



exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) No provision of this Guarantee Agreement shall be construed to relieve the Guarantee Trustee from liability for its own negligent

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action, its own negligent failure to act or its own wilful misconduct, except that:

(i) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred;

(A) the duties and obligations of the Guarantee Trustee shall be determined solely by the express provisions of this Guarantee Agreement, and the Guarantee Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Guarantee Agreement, and no implied covenants or obligations shall be read into this Guarantee Agreement against the Guarantee Trustee; and

(B) in the absence of bad faith on the part of the Guarantee Trustee, the Guarantee Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Guarantee Trustee and conforming to the requirements of this Guarantee Agreement; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Guarantee Trustee, the Guarantee Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Guarantee Agreement;

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

(iii) the Guarantee Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders as provided herein relating to the time, method and place of conducting any proceeding for any remedy

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available to the Guarantee Trustee, or exercising any trust or power conferred upon the Guarantee Trustee under this Guarantee Agreement; and

(iv) no provision of this Guarantee Agreement shall require the Guarantee Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if it shall have reasonable ground for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of this Guarantee Agreement or adequate indemnity against such risk or liability is not reasonably assured to it.

(c) Subject to the provisions of Section 3.02(a) and (b):

(i) whenever in the administration of this Guarantee Agreement, the Guarantee Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Guarantee Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part and, if the Trust is excluded from the definition of Investment Company solely by reason of Rule 3a-7 under the Investment Company Act ("Rule 3a-7"), subject to the requirements of Rule 3a-7, request and rely upon a certificate, which shall comply with the provisions of Section 314(e) of the Trust Indenture Act, signed by any authorized officer of the Guarantor;

(ii) the Guarantee Trustee (A) may consult with counsel (which may be counsel to the Guarantor or any of its Affiliates and may include any of its employees) selected by it in good faith and with due care and the written advice or opinion of such counsel with respect to legal matters shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon and in accordance with such advice and opinion and (B) shall have the right at any time to seek instructions concerning the administration of this Guarantee Agreement from any court of competent jurisdiction;

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

(iv) the Guarantee Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Guarantee Agreement at the request or direction of any Holders, unless such Holders shall have offered to the Guarantee Trustee reasonable security and indemnity against the costs, expenses (including attorneys' fees and expenses) and liabilities that might be incurred by it in complying with such request or direction; PROVIDED that nothing contained in this clause (iv) shall relieve the Guarantee Trustee of the obligation, upon the occurrence of an Event of Default (which has not been cured or waived) to exercise such of the rights and powers vested in it by this Guarantee Agreement, and to use the same degree of care and skill in such exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs; and

(v) any action taken by the Guarantee Trustee or its agents hereunder shall bind the Holders and the signature of the Guarantee Trustee or its agents alone shall be sufficient and effective to perform any such action; and no third party shall be required to inquire as to the authority of the Guarantee Trustee to so act, or as to its compliance with any of the terms and provisions of this Guarantee Agreement, both of which shall be conclusively evidenced by the Guarantee Trustee's or its agent's taking such action.

#### SECTION 3.03. NOT RESPONSIBLE FOR RECITALS OR ISSUANCE OF GUARANTEE.

The recitals contained in this Guarantee Agreement shall be taken as the statements of the Guarantor and the Guarantee Trustee does not assume any responsibility for their correctness. The Guarantee Trustee

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makes no representations as to the validity or sufficiency of this Guarantee Agreement.

### ARTICLE IV

#### GUARANTEE TRUSTEE

SECTION 4.01. QUALIFICATIONS. (a) There shall at all times be a Guarantee Trustee which shall:

(i) not be an Affiliate of the Guarantor;

(ii) be a corporation organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or Person permitted by the Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by Federal, State, Territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then for the purposes of this Section 4.01(a)(ii), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published; and

(iii) if the Trust is excluded from the definition of an Investment Company solely by reason of Rule 3a-7 and to the extent Rule 3a-7 requires a trustee having certain qualifications to hold title to the "eligible assets" (as defined in Rule 3a-7) of the Trust, possess those qualifications.

If at any time the Guarantee Trustee shall cease to satisfy the requirements of clauses (i),(ii) and (iii) above, the Guarantee Trustee shall immediately resign in the manner and with the effect set out in Section 4.02. If the Guarantee Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Guarantee Trustee and the Guarantor shall

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in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

#### SECTION 4.02. APPOINTMENT, REMOVAL AND RESIGNATION OF GUARANTEE

TRUSTEE. (a) Subject to Section 4.02(b), the Guarantee Trustee may be appointed or removed without cause at any time by the Guarantor.

(b) The Guarantee Trustee shall not be removed in accordance with Section 4.02(a) until a Successor Guarantee Trustee possessing the qualifications to act as Guarantee Trustee under Section 4.01(a) has been appointed and has accepted such appointment by written instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor and the Guarantee Trustee being removed.

(c) The Guarantee Trustee appointed to office shall hold office until its successor shall have been appointed and until its removal or resignation.

(d) The Guarantee Trustee may resign from office (without need for

prior or subsequent accounting) by an instrument (a "Resignation Request") in writing signed by the Guarantee Trustee and delivered to the Guarantor, which resignation shall take effect upon such delivery or upon such later date as is specified therein; PROVIDED, HOWEVER, that no such resignation of the Guarantee Trustee shall be effective until: (i) a Successor Guarantee Trustee possessing the qualifications to act as Guarantee Trustee under Section 4.01(a) has been appointed and has accepted such appointment by instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor and the resigning Guarantee Trustee; or (ii) until the assets of the Trust have been completely liquidated and the proceeds thereof distributed to the Holders, if the Trust is excluded from the definition of an Investment Company solely by reason of Rule 3a-7.

(e) If no Successor Guarantee Trustee shall have been appointed and accepted appointment as provided in this Section 4.02 within 60 days after delivery to the Guarantor of a Resignation Request, the resigning Guarantee Trustee

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may petition any court of competent jurisdiction for appointment of a Successor Guarantee Trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a Successor Guarantee Trustee.

#### ARTICLE V

#### GUARANTEE

SECTION 5.01. GUARANTEE. The Guarantor irrevocably and unconditionally agrees to pay in full to the Holders the Guarantee Payments (without duplication of amounts theretofore paid by the Issuer), regardless of any defense, right of set-off or counterclaim that the Issuer may have or assert. The Guarantor's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Issuer to pay such amounts to the Holders.

SECTION 5.02. WAIVER OF NOTICE. The Guarantor hereby waives notice of acceptance of this Guarantee Agreement and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Issuer or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and, to the extent permitted by law, all other notices and demands.

SECTION 5.03. OBLIGATIONS NOT AFFECTED. The obligations, covenants, agreements and duties of the Guarantor under this Guarantee Agreement shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

(a) the release or waiver, by operation of law or otherwise, of the performance or observance by the Issuer of any express or implied agreement, covenant, term or condition relating to the Preferred Securities to be performed or observed by the Issuer;

(b) the extension of time for the payment by the Issuer of all or any portion of the Distributions (other than an extension of time for payment of Distributions that results from the extension of any interest payment

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period on the Debentures), Redemption Price, Liquidation Distribution or any other sums payable under the terms of the Preferred Securities or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the Preferred Securities;

(c) any failure, omission, delay or lack of diligence on the part of the Holders to enforce, assert or exercise any right, privilege, power or remedy conferred on the Holders pursuant to the terms of the Preferred Securities, or any action on the part of the Issuer granting indulgence or extension of any kind;

(d) the voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Issuer or any of the assets of the Issuer;

(e) any invalidity of, or defect or deficiency in, the Preferred Securities;

(f) the settlement or compromise of any obligation guaranteed hereby or hereby incurred; or

(g) any other circumstances whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 5.03 that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances.

There shall be no obligation of the Holders to give notice to, or obtain consent of, the Guarantor with respect to the happening of any of the foregoing.

SECTION 5.04. ENFORCEMENT OF GUARANTEE. The Guarantor and the Guarantee Trustee expressly acknowledge that (i) this Guarantee Agreement will be deposited with the Guarantee Trustee to be held for the benefit of the Holders; (ii) the Guarantee Trustee has the right to enforce this

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Guarantee Agreement on behalf of the Holders; (iii) Holders representing not less than a Majority in liquidation amount of the Preferred Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available in respect of this Guarantee Agreement, including the giving of directions to the Guarantee Trustee, or exercising any trust or other power conferred upon the Guarantee Trustee under this Guarantee Agreement, and (iv) if the Guarantee Trustee fails to enforce this Guarantee Agreement, any Holder may institute a legal proceeding directly against the Guarantor to enforce its rights under this Guarantee Agreement, without first instituting a legal proceeding against the Issuer, the Guarantee Trustee or any other Person. Notwithstanding the foregoing, if the Guarantor has failed to make a Guarantee Payment, a Holder of Preferred Securities may directly institute a proceeding against the Guarantor for enforcement of such Holder's right to receive payment under the Guarantee. The Guarantor waives any right or remedy to require that any action be brought first against the Issuer or any other person or entity before proceeding directly against the Guarantor.

SECTION 5.05. GUARANTEE OF PAYMENT. This Guarantee Agreement creates a guarantee of payment and not merely of collection. This Guarantee Agreement will not be discharged except by payment of the Guarantee Payments in full (without duplication of amounts theretofore paid by the Issuer).

SECTION 5.06. SUBROGATION. The Guarantor shall be subrogated to all rights, if any, of the Holders against the Issuer in respect of any amounts paid to the Holders by the Guarantor under this Guarantee Agreement; PROVIDED, HOWEVER, that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any rights which it may acquire by way of subrogation or any indemnity, reimbursement or other agreement, in all cases as a result of payment under this Guarantee Agreement, if, at the time of any such payment, any amounts are due and unpaid under this Guarantee Agreement. If any amount shall be paid to the Guarantor in

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violation of the preceding sentence, the Guarantor agrees to hold such amount in trust for the Holders and to pay over such amount to the Holders.

SECTION 5.07. INDEPENDENT OBLIGATIONS. The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Issuer with respect to the Preferred Securities and that the Guarantor shall be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this Guarantee Agreement notwithstanding the occurrence of any event referred to in subsections (a) through (g), inclusive, of Section 5.03.

## ARTICLE VI

### LIMITATION OF TRANSACTIONS; SUBORDINATION

SECTION 6.01. LIMITATION OF TRANSACTIONS. So long as any Preferred Securities remain outstanding, the Guarantor will not declare or pay any dividends on, or redeem, purchase, acquire or make a distribution or liquidation payment with respect to, any of its common stock or preferred stock or make any guarantee payment with respect thereto if at such time (i) the Guarantor shall be in default with respect to its Guarantee Payments or other payment obligations hereunder, (ii) there shall have occurred any Event of Default (as defined in the Declaration) or (iii) the Guarantor shall have given notice of its selection of an extension period (as defined in the Indenture) and such period, or any extension thereof, is continuing; PROVIDED, HOWEVER, that the foregoing restrictions will not apply to (i) dividends, redemptions, purchases, acquisitions, distributions or payments made by the Guarantor by way of issuance of shares of its capital stock, (ii) payments of accrued dividends by the Guarantor upon the redemption, exchange or conversion of any preferred stock of the Guarantor as may be outstanding from time to time in accordance with the terms of such preferred stock or (iii) cash payments made by the Guarantor in lieu of delivering fractional shares upon the redemption, exchange or conversion of any preferred stock of the Guarantor as may be outstanding from time to time in accordance with the terms of such preferred stock. In addition, so long as any

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Preferred Securities remain outstanding, the Guarantor (i) will remain the sole direct or indirect owner of all the outstanding Common Securities and shall not cause or permit the Common Securities to be transferred except to the extent such transfer is permitted under Section 9.01(c) of the Declaration; PROVIDED that any permitted successor of the Guarantor under the Indenture may succeed to the Guarantor's ownership of the Common Securities; and (ii) will use reasonable efforts to cause the Issuer to continue to be treated as a grantor trust for

United States Federal income tax purposes, except in connection with a distribution of Debentures as provided in the Declaration.

SECTION 6.02. SUBORDINATION. This Guarantee Agreement will constitute an unsecured obligation of the Guarantor and will rank (i) subordinate and junior in right of payment to all other indebtedness, liabilities and obligations of the Guarantor and any guarantees, endorsements or other contingent obligations of the Guarantor in respect of such indebtedness, liabilities or obligations, including the Debentures, except those made PARI PASSU or subordinate by their terms, and (ii) senior to all capital stock now or hereafter issued by the Guarantor and to any guarantee now or hereafter entered into by the Guarantor in respect of any of its capital stock. The Guarantor's obligations under this Guarantee Agreement will rank PARI PASSU with respect to obligations under other guarantee agreements which it may enter into from time to time to the extent that such agreements shall be entered into in substantially the form hereof and provide for comparable guarantees by the Guarantor of payment on preferred securities issued by other business trusts of which the Guarantor holds the common securities.

#### ARTICLE VII

##### TERMINATION

This Guarantee Agreement shall terminate and be of no further force and effect upon full payment of the Redemption Price of all Preferred Securities, or upon the

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distribution of Debentures to Holders in exchange for all the Preferred Securities, or upon full payment of the amounts payable in accordance with the Declaration upon liquidation of the Issuer. Notwithstanding the foregoing, this Guarantee Agreement will continue to be effective or will be reinstated, as the case may be, if at any time any Holder must restore payment of any sums paid with respect to the Preferred Securities or this Guarantee Agreement.

#### ARTICLE VIII

##### LIMITATION OF LIABILITY; INDEMNIFICATION

SECTION 8.01. EXCULPATION. (a) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Guarantor or any Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith and in a manner such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Guarantee Agreement or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's negligence or wilful misconduct with respect to such acts or omissions.

(b) An Indemnified Person shall be fully protected in relying in good faith upon the records of the Guarantor and upon such information, opinions, reports or statements presented to the Guarantor by any Person as to matters the Indemnified Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Guarantor, including information, opinions, reports or statements as to the value and amount of assets, liabilities, profits, losses or any other facts pertinent to the existence and amounts of assets from which Distributions to Holders might properly be paid.

SECTION 8.02. INDEMNIFICATION. (a) To the fullest extent permitted by applicable law, the Guarantor shall indemnify and hold harmless each Indemnified Person from and against any loss, damage or claim incurred by such Indemnified Person by reason of any act or omission performed or omitted by such Indemnified Person in good

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faith and in a manner such Indemnified Person reasonably believed to be within the scope of authority conferred on such Indemnified Person by this Guarantee Agreement, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Indemnified Person by reason of negligence or wilful misconduct with respect to such acts or omissions.

(b) To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by an Indemnified Person in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Guarantor prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Guarantor of an undertaking by or on behalf of the Indemnified Person to repay such amount if it shall be determined that the Indemnified Person is not entitled to be indemnified as authorized in Section 8.02(a).

#### ARTICLE IX

##### MISCELLANEOUS

SECTION 9.01. SUCCESSORS AND ASSIGNS. All guarantees and agreements contained in this Guarantee Agreement shall bind the successors, assignees,

receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of the Preferred Securities then outstanding. Except in connection with a consolidation, merger or conveyance, transfer or lease of assets involving the Guarantor that is permitted under Article Ten of the Indenture, the Guarantor shall not assign its obligations hereunder.

SECTION 9.02. AMENDMENTS. Except with respect to any changes which do not adversely affect the rights of Holders (in which case no consent of Holders will be required), this Guarantee Agreement may only be amended with the prior approval of the Holders of not less than 66-2/3% in liquidation amount of the Preferred Securities. The provisions of Section 12.02 of the Declaration concerning

meetings of Holders shall apply to the giving of such approval.

SECTION 9.03 NOTICES. Any notice, request or other communication required or permitted to be given hereunder shall be in writing, duly signed by the party giving such notice, and delivered, telecopied or mailed by first class mail as follows:

(a) if given to the Guarantor, to the address set forth below or such other address as the Guarantor may give notice of to the Holders:

White Mountains Insurance Group, Ltd.  
80 South Main Street  
Hanover, New Hampshire 03755-2053  
Facsimile No.: [( ) ]  
Attention: [ ]

(b) if given to the Guarantee Trustee, to the address set forth below or such other address as the Guarantee Trustee may give notice of to the Holders:

[ ]  
[ ]  
[ ]  
Facsimile No.: [( ) ]  
Attention: [ ]

(c) if given to any Holder of Preferred Securities, at the address set forth on the books and records of the Issuer.

All notices hereunder shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

SECTION 9.04. GENDERS. The masculine, feminine and neuter genders used herein shall include the masculine, feminine and neuter genders.

SECTION 9.05. BENEFIT. This Guarantee Agreement is solely for the benefit of the Holders and, subject to Section 3.01(a), is not separately transferable from the Preferred Securities.

SECTION 9.06. GOVERNING LAW. THIS GUARANTEE AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS).

SECTION 9.07. COUNTERPARTS. This Guarantee Agreement may be executed in counterparts, each of which shall be an original; but such counterparts shall together constitute one and the same instrument.

SECTION 9.08. EXERCISE OF OVERALLOTMENT OPTION. If and to the extent that Preferred Securities are issued by the Issuer upon exercise of the over allotment option referred to in the first WHEREAS clause, the Guarantor agrees to give prompt notice thereof to the Guarantee Trustee, but the failure to give such notice shall not relieve the Guarantor of any of its obligations hereunder.

This Guarantee Agreement is executed as of the day and year first above written.

WHITE MOUNTAINS INSURANCE  
GROUP, LTD.

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

BANK ONE NATIONAL ASSOCIATION,  
as Guarantee Trustee

by

-----  
Name:

Title:

## [Form of Guarantee Agreement]

## GUARANTEE AGREEMENT

OF

Fund American Trust II

Dated as of [     ]

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[Form of]

GUARANTEE AGREEMENT dated as of [ ], between White Mountains Insurance Group, Ltd., a company existing under the laws of Bermuda (the "Guarantor"), and Bank One, National Association, as the initial Guarantee Trustee (as defined herein) for the benefit of the Holders (as defined herein) from time to time of the Preferred Securities (as defined herein) of Fund American Trust II, a Delaware business trust (the "Issuer").

WHEREAS, pursuant to an Amended and Restated Declaration of Trust (the "Declaration") dated as of [ ], among the trustees named therein, Fund American Companies, Inc., a Delaware corporation ("Fund American"), as Sponsor, and the Holders from time to time of undivided beneficial interests in the assets of the Issuer, the Issuer may issue up to \$[ ] aggregate liquidation amount of its [ ]% Trust Preferred Securities (the "Preferred Securities") representing preferred undivided beneficial interests in the assets of the Issuer and having the terms set forth in Exhibit B to the Declaration, of which \$[ ] aggregate liquidation amount of Preferred Securities are being issued as of the date hereof by the Issuer pursuant to the Underwriting Agreement (as defined in the Declaration); and

WHEREAS, as incentive for the Holders to purchase Preferred Securities, the Guarantor desires to irrevocably and unconditionally agree, to the extent set forth herein, to pay to the Holders the Guarantee Payments (as defined herein) and to make certain other payments on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the purchase by the initial purchasers thereof of Preferred Securities, which purchase the Guarantor hereby agrees shall benefit the Guarantor, the Guarantor executes and delivers this Guarantee Agreement for the benefit of the Holders from time to time.

ARTICLE I

DEFINITIONS

(a) Capitalized terms used in this Guarantee Agreement but not defined in the preamble above have the

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respective meanings assigned to them in this Article I.

(b) A term defined anywhere in this Guarantee Agreement has the same meaning throughout.

(c) All references to "this Guarantee Agreement" are to this Guarantee Agreement as modified, supplemented or amended from time to time.

(d) All references in this Guarantee Agreement to Articles and Sections are to Articles and Sections of this Guarantee Agreement unless otherwise specified.

(e) A term defined in the Trust Indenture Act has the same meaning when used in this Guarantee Agreement unless otherwise defined in this Guarantee Agreement or unless the context otherwise requires.

(f) A reference to the singular includes the plural and vice versa.

"Affiliate" has the same meaning as given to that term in Rule 405 under the Securities Act of 1933, as amended, or any successor rule thereunder.

"Commission" means the Securities and Exchange Commission.

"Common Securities" means the securities representing common undivided beneficial interests in the assets of the Issuer, having the terms set forth in Exhibit C to the Declaration.

"Covered Person" means any Holder.

"Debentures" means the series of Junior Subordinated Debentures issued by Fund American under the Indenture to the Property Trustee entitled the "[ ]% Junior Subordinated Debentures due [ ]" which have been guaranteed by the Guarantor.

"Distributions" has the meaning set forth in

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Exhibit B to the Declaration.

"Event of Default" means a default by the Guarantor on any of its payment or other obligations under this Guarantee Agreement; PROVIDED, HOWEVER, that except with respect to such a default resulting from a failure to pay any Guarantee Payment, such default shall have continued for more than 30 days.

"Guarantee Payments" shall mean the following Distributions and other payments, without duplication, with respect to the Preferred Securities, to the extent not made or paid by the Issuer: (i) any accrued and unpaid Distributions that are required to be paid on the Preferred Securities, but only if and to the extent that in each case Fund American or the Guarantor has made a payment to the Property Trustee of interest on the Debentures, (ii) the redemption price, including all accrued and unpaid Distributions to the date of redemption (the "Redemption Price"), with respect to any Preferred Securities called for redemption by the Issuer, but only if and to the extent that in each case Fund American or the Guarantor has made a payment to the Property Trustee of interest or principal on the Debentures, and (iii) upon a voluntary or involuntary dissolution, winding-up or termination of the Issuer (other than in connection with the distribution of Debentures to Holders or the redemption of all the Preferred Securities upon the maturity or redemption of the Debentures as provided in the Declaration), the lesser of (a) the aggregate of the liquidation amount and all accrued and unpaid Distributions on the Preferred Securities to the date of payment, to the extent the Issuer has funds available therefor, and (b) the amount of assets of the Issuer remaining available for distribution to Holders upon liquidation of the Issuer (in either case, the "Liquidation Distribution").

"Guarantee Trustee" means Bank One, National Association, until a Successor Guarantee Trustee has been appointed and accepted such appointment pursuant to the terms of this Guarantee Agreement and thereafter means each such Successor Guarantee Trustee.

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"Holder" shall mean any holder, as registered on the books and records of the Issuer, of any Preferred Securities; PROVIDED, HOWEVER, that in determining whether the holders of the requisite percentage of Preferred Securities have given any request, notice, consent or waiver hereunder, "Holder" shall not include the Guarantor or any entity directly or indirectly controlling or controlled by or under direct or indirect common control with the Guarantor.

"Indemnified Person" means the Guarantee Trustee, any Affiliate of the Guarantee Trustee, and any officers, directors, shareholders, members, partners, employees, representatives or agents of the Guarantee Trustee.

"Indenture" means the Junior Subordinated Debenture Indenture dated as of [ ], between the Guarantor, Fund American and Bank One, National Association, as trustee, as amended and supplemented from time to time, pursuant to which the Debentures are to be issued.

"Investment Company" means an investment company as defined in the Investment Company Act.

"Investment Company Act" means the Investment Company Act of 1940, as amended from time to time, or any successor legislation.

"Liquidation Distribution" has the meaning set forth in the definition of Guarantee Payments.

"Majority in liquidation amount of the Preferred Securities" means, except as otherwise required by the Trust Indenture Act, Holder(s) of outstanding Preferred Securities voting together as a single class who are the record owners of Preferred Securities whose aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) represents more than 50% of the aggregate

liquidation amount of all outstanding Preferred Securities.

"Person" means a legal person, including any individual, corporation, estate, partnership, joint venture,

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association, joint stock company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

"Preferred Securities" has the meaning set forth in the first WHEREAS clause above.

"Property Trustee" means the Person acting as Property Trustee under the Declaration.

"Redemption Price" has the meaning set forth in the definition of Guarantee Payments.

"Responsible Officer" means, with respect to the Guarantee Trustee, any officer of the Guarantee Trustee with responsibility for the administration of this Guarantee Agreement and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer's knowledge of, and familiarity with, the particular subject.

"66-2/3% in liquidation amount of the Preferred Securities" means, except as otherwise required by the Trust Indenture Act, Holder(s) of outstanding Preferred Securities voting together as a single class who are the record owners of Preferred Securities whose aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) represents 66-2/3% or more of the aggregate liquidation amount of all outstanding Preferred Securities.

"Successor Guarantee Trustee" means a successor Guarantee Trustee possessing the qualifications to act as a Guarantee Trustee under Section 4.01.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended.

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## ARTICLE II

### TRUST INDENTURE ACT

SECTION 2.01. TRUST INDENTURE ACT; APPLICATION. (a) This Guarantee Agreement is subject to the provisions of the Trust Indenture Act that are required to be part of this Guarantee Agreement and shall, to the extent applicable, be governed by such provisions.

(b) If and to the extent that any provision of this Guarantee Agreement limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control.

(c) The application of the Trust Indenture Act to this Guarantee Agreement shall not affect the nature of the Preferred Securities as equity securities representing preferred undivided beneficial interests in the assets of the Issuer.

SECTION 2.02. LISTS OF HOLDERS OF PREFERRED SECURITIES. (a) The Guarantor shall provide the Guarantee Trustee with such information as is required under Section 312(a) of the Trust Indenture Act at the times and in the manner provided in Section 312(a).

(b) The Guarantee Trustee shall comply with its obligations under Sections 310(b), 311 and 312(b) of the Trust Indenture Act.

SECTION 2.03. REPORTS BY THE GUARANTEE TRUSTEE. Within 60 days after May 15 of each year, the Guarantee Trustee shall provide to the Holders such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form, in the manner and at the times provided by Section 313 of the Trust Indenture Act. The Guarantee Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

SECTION 2.04. PERIODIC REPORTS TO THE GUARANTEE TRUSTEE. The Guarantor shall provide to the Guarantee

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Trustee, the Commission and the Holders, as applicable, such documents, reports and information as required by Section 314(a)(1)-(3) (if any) of the Trust Indenture Act and the compliance certificates required by Section 314(a)(4) and (c) of the Trust Indenture Act, any such certificates to be provided in the form, in the manner and at the times required by Section 314(a)(4) and (c) of

the Trust Indenture Act (PROVIDED that any certificate to be provided pursuant to Section 314(a)(4) of the Trust Indenture Act shall be provided within 120 days of the end of each fiscal year of the Issuer).

SECTION 2.05. EVIDENCE OF COMPLIANCE WITH CONDITIONS PRECEDENT. The Guarantor shall provide the Guarantee Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Guarantee Agreement which relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given pursuant to Section 314(c) of the Trust Indenture Act shall comply with Section 314(e) of the Trust Indenture Act.

SECTION 2.06. EVENTS OF DEFAULT; WAIVER. (a) Subject to Section 2.06(b), Holders may, by vote of at least a Majority in liquidation amount of the Preferred Securities, (A) direct the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee, or exercising any trust or power conferred upon the Guarantee Trustee, or (B) on behalf of the Holders of all Preferred Securities, waive any past Event of Default and its consequences. Upon such waiver, any such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Guarantee Agreement, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

(b) The right of any Holder to receive payment of the Guarantee Payments in accordance with this Guarantee Agreement, or to institute suit for the enforcement of any such payment, shall not be impaired without the consent of each such Holder.

SECTION 2.07. DISCLOSURE OF INFORMATION. The disclosure of information as to the names and addresses of

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the Holders in accordance with Section 312 of the Trust Indenture Act, regardless of the source from which such information was derived, shall not be deemed to be a violation of any existing law or any law hereafter enacted which does not specifically refer to Section 312 of the Trust Indenture Act, nor shall the Guarantee Trustee be held accountable by reason of mailing any material pursuant to a request made under Section 312(b) of the Trust Indenture Act.

SECTION 2.08. CONFLICTING INTEREST. The Declaration shall be deemed to be specifically described in this Guarantee Agreement for the purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

### ARTICLE III

#### POWERS, DUTIES AND RIGHTS OF GUARANTEE TRUSTEE

SECTION 3.01. POWERS AND DUTIES OF THE GUARANTEE TRUSTEE. (a) This Guarantee Agreement shall be held by the Guarantee Trustee in trust for the benefit of the Holders. The Guarantee Trustee shall not transfer its right, title and interest in this Guarantee Agreement to any Person except a Successor Guarantee Trustee on acceptance by such Successor Guarantee Trustee of its appointment to act as Guarantee Trustee or to a Holder exercising his or her rights pursuant to Section 5.04. The right, title and interest of the Guarantee Trustee to this Guarantee Agreement shall vest automatically in each Person who may hereafter be appointed as Guarantee Trustee in accordance with Article IV. Such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered.

(b) If an Event of Default occurs and is continuing, the Guarantee Trustee shall enforce this Guarantee Agreement for the benefit of the Holders.

(c) This Guarantee Agreement and all moneys

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received by the Property Trustee hereunder in respect of the Guarantee Payments will not be subject to any right, charge, security interest, lien or claim of any kind in favor of or for the benefit of the Guarantee Trustee or its agents or their creditors.

(d) The Guarantee Trustee shall, within 90 days after the occurrence of an Event of Default, transmit by mail, first class postage prepaid, to the Holders, as their names and addresses appear upon the register, notice of all Events of Default known to the Guarantee Trustee, unless such Events of Default shall have been cured before the giving of such notice; PROVIDED that, the Guarantee Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Guarantee Trustee in good faith determines that the withholding of such notice is in the interests of the Holders. The Guarantee Trustee shall not be deemed to have knowledge of any Event of Default except any Event of Default as to which the Guarantee Trustee shall have received written notice or a Responsible Officer charged with the administration of this Guarantee Agreement shall have obtained written notice.

(e) The Guarantee Trustee shall not resign as a Trustee unless a Successor Guarantee Trustee has been appointed and accepted that appointment in

SECTION 3.02. CERTAIN RIGHTS AND DUTIES OF THE GUARANTEE TRUSTEE.

(a) The Guarantee Trustee, before the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Guarantee Agreement, and no implied covenants shall be read into this Guarantee Agreement against the Guarantee Trustee. In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.06(a)), the Guarantee Trustee shall exercise such of the rights and powers vested in it by this Guarantee Agreement, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

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

(i) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred;

(A) the duties and obligations of the Guarantee Trustee shall be determined solely by the express provisions of this Guarantee Agreement, and the Guarantee Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Guarantee Agreement, and no implied covenants or obligations shall be read into this Guarantee Agreement against the Guarantee Trustee; and

(B) in the absence of bad faith on the part of the Guarantee Trustee, the Guarantee Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Guarantee Trustee and conforming to the requirements of this Guarantee Agreement; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Guarantee Trustee, the Guarantee Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Guarantee Agreement;

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

(iii) the Guarantee Trustee shall not be liable with

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respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders as provided herein relating to the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee, or exercising any trust or power conferred upon the Guarantee Trustee under this Guarantee Agreement; and

(iv) no provision of this Guarantee Agreement shall require the Guarantee Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if it shall have reasonable ground for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of this Guarantee Agreement or adequate indemnity against such risk or liability is not reasonably assured to it.

(c) Subject to the provisions of Section 3.02(a) and (b):

(i) whenever in the administration of this Guarantee Agreement, the Guarantee Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Guarantee Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part and, if the Trust is excluded from the definition of Investment Company solely by reason of Rule 3a-7 under the Investment Company Act ("Rule 3a-7"), subject to the requirements of Rule 3a-7, request and rely upon a certificate, which shall comply with the provisions of Section 314(e) of the Trust Indenture Act, signed by any authorized officer of the Guarantor;

(ii) the Guarantee Trustee (A) may consult with counsel (which may be counsel to the Guarantor or any of its Affiliates and may include any of its employees) selected by it in good faith and with due care and the written advice or opinion of such counsel with respect to legal matters shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon and in accordance with such advice and opinion

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and (B) shall have the right at any time to seek instructions concerning the administration of this Guarantee Agreement from any court of competent jurisdiction;

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

(iv) the Guarantee Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Guarantee Agreement at the request or direction of any Holders, unless such Holders shall have offered to the Guarantee Trustee reasonable security and indemnity against the costs, expenses (including attorneys' fees and expenses) and liabilities that might be incurred by it in complying with such request or direction; PROVIDED that nothing contained in this clause (iv) shall relieve the Guarantee Trustee of the obligation, upon the occurrence of an Event of Default (which has not been cured or waived) to exercise such of the rights and powers vested in it by this Guarantee Agreement, and to use the same degree of care and skill in such exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs; and

(v) any action taken by the Guarantee Trustee or its agents hereunder shall bind the Holders and the signature of the Guarantee Trustee or its agents alone shall be sufficient and effective to perform any such action; and no third party shall be required to inquire as to the authority of the Guarantee Trustee to so act, or as to its compliance with any of the terms and provisions of this Guarantee Agreement, both of which shall be conclusively evidenced by the Guarantee Trustee's or its agent's taking such action.

#### SECTION 3.03. NOT RESPONSIBLE FOR RECITALS OR

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ISSUANCE OF GUARANTEE. The recitals contained in this Guarantee Agreement shall be taken as the statements of the Guarantor and the Guarantee Trustee does not assume any responsibility for their correctness. The Guarantee Trustee makes no representations as to the validity or sufficiency of this Guarantee Agreement.

#### ARTICLE IV

##### GUARANTEE TRUSTEE

SECTION 4.01. QUALIFICATIONS. (a) There shall at all times be a Guarantee Trustee which shall:

(i) not be an Affiliate of the Guarantor;

(ii) be a corporation organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or Person permitted by the Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by Federal, State, Territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then for the purposes of this Section 4.01(a)(ii), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published; and

(iii) if the Trust is excluded from the definition of an Investment Company solely by reason of Rule 3a-7 and to the extent Rule 3a-7 requires a trustee having certain qualifications to hold title to the "eligible assets" (as defined in Rule 3a-7) of the Trust, possess those qualifications.

If at any time the Guarantee Trustee shall cease to satisfy the requirements of clauses (i),(ii) and (iii) above, the Guarantee Trustee shall immediately resign in the

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manner and with the effect set out in Section 4.02. If the Guarantee Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Guarantee Trustee and the Guarantor shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

SECTION 4.02. APPOINTMENT, REMOVAL AND RESIGNATION OF GUARANTEE TRUSTEE. (a) Subject to Section 4.02(b), the Guarantee Trustee may be appointed or removed without cause at any time by the Guarantor.

(b) The Guarantee Trustee shall not be removed in accordance with Section 4.02(a) until a Successor Guarantee Trustee possessing the

qualifications to act as Guarantee Trustee under Section 4.01(a) has been appointed and has accepted such appointment by written instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor and the Guarantee Trustee being removed.

(c) The Guarantee Trustee appointed to office shall hold office until its successor shall have been appointed and until its removal or resignation.

(d) The Guarantee Trustee may resign from office (without need for prior or subsequent accounting) by an instrument (a "Resignation Request") in writing signed by the Guarantee Trustee and delivered to the Guarantor, which resignation shall take effect upon such delivery or upon such later date as is specified therein; PROVIDED, HOWEVER, that no such resignation of the Guarantee Trustee shall be effective until: (i) a Successor Guarantee Trustee possessing the qualifications to act as Guarantee Trustee under Section 4.01(a) has been appointed and has accepted such appointment by instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor and the resigning Guarantee Trustee; or (ii) until the assets of the Trust have been completely liquidated and the proceeds thereof distributed to the Holders, if the Trust is excluded from the definition of an Investment Company solely by reason of Rule 3a-7.

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(e) If no Successor Guarantee Trustee shall have been appointed and accepted appointment as provided in this Section 4.02 within 60 days after delivery to the Guarantor of a Resignation Request, the resigning Guarantee Trustee may petition any court of competent jurisdiction for appointment of a Successor Guarantee Trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a Successor Guarantee Trustee.

#### ARTICLE V

#### GUARANTEE

SECTION 5.01. GUARANTEE. The Guarantor irrevocably and unconditionally agrees to pay in full to the Holders the Guarantee Payments (without duplication of amounts theretofore paid by the Issuer), regardless of any defense, right of set-off or counterclaim that the Issuer may have or assert. The Guarantor's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Issuer to pay such amounts to the Holders.

SECTION 5.02. WAIVER OF NOTICE. The Guarantor hereby waives notice of acceptance of this Guarantee Agreement and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Issuer or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and, to the extent permitted by law, all other notices and demands.

SECTION 5.03. OBLIGATIONS NOT AFFECTED. The obligations, covenants, agreements and duties of the Guarantor under this Guarantee Agreement shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

(a) the release or waiver, by operation of law or otherwise, of the performance or observance by the Issuer of any express or implied agreement, covenant, term or condition relating to the Preferred Securities to be performed or observed by the Issuer;

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(b) the extension of time for the payment by the Issuer of all or any portion of the Distributions (other than an extension of time for payment of Distributions that results from the extension of any interest payment period on the Debentures), Redemption Price, Liquidation Distribution or any other sums payable under the terms of the Preferred Securities or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the Preferred Securities;

(c) any failure, omission, delay or lack of diligence on the part of the Holders to enforce, assert or exercise any right, privilege, power or remedy conferred on the Holders pursuant to the terms of the Preferred Securities, or any action on the part of the Issuer granting indulgence or extension of any kind;

(d) the voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Issuer or any of the assets of the Issuer;

(e) any invalidity of, or defect or deficiency in, the Preferred Securities;

(f) the settlement or compromise of any obligation guaranteed hereby or hereby incurred; or

(g) any other circumstances whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 5.03 that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances.

There shall be no obligation of the Holders to give notice to, or obtain consent of, the Guarantor with respect to the happening of any of the foregoing.

#### SECTION 5.04. ENFORCEMENT OF GUARANTEE. The

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Guarantor and the Guarantee Trustee expressly acknowledge that (i) this Guarantee Agreement will be deposited with the Guarantee Trustee to be held for the benefit of the Holders; (ii) the Guarantee Trustee has the right to enforce this Guarantee Agreement on behalf of the Holders; (iii) Holders representing not less than a Majority in liquidation amount of the Preferred Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available in respect of this Guarantee Agreement, including the giving of directions to the Guarantee Trustee, or exercising any trust or other power conferred upon the Guarantee Trustee under this Guarantee Agreement, and (iv) if the Guarantee Trustee fails to enforce this Guarantee Agreement, any Holder may institute a legal proceeding directly against the Guarantor to enforce its rights under this Guarantee Agreement, without first instituting a legal proceeding against the Issuer, the Guarantee Trustee or any other Person. Notwithstanding the foregoing, if the Guarantor has failed to make a Guarantee Payment, a Holder of Preferred Securities may directly institute a proceeding against the Guarantor for enforcement of such Holder's right to receive payment under the Guarantee. The Guarantor waives any right or remedy to require that any action be brought first against the Issuer or any other person or entity before proceeding directly against the Guarantor.

SECTION 5.05. GUARANTEE OF PAYMENT. This Guarantee Agreement creates a guarantee of payment and not merely of collection. This Guarantee Agreement will not be discharged except by payment of the Guarantee Payments in full (without duplication of amounts theretofore paid by the Issuer).

SECTION 5.06. SUBROGATION. The Guarantor shall be subrogated to all rights, if any, of the Holders against the Issuer in respect of any amounts paid to the Holders by the Guarantor under this Guarantee Agreement; PROVIDED, HOWEVER, that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any rights which it may acquire by way of subrogation or any indemnity, reimbursement or other

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agreement, in all cases as a result of payment under this Guarantee Agreement, if, at the time of any such payment, any amounts are due and unpaid under this Guarantee Agreement. If any amount shall be paid to the Guarantor in violation of the preceding sentence, the Guarantor agrees to hold such amount in trust for the Holders and to pay over such amount to the Holders.

SECTION 5.07. INDEPENDENT OBLIGATIONS. The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Issuer with respect to the Preferred Securities and that the Guarantor shall be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this Guarantee Agreement notwithstanding the occurrence of any event referred to in subsections (a) through (g), inclusive, of Section 5.03.

### ARTICLE VI

#### LIMITATION OF TRANSACTIONS; SUBORDINATION

SECTION 6.01. LIMITATION OF TRANSACTIONS. So long as any Preferred Securities remain outstanding, the Guarantor will not declare or pay any dividends on, or redeem, purchase, acquire or make a distribution or liquidation payment with respect to, any of its common stock or preferred stock if at such time (i) the Guarantor shall be in default with respect to its Guarantee Payments or other payment obligations hereunder, (ii) there shall have occurred any Event of Default (as defined in the Declaration) or (iii) the Guarantor shall have given notice of its selection of an extension period (as defined in the Indenture) and such period, or any extension thereof, is continuing; PROVIDED, HOWEVER, that the foregoing restrictions will not apply to (i) dividends, redemptions, purchases, acquisitions, distributions or payments made by the Guarantor by way of issuance of shares of its capital stock, (ii) declarations or payments of dividends in connection with the implementation of a stockholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto, (iii) payments of accrued dividends by the Guarantor upon the redemption, exchange or conversion

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of any preferred stock of the Guarantor as may be outstanding from time to time in accordance with the terms of such preferred stock, (iv) cash payments made by



the Guarantor in lieu of delivering fractional shares upon the redemption, exchange or conversion of any preferred stock of the Guarantor as may be outstanding from time to time in accordance with the terms of such preferred stock, (v) purchases or acquisitions of share of common stock in connection with the satisfaction of obligations under any employee benefit plan or other contractual obligation, (vi) dividends, distributions, redemptions, purchases, acquisitions or payments as a result of a reclassification of capital stock or conversion of one class or series of capital stock for another class or series of capital stock.

SECTION 6.02. SUBORDINATION. This Guarantee Agreement will constitute an unsecured obligation of the Guarantor and will rank (i) subordinate and junior in right of payment to all other indebtedness, liabilities and obligations of the Guarantor and any guarantees, endorsements or other contingent obligations of the Guarantor in respect of such indebtedness, liabilities or obligations, including the Debentures, except those made PARI PASSU or subordinate by their terms, and (ii) senior to all capital stock now or hereafter issued by the Guarantor and to any guarantee now or hereafter entered into by the Guarantor in respect of any of its capital stock. The Guarantor's obligations under this Guarantee Agreement will rank PARI PASSU with respect to obligations under other guarantee agreements which it may enter into from time to time to the extent that such agreements shall be entered into in substantially the form hereof and provide for comparable guarantees by the Guarantor of payment on preferred securities issued by other business trusts of which the Guarantor holds the common securities.

#### ARTICLE VII

##### TERMINATION

This Guarantee Agreement shall terminate and be of

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no further force and effect upon full payment of the Redemption Price of all Preferred Securities, or upon the distribution of Debentures to Holders in exchange for all the Preferred Securities, or upon full payment of the amounts payable in accordance with the Declaration upon liquidation of the Issuer. Notwithstanding the foregoing, this Guarantee Agreement will continue to be effective or will be reinstated, as the case may be, if at any time any Holder must restore payment of any sums paid with respect to the Preferred Securities or this Guarantee Agreement.

#### ARTICLE VIII

##### LIMITATION OF LIABILITY; INDEMNIFICATION

SECTION 8.01. EXCULPATION. (a) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Guarantor or any Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith and in a manner such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Guarantee Agreement or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's negligence or wilful misconduct with respect to such acts or omissions.

(b) An Indemnified Person shall be fully protected in relying in good faith upon the records of the Guarantor and upon such information, opinions, reports or statements presented to the Guarantor by any Person as to matters the Indemnified Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Guarantor, including information, opinions, reports or statements as to the value and amount of assets, liabilities, profits, losses or any other facts pertinent to the existence and amounts of assets from which Distributions to Holders might properly be paid.

SECTION 8.02. INDEMNIFICATION. (a) To the fullest extent permitted by applicable law, the Guarantor shall indemnify and hold harmless each Indemnified Person

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from and against any loss, damage or claim incurred by such Indemnified Person by reason of any act or omission performed or omitted by such Indemnified Person in good faith and in a manner such Indemnified Person reasonably believed to be within the scope of authority conferred on such Indemnified Person by this Guarantee Agreement, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Indemnified Person by reason of negligence or wilful misconduct with respect to such acts or omissions.

(b) To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by an Indemnified Person in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Guarantor prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Guarantor of an undertaking by or on behalf of the Indemnified Person to repay such amount if it shall be determined that the Indemnified Person is not entitled to be indemnified as authorized in Section 8.02(a).

ARTICLE IX

MISCELLANEOUS

SECTION 9.01. SUCCESSORS AND ASSIGNS. All guarantees and agreements contained in this Guarantee Agreement shall bind the successors, assignees, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of the Preferred Securities then outstanding. Except in connection with a consolidation, merger or conveyance, transfer or lease of assets involving the Guarantor that is permitted under Article Ten of the Indenture, the Guarantor shall not assign its obligations hereunder.

SECTION 9.02. AMENDMENTS. Except with respect to any changes which do not adversely affect the rights of Holders (in which case no consent of Holders will be required), this Guarantee Agreement may only be amended with

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the prior approval of the Holders of not less than 66-2/3% in liquidation amount of the Preferred Securities. The provisions of Section 12.02 of the Declaration concerning meetings of Holders shall apply to the giving of such approval.

SECTION 9.03 NOTICES. Any notice, request or other communication required or permitted to be given hereunder shall be in writing, duly signed by the party giving such notice, and delivered, telecopied or mailed by first class mail as follows:

(a) if given to the Guarantor, to the address set forth below or such other address as the Guarantor may give notice of to the Holders:

White Mountains Insurance Group, Ltd.  
80 South Main Street  
Hanover, New Hampshire 03755-2053  
Facsimile No.: [(    )    ]  
Attention: [                    ]

(b) if given to the Guarantee Trustee, to the address set forth below or such other address as the Guarantee Trustee may give notice of to the Holders:

[                    ]  
[                    ]  
[                    ]  
Facsimile No.: [(    )    ]  
Attention: [                    ]

(c) if given to any Holder of Preferred Securities, at the address set forth on the books and records of the Issuer.

All notices hereunder shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document

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shall be deemed to have been delivered on the date of such refusal or inability to deliver.

SECTION 9.04. GENDERS. The masculine, feminine and neuter genders used herein shall include the masculine, feminine and neuter genders.

SECTION 9.05. BENEFIT. This Guarantee Agreement is solely for the benefit of the Holders and, subject to Section 3.01(a), is not separately transferable from the Preferred Securities.

SECTION 9.06. GOVERNING LAW. THIS GUARANTEE AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS).

SECTION 9.07. COUNTERPARTS. This Guarantee Agreement may be executed in counterparts, each of which shall be an original; but such counterparts shall together constitute one and the same instrument.

SECTION 9.08. EXERCISE OF OVERALLOTMENT OPTION. If and to the extent that Preferred Securities are issued by the Issuer upon exercise of any over allotment option under the Underwriting Agreement (as defined in the Declaration), the Guarantor agrees to give prompt notice thereof to the Guarantee Trustee, but the failure to give such notice shall not relieve the Guarantor of any of its obligations hereunder.

This Guarantee Agreement is executed as of the day and year first above written.

by

-----  
Name:  
Title:

BANK ONE NATIONAL ASSOCIATION,  
as Guarantee Trustee

by

-----  
Name:  
Title:

[Form of Guarantee Agreement]

GUARANTEE AGREEMENT

OF

Fund American Trust III

-----  
 Dated as of [                      ]

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[Form of]

GUARANTEE AGREEMENT dated as of [ ], between White Mountains Insurance Group, Ltd, a company existing under the laws of Bermuda (the "Guarantor"), and Bank One, National Association, as the initial Guarantee Trustee (as defined herein) for the benefit of the Holders (as defined herein) from time to time of the Preferred Securities (as defined herein) of Fund American Trust III, a Delaware business trust (the "Issuer").

WHEREAS, pursuant to an Amended and Restated Declaration of Trust (the "Declaration") dated as of [ ], among the trustees named therein, Fund American Companies, Inc, a Delaware corporation ("Fund American"), as Sponsor, and the Holders from time to time of undivided beneficial interests in the assets of the Issuer, the Issuer may issue up to \$[ ] aggregate liquidation amount of its [ ]% Trust Preferred Securities (the "Preferred Securities") representing preferred undivided beneficial interests in the assets of the Issuer and having the terms set forth in Exhibit B to the Declaration, of which \$[ ] aggregate liquidation amount of Preferred Securities are being issued as of the date hereof by the Issuer pursuant to the Underwriting Agreement (as defined in the Declaration); and

WHEREAS, as incentive for the Holders to purchase Preferred Securities, the Guarantor desires to irrevocably and unconditionally agree, to the extent set forth herein, to pay to the Holders the Guarantee Payments (as defined herein) and to make certain other payments on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the purchase by the initial purchasers thereof of Preferred Securities, which purchase the Guarantor hereby agrees shall benefit the Guarantor, the Guarantor executes and delivers this Guarantee Agreement for the benefit of the Holders from time to time.

ARTICLE I

DEFINITIONS

(a) Capitalized terms used in this Guarantee Agreement but not defined in the preamble above have the

respective meanings assigned to them in this Article I

(b) A term defined anywhere in this Guarantee Agreement has the same meaning throughout.

(c) All references to "this Guarantee Agreement" are to this Guarantee Agreement as modified, supplemented or amended from time to time.

(d) All references in this Guarantee Agreement to Articles and Sections are to Articles and Sections of this Guarantee Agreement unless otherwise specified.

(e) A term defined in the Trust Indenture Act has the same meaning when used in this Guarantee Agreement unless otherwise defined in this Guarantee Agreement or unless the context otherwise requires.

(f) A reference to the singular includes the plural and vice versa.

"Affiliate" has the same meaning as given to that term in Rule 405 under the Securities Act of 1933, as amended, or any successor rule thereunder.

"Commission" means the Securities and Exchange Commission.

"Common Securities" means the securities representing common undivided beneficial interests in the assets of the Issuer, having the terms set forth in Exhibit C to the Declaration.

"Covered Person" means any Holder.

"Debentures" means the series of Junior Subordinated Debentures issued by Fund American under the Indenture to the Property Trustee entitled the "[ ]% Junior Subordinated Debentures due [ ]" which have been guaranteed by the Guarantor.

"Distributions" has the meaning set forth in Exhibit B to the Declaration.

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"Event of Default" means a default by the Guarantor on any of its payment or other obligations under this Guarantee Agreement; PROVIDED, HOWEVER, that except with respect to such a default resulting from a failure to pay any Guarantee Payment, such default shall have continued for more than 30 days.

"Guarantee Payments" shall mean the following Distributions and other payments, without duplication, with respect to the Preferred Securities, to the extent not made or paid by the Issuer: (i) any accrued and unpaid Distributions that are required to be paid on the Preferred Securities, but only if and to the extent that in each case Fund American or the Guarantor has made a payment to the Property Trustee of interest on the Debentures, (ii) the redemption price, including all accrued and unpaid Distributions to the date of redemption (the "Redemption Price"), with respect to any Preferred Securities called for redemption by the Issuer, but only if and to the extent that in each case Fund American or the Guarantor has made a payment to the Property Trustee of interest or principal on the Debentures, and (iii) upon a voluntary or involuntary dissolution, winding-up or termination of the Issuer (other than in connection with the distribution of Debentures to Holders or the redemption of all the Preferred Securities upon the maturity or redemption of the Debentures as provided in the Declaration), the lesser of (a) the aggregate of the liquidation amount and all accrued and unpaid Distributions on the Preferred Securities to the date of payment, to the extent the Issuer has funds available therefor, and (b) the amount of assets of the Issuer remaining available for distribution to Holders upon liquidation of the Issuer (in either case, the "Liquidation Distribution").

"Guarantee Trustee" means Bank One, National Association, until a Successor Guarantee Trustee has been appointed and accepted such appointment pursuant to the terms of this Guarantee Agreement and thereafter means each such Successor Guarantee Trustee.

"Holder" shall mean any holder, as registered on the books and records of the Issuer, of any Preferred Securities; PROVIDED, HOWEVER, that in determining whether the holders of the requisite percentage of Preferred Securities have given any request, notice, consent or waiver hereunder, "Holder" shall not include the Guarantor or any entity directly or indirectly

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controlling or controlled by or under direct or indirect common control with the Guarantor.

"Indemnified Person" means the Guarantee Trustee, any Affiliate of the Guarantee Trustee, and any officers, directors, shareholders, members, partners, employees, representatives or agents of the Guarantee Trustee.

"Indenture" means the Junior Subordinated Debenture Indenture dated as of [ ], between the Guarantor, Fund American and Bank One, National Association, as trustee, as amended and supplemented from time to time, pursuant to which the Debentures are to be issued.

"Investment Company" means an investment company as defined in the Investment Company Act.

"Investment Company Act" means the Investment Company Act of 1940, as amended from time to time, or any successor legislation.

"Liquidation Distribution" has the meaning set forth in the definition of Guarantee Payments.

"Majority in liquidation amount of the Preferred Securities" means, except as otherwise required by the Trust Indenture Act, Holder(s) of outstanding Preferred Securities voting together as a single class who are the record owners of Preferred Securities whose aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) represents more than 50% of the aggregate liquidation amount of all outstanding Preferred Securities.

"Person" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, or government or any

agency or political subdivision thereof, or any other entity of whatever nature.

"Preferred Securities" has the meaning set forth in the first WHEREAS clause above.

"Property Trustee" means the Person acting as Property Trustee under the Declaration.

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"Redemption Price" has the meaning set forth in the definition of Guarantee Payments.

"Responsible Officer" means, with respect to the Guarantee Trustee, any officer of the Guarantee Trustee with responsibility for the administration of this Guarantee Agreement and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer's knowledge of, and familiarity with, the particular subject.

"66-2/3% in liquidation amount of the Preferred Securities" means, except as otherwise required by the Trust Indenture Act, Holder(s) of outstanding Preferred Securities voting together as a single class who are the record owners of Preferred Securities whose aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) represents 66-2/3% or more of the aggregate liquidation amount of all outstanding Preferred Securities.

"Successor Guarantee Trustee" means a successor Guarantee Trustee possessing the qualifications to act as a Guarantee Trustee under Section 4.01.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended.

## ARTICLE II

### TRUST INDENTURE ACT

SECTION 2.01. TRUST INDENTURE ACT; APPLICATION. (a) This Guarantee Agreement is subject to the provisions of the Trust Indenture Act that are required to be part of this Guarantee Agreement and shall, to the extent applicable, be governed by such provisions.

(b) If and to the extent that any provision of this Guarantee Agreement limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control.

(c) The application of the Trust Indenture Act to this Guarantee Agreement shall not affect the nature

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of the Preferred Securities as equity securities representing preferred undivided beneficial interests in the assets of the Issuer.

SECTION 2.02. LISTS OF HOLDERS OF PREFERRED SECURITIES. (a) The Guarantor shall provide the Guarantee Trustee with such information as is required under Section 312(a) of the Trust Indenture Act at the times and in the manner provided in Section 312(a).

(b) The Guarantee Trustee shall comply with its obligations under Sections 310(b), 311 and 312(b) of the Trust Indenture Act.

SECTION 2.03. REPORTS BY THE GUARANTEE TRUSTEE. Within 60 days after May 15 of each year, the Guarantee Trustee shall provide to the Holders such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form, in the manner and at the times provided by Section 313 of the Trust Indenture Act. The Guarantee Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

SECTION 2.04. PERIODIC REPORTS TO THE GUARANTEE TRUSTEE. The Guarantor shall provide to the Guarantee Trustee, the Commission and the Holders, as applicable, such documents, reports and information as required by Section 314(a)(1)-(3) (if any) of the Trust Indenture Act and the compliance certificates required by Section 314(a)(4) and (c) of the Trust Indenture Act, any such certificates to be provided in the form, in the manner and at the times required by Section 314(a)(4) and (c) of the Trust Indenture Act (PROVIDED that any certificate to be provided pursuant to Section 314(a)(4) of the Trust Indenture Act shall be provided within 120 days of the end of each fiscal year of the Issuer).

SECTION 2.05. EVIDENCE OF COMPLIANCE WITH CONDITIONS PRECEDENT. The Guarantor shall provide the Guarantee Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Guarantee Agreement which relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given pursuant to Section 314(c) of the Trust Indenture Act shall comply with Section 314(e) of the Trust Indenture Act.

SECTION 2.06. EVENTS OF DEFAULT; WAIVER. (a) Subject to Section 2.06(b), Holders may, by vote of at least a Majority in liquidation amount of the

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Preferred Securities, (A) direct the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee, or exercising any trust or power conferred upon the Guarantee Trustee, or (B) on behalf of the Holders of all Preferred Securities, waive any past Event of Default and its consequences. Upon such waiver, any such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Guarantee Agreement, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

(b) The right of any Holder to receive payment of the Guarantee Payments in accordance with this Guarantee Agreement, or to institute suit for the enforcement of any such payment, shall not be impaired without the consent of each such Holder.

SECTION 2.07. DISCLOSURE OF INFORMATION. The disclosure of information as to the names and addresses of the Holders in accordance with Section 312 of the Trust Indenture Act, regardless of the source from which such information was derived, shall not be deemed to be a violation of any existing law or any law hereafter enacted which does not specifically refer to Section 312 of the Trust Indenture Act, nor shall the Guarantee Trustee be held accountable by reason of mailing any material pursuant to a request made under Section 312(b) of the Trust Indenture Act.

SECTION 2.08. CONFLICTING INTEREST. The Declaration shall be deemed to be specifically described in this Guarantee Agreement for the purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

### ARTICLE III

#### POWERS, DUTIES AND RIGHTS OF GUARANTEE TRUSTEE

SECTION 3.01. POWERS AND DUTIES OF THE GUARANTEE TRUSTEE. (a) This Guarantee Agreement shall be held by the Guarantee Trustee in trust for the benefit of the Holders. The Guarantee Trustee shall not transfer its right, title and interest in this Guarantee Agreement to any Person except a Successor Guarantee Trustee on acceptance by such Successor Guarantee Trustee of its appointment to act as Guarantee Trustee or to a Holder

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exercising his or her rights pursuant to Section 5.04. The right, title and interest of the Guarantee Trustee to this Guarantee Agreement shall vest automatically in each Person who may hereafter be appointed as Guarantee Trustee in accordance with Article IV. Such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered.

(b) If an Event of Default occurs and is continuing, the Guarantee Trustee shall enforce this Guarantee Agreement for the benefit of the Holders.

(c) This Guarantee Agreement and all moneys received by the Property Trustee hereunder in respect of the Guarantee Payments will not be subject to any right, charge, security interest, lien or claim of any kind in favor of or for the benefit of the Guarantee Trustee or its agents or their creditors.

(d) The Guarantee Trustee shall, within 90 days after the occurrence of an Event of Default, transmit by mail, first class postage prepaid, to the Holders, as their names and addresses appear upon the register, notice of all Events of Default known to the Guarantee Trustee, unless such Events of Default shall have been cured before the giving of such notice; PROVIDED that, the Guarantee Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Guarantee Trustee in good faith determines that the withholding of such notice is in the interests of the Holders. The Guarantee Trustee shall not be deemed to have knowledge of any Event of Default except any Event of Default as to which the Guarantee Trustee shall have received written notice or a Responsible Officer charged with the administration of this Guarantee Agreement shall have obtained written notice.

(e) The Guarantee Trustee shall not resign as a Trustee unless a Successor Guarantee Trustee has been appointed and accepted that appointment in accordance with Article IV.

SECTION 3.02. CERTAIN RIGHTS AND DUTIES OF THE GUARANTEE TRUSTEE. (a) The Guarantee Trustee, before the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Guarantee Agreement,



and no implied covenants shall be read into this Guarantee Agreement against the Guarantee Trustee. In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.06(a)), the Guarantee Trustee shall exercise such of the rights and powers vested in it by this Guarantee Agreement, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

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

(i) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred;

(A) the duties and obligations of the Guarantee Trustee shall be determined solely by the express provisions of this Guarantee Agreement, and the Guarantee Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Guarantee Agreement, and no implied covenants or obligations shall be read into this Guarantee Agreement against the Guarantee Trustee; and

(B) in the absence of bad faith on the part of the Guarantee Trustee, the Guarantee Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Guarantee Trustee and conforming to the requirements of this Guarantee Agreement; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Guarantee Trustee, the Guarantee Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Guarantee Agreement;

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

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(iii) the Guarantee Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders as provided herein relating to the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee, or exercising any trust or power conferred upon the Guarantee Trustee under this Guarantee Agreement; and

(iv) no provision of this Guarantee Agreement shall require the Guarantee Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if it shall have reasonable ground for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of this Guarantee Agreement or adequate indemnity against such risk or liability is not reasonably assured to it.

(c) Subject to the provisions of Section 3.02(a) and (b):

(i) whenever in the administration of this Guarantee Agreement, the Guarantee Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Guarantee Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part and, if the Trust is excluded from the definition of Investment Company solely by reason of Rule 3a-7 under the Investment Company Act ("Rule 3a-7"), subject to the requirements of Rule 3a-7, request and rely upon a certificate, which shall comply with the provisions of Section 314(e) of the Trust Indenture Act, signed by any authorized officer of the Guarantor;

(ii) the Guarantee Trustee (A) may consult with counsel (which may be counsel to the Guarantor or any of its Affiliates and may include any of its employees) selected by it in good faith and with due care and the written advice or opinion of such counsel with respect to legal matters shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon and in accordance with such advice and opinion and (B) shall have the right at any time to seek instructions concerning the

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administration of this Guarantee Agreement from any court of competent jurisdiction;

(iii) the Guarantee Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through

agents or attorneys and the Guarantee Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed by it in good faith and with due care;

(iv) the Guarantee Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Guarantee Agreement at the request or direction of any Holders, unless such Holders shall have offered to the Guarantee Trustee reasonable security and indemnity against the costs, expenses (including attorneys' fees and expenses) and liabilities that might be incurred by it in complying with such request or direction; PROVIDED that nothing contained in this clause (iv) shall relieve the Guarantee Trustee of the obligation, upon the occurrence of an Event of Default (which has not been cured or waived) to exercise such of the rights and powers vested in it by this Guarantee Agreement, and to use the same degree of care and skill in such exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs; and

(v) any action taken by the Guarantee Trustee or its agents hereunder shall bind the Holders and the signature of the Guarantee Trustee or its agents alone shall be sufficient and effective to perform any such action; and no third party shall be required to inquire as to the authority of the Guarantee Trustee to so act, or as to its compliance with any of the terms and provisions of this Guarantee Agreement, both of which shall be conclusively evidenced by the Guarantee Trustee's or its agent's taking such action.

SECTION 3.03. NOT RESPONSIBLE FOR RECITALS OR ISSUANCE OF GUARANTEE. The recitals contained in this Guarantee Agreement shall be taken as the statements of the Guarantor and the Guarantee Trustee does not assume any responsibility for their correctness. The Guarantee Trustee makes no representations as to the validity or sufficiency of this Guarantee Agreement.

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#### ARTICLE IV

##### GUARANTEE TRUSTEE

SECTION 4.01. QUALIFICATIONS. (a) There shall at all times be a Guarantee Trustee which shall:

(i) not be an Affiliate of the Guarantor;

(ii) be a corporation organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or Person permitted by the Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by Federal, State, Territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then for the purposes of this Section 4.01(a)(ii), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published; and

(iii) if the Trust is excluded from the definition of an Investment Company solely by reason of Rule 3a-7 and to the extent Rule 3a-7 requires a trustee having certain qualifications to hold title to the "eligible assets" (as defined in Rule 3a-7) of the Trust, possess those qualifications.

If at any time the Guarantee Trustee shall cease to satisfy the requirements of clauses (i),(ii) and (iii) above, the Guarantee Trustee shall immediately resign in the manner and with the effect set out in Section 4.02. If the Guarantee Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Guarantee Trustee and the Guarantor shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

SECTION 4.02. APPOINTMENT, REMOVAL AND RESIGNATION OF GUARANTEE TRUSTEE.

(a) Subject to Section 4.02(b), the Guarantee Trustee may be appointed or removed without cause at any time by the Guarantor.

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(b) The Guarantee Trustee shall not be removed in accordance with Section 4.02(a) until a Successor Guarantee Trustee possessing the qualifications to act as Guarantee Trustee under Section 4.01(a) has been appointed and has accepted such appointment by written instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor and the Guarantee Trustee being removed.

(c) The Guarantee Trustee appointed to office shall hold office until its successor shall have been appointed and until its removal or resignation.

(d) The Guarantee Trustee may resign from office (without need for prior

or subsequent accounting) by an instrument (a "Resignation Request") in writing signed by the Guarantee Trustee and delivered to the Guarantor, which resignation shall take effect upon such delivery or upon such later date as is specified therein; PROVIDED, HOWEVER, that no such resignation of the Guarantee Trustee shall be effective until: (i) a Successor Guarantee Trustee possessing the qualifications to act as Guarantee Trustee under Section 4.01(a) has been appointed and has accepted such appointment by instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor and the resigning Guarantee Trustee; or (ii) until the assets of the Trust have been completely liquidated and the proceeds thereof distributed to the Holders, if the Trust is excluded from the definition of an Investment Company solely by reason of Rule 3a-7.

(e) If no Successor Guarantee Trustee shall have been appointed and accepted appointment as provided in this Section 4.02 within 60 days after delivery to the Guarantor of a Resignation Request, the resigning Guarantee Trustee may petition any court of competent jurisdiction for appointment of a Successor Guarantee Trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a Successor Guarantee Trustee.

#### ARTICLE V

#### GUARANTEE

SECTION 5.01. GUARANTEE. The Guarantor irrevocably and unconditionally agrees to pay in full to the Holders the Guarantee Payments (without duplication

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of amounts theretofore paid by the Issuer), regardless of any defense, right of set-off or counterclaim that the Issuer may have or assert. The Guarantor's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Issuer to pay such amounts to the Holders.

SECTION 5.02. WAIVER OF NOTICE. The Guarantor hereby waives notice of acceptance of this Guarantee Agreement and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Issuer or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and, to the extent permitted by law, all other notices and demands.

SECTION 5.03. OBLIGATIONS NOT AFFECTED. The obligations, covenants, agreements and duties of the Guarantor under this Guarantee Agreement shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

(a) the release or waiver, by operation of law or otherwise, of the performance or observance by the Issuer of any express or implied agreement, covenant, term or condition relating to the Preferred Securities to be performed or observed by the Issuer;

(b) the extension of time for the payment by the Issuer of all or any portion of the Distributions (other than an extension of time for payment of Distributions that results from the extension of any interest payment period on the Debentures), Redemption Price, Liquidation Distribution or any other sums payable under the terms of the Preferred Securities or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the Preferred Securities;

(c) any failure, omission, delay or lack of diligence on the part of the Holders to enforce, assert or exercise any right, privilege, power or remedy conferred on the Holders pursuant to the terms of the Preferred Securities, or any action on the part of the Issuer granting indulgence or extension of any kind;

(d) the voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership,

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insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Issuer or any of the assets of the Issuer;

(e) any invalidity of, or defect or deficiency in, the Preferred Securities;

(f) the settlement or compromise of any obligation guaranteed hereby or hereby incurred; or

(g) any other circumstances whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 5.03 that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances.

There shall be no obligation of the Holders to give notice to, or obtain consent of, the Guarantor with respect to the happening of any of the foregoing.

SECTION 5.04. ENFORCEMENT OF GUARANTEE. The Guarantor and the Guarantee Trustee expressly acknowledge that (i) this Guarantee Agreement will be deposited with the Guarantee Trustee to be held for the benefit of the Holders; (ii) the Guarantee Trustee has the right to enforce this Guarantee Agreement on behalf of the Holders; (iii) Holders representing not less than a Majority in liquidation amount of the Preferred Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available in respect of this Guarantee Agreement, including the giving of directions to the Guarantee Trustee, or exercising any trust or other power conferred upon the Guarantee Trustee under this Guarantee Agreement, and (iv) if the Guarantee Trustee fails to enforce this Guarantee Agreement, any Holder may institute a legal proceeding directly against the Guarantor to enforce its rights under this Guarantee Agreement, without first instituting a legal proceeding against the Issuer, the Guarantee Trustee or any other Person. Notwithstanding the foregoing, if the Guarantor has failed to make a Guarantee Payment, a Holder of Preferred Securities may directly institute a proceeding against the Guarantor for enforcement of such Holder's right to receive payment under the Guarantee. The Guarantor waives any right or remedy to require that any action be brought first against the Issuer or any other

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person or entity before proceeding directly against the Guarantor.

SECTION 5.05. GUARANTEE OF PAYMENT. This Guarantee Agreement creates a guarantee of payment and not merely of collection. This Guarantee Agreement will not be discharged except by payment of the Guarantee Payments in full (without duplication of amounts theretofore paid by the Issuer).

SECTION 5.06. SUBROGATION. The Guarantor shall be subrogated to all rights, if any, of the Holders against the Issuer in respect of any amounts paid to the Holders by the Guarantor under this Guarantee Agreement; PROVIDED, HOWEVER, that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any rights which it may acquire by way of subrogation or any indemnity, reimbursement or other agreement, in all cases as a result of payment under this Guarantee Agreement, if, at the time of any such payment, any amounts are due and unpaid under this Guarantee Agreement. If any amount shall be paid to the Guarantor in violation of the preceding sentence, the Guarantor agrees to hold such amount in trust for the Holders and to pay over such amount to the Holders.

SECTION 5.07. INDEPENDENT OBLIGATIONS. The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Issuer with respect to the Preferred Securities and that the Guarantor shall be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this Guarantee Agreement notwithstanding the occurrence of any event referred to in subsections (a) through (g), inclusive, of Section 5.03.

#### ARTICLE VI

##### LIMITATION OF TRANSACTIONS; SUBORDINATION

SECTION 6.01. LIMITATION OF TRANSACTIONS. So long as any Preferred Securities remain outstanding, the Guarantor will not declare or pay any dividends on, or redeem, purchase, acquire or make a distribution or liquidation payment with respect to, any of its common stock or preferred stock if at such time (i) the Guarantor shall be in default with respect to its Guarantee Payments or other payment obligations

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hereunder, (ii) there shall have occurred any Event of Default (as defined in the Declaration) or (iii) the Guarantor shall have given notice of its selection of an extension period (as defined in the Indenture) and such period, or any extension thereof, is continuing; PROVIDED, HOWEVER, that the foregoing restrictions will not apply to (i) dividends, redemptions, purchases, acquisitions, distributions or payments made by the Guarantor by way of issuance of shares of its capital stock, (ii) declarations or payments of dividends in connection with the implementation of a stockholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto, (iii) payments of accrued dividends by the Guarantor upon the redemption, exchange or conversion of any preferred stock of the Guarantor as may be outstanding from time to time in accordance with the terms of such preferred stock, (iv) cash payments made by the Guarantor in lieu of delivering fractional shares upon the redemption, exchange or conversion of any preferred stock of the Guarantor as may be outstanding from time to time in accordance with the terms of such preferred stock, (v) purchases or acquisitions of share of common stock in connection with the satisfaction of obligations under any employee benefit plan or other contractual obligation, (vi) dividends, distributions, redemptions, purchases, acquisitions or payments as a result of a reclassification of capital stock or conversion of one class or series of capital stock for another class or series of capital stock.

SECTION 6.02. SUBORDINATION. This Guarantee Agreement will constitute an

unsecured obligation of the Guarantor and will rank (i) subordinate and junior in right of payment to all other indebtedness, liabilities and obligations of the Guarantor and any guarantees, endorsements or other contingent obligations of the Guarantor in respect of such indebtedness, liabilities or obligations, including the Debentures, except those made PARI PASSU or subordinate by their terms, and (ii) senior to all capital stock now or hereafter issued by the Guarantor and to any guarantee now or hereafter entered into by the Guarantor in respect of any of its capital stock. The Guarantor's obligations under this Guarantee Agreement will rank PARI PASSU with respect to obligations under other guarantee agreements which it may enter into from time to time to the extent that such agreements shall be entered into in substantially the form hereof and provide for comparable guarantees by the Guarantor of payment on preferred securities issued by

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other business trusts of which the Guarantor holds the common securities.

#### ARTICLE VII

##### TERMINATION

This Guarantee Agreement shall terminate and be of no further force and effect upon full payment of the Redemption Price of all Preferred Securities, or upon the distribution of Debentures to Holders in exchange for all the Preferred Securities, or upon full payment of the amounts payable in accordance with the Declaration upon liquidation of the Issuer. Notwithstanding the foregoing, this Guarantee Agreement will continue to be effective or will be reinstated, as the case may be, if at any time any Holder must restore payment of any sums paid with respect to the Preferred Securities or this Guarantee Agreement.

#### ARTICLE VIII

##### LIMITATION OF LIABILITY; INDEMNIFICATION

SECTION 8.01. EXCULPATION. (a) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Guarantor or any Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith and in a manner such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Guarantee Agreement or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's negligence or wilful misconduct with respect to such acts or omissions.

(b) An Indemnified Person shall be fully protected in relying in good faith upon the records of the Guarantor and upon such information, opinions, reports or statements presented to the Guarantor by any Person as to matters the Indemnified Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Guarantor, including information, opinions, reports or statements as to the value and amount of assets, liabilities, profits,

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losses or any other facts pertinent to the existence and amounts of assets from which Distributions to Holders might properly be paid.

SECTION 8.02. INDEMNIFICATION. (a) To the fullest extent permitted by applicable law, the Guarantor shall indemnify and hold harmless each Indemnified Person from and against any loss, damage or claim incurred by such Indemnified Person by reason of any act or omission performed or omitted by such Indemnified Person in good faith and in a manner such Indemnified Person reasonably believed to be within the scope of authority conferred on such Indemnified Person by this Guarantee Agreement, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Indemnified Person by reason of negligence or wilful misconduct with respect to such acts or omissions.

(b) To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by an Indemnified Person in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Guarantor prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Guarantor of an undertaking by or on behalf of the Indemnified Person to repay such amount if it shall be determined that the Indemnified Person is not entitled to be indemnified as authorized in Section 8.02(a).

#### ARTICLE IX

##### MISCELLANEOUS

SECTION 9.01. SUCCESSORS AND ASSIGNS. All guarantees and agreements contained in this Guarantee Agreement shall bind the successors, assignees, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of the Preferred Securities then outstanding. Except in connection with a consolidation, merger or conveyance, transfer or lease of assets involving the Guarantor that is permitted under Article Ten of the

Indenture, the Guarantor shall not assign its obligations hereunder.

SECTION 9.02. AMENDMENTS. Except with respect to any changes which do not adversely affect the rights of Holders (in which case no consent of Holders will be

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required), this Guarantee Agreement may only be amended with the prior approval of the Holders of not less than 66-2/3% in liquidation amount of the Preferred Securities. The provisions of Section 12.02 of the Declaration concerning meetings of Holders shall apply to the giving of such approval.

SECTION 9.03 NOTICES. Any notice, request or other communication required or permitted to be given hereunder shall be in writing, duly signed by the party giving such notice, and delivered, telecopied or mailed by first class mail as follows:

(a) if given to the Guarantor, to the address set forth below or such other address as the Guarantor may give notice of to the Holders:

White Mountains Insurance Group, Ltd.  
80 South Main Street  
Hanover, New Hampshire 03755-2053  
Facsimile No.: [( ) ]  
Attention: [ ]

(b) if given to the Guarantee Trustee, to the address set forth below or such other address as the Guarantee Trustee may give notice of to the Holders:

[ ]  
[ ]  
[ ]  
Facsimile No.: [( ) ]  
Attention: [ ]

(c) if given to any Holder of Preferred Securities, at the address set forth on the books and records of the Issuer.

All notices hereunder shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

SECTION 9.04. GENDERS. The masculine, feminine and neuter genders used herein shall include the masculine, feminine and neuter genders.

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SECTION 9.05. BENEFIT. This Guarantee Agreement is solely for the benefit of the Holders and, subject to Section 3.01(a), is not separately transferable from the Preferred Securities.

SECTION 9.06. GOVERNING LAW. THIS GUARANTEE AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS).

SECTION 9.07. COUNTERPARTS. This Guarantee Agreement may be executed in counterparts, each of which shall be an original; but such counterparts shall together constitute one and the same instrument.

SECTION 9.08. EXERCISE OF OVERALLOTMENT OPTION. If and to the extent that Preferred Securities are issued by the Issuer upon exercise of any overallocation option under the Underwriting Agreement (as defined in the Declaration), the Guarantor agrees to give prompt notice thereof to the Guarantee Trustee, but the failure to give such notice shall not relieve the Guarantor of any of its obligations hereunder.

This Guarantee Agreement is executed as of the day and year first above written.

WHITE MOUNTAINS INSURANCE  
GROUP, LTD.

by

Name:  
Title:

BANK ONE NATIONAL ASSOCIATION,  
as Guarantee Trustee

by

Name:

Title:

EXHIBIT 12.1  
 COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES AND  
 RATIO OF EARNINGS TO FIXED CHARGES AND PREFERRED STOCK DIVIDENDS  
 (\$ in millions)

SIX MONTHS  
 TWELVE MONTHS  
 TWELVE MONTHS  
 ENDED JUNE  
 30, ENDED  
 DECEMBER 31,  
 ENDED  
 DECEMBER 31,  
 CONSOLIDATED  
 BASIS 2001  
 2000 1999 ---  
 -----  
 --- -----  
 -----  
 -----  
 -----  
 -----  
 -----

--- Pretax  
 earnings  
 (loss) from  
 continuing  
 operations \$  
 (109.0) \$  
 355.4 \$ 161.5  
 Less  
 undistributed  
 earnings in  
 unconsolidated  
 affiliates  
 (2.6) (1.0)  
 (29.0)  
 Interest  
 expense (A)  
 8.4 16.1 14.7  
 Portion of  
 rent  
 representative  
 of interest  
 expense 1.3  
 0.9 0.6 -----  
 -----

Operating  
 earnings as  
 adjusted \$  
 (101.9) \$  
 371.4 \$ 147.8  
 =====  
 =====  
 =====

Interest  
 expense (A) \$  
 8.4 \$ 16.1 \$  
 14.7 Portion  
 of rent  
 representative  
 of interest  
 expense 1.3  
 0.9 0.6 -----  
 -----

Total fixed  
 charges \$ 9.7  
 \$ 17.0 \$ 15.3  
 =====  
 =====  
 =====

RATIO OF  
 EARNINGS TO  
 FIXED CHARGES  
 (10.5)(B)  
 21.8 9.7  
 =====  
 =====  
 =====

Preferred  
 stock  
 dividend  
 requirements  
 \$ 3.4 \$ 0.0 \$  
 0.0 Effective  
 percentage  
 for dividend  
 gross-up (1-  
 effective tax  
 rate) 1.0 0.0  
 0.0 -----  
 -----



-----  
 Effective preferred stock dividend requirements \$ 3.4 \$ 0.0 \$ 0.0 -----  
 -----

----- Total fixed charges and preferred stock dividends \$ 13.1 \$ 17.0 \$ 15.3 =====  
 =====

RATIO OF EARNINGS TO FIXED CHARGES AND PREFERRED STOCK DIVIDENDS (7.8)(B) 21.8 9.7 =====  
 =====

TWELVE MONTHS TWELVE MONTHS TWELVE MONTHS ENDED DECEMBER 31, ENDED DECEMBER 31, ENDED DECEMBER 31, 1998 1997 1996 -----  
 -----  
 -----

----- Pretax earnings (loss) from continuing operations \$ 79.6 \$ 101.3 \$ 22.4 Less undistributed earnings in unconsolidated affiliates (17.2) (14.7) (8.2)

Interest expense (A) 13.7 10.6 10.3 Portion of rent representative of interest expense 0.6 0.6 0.6 -----  
 -----

----- Operating earnings as adjusted \$ 76.7 \$ 97.8 \$ 25.1 =====  
 =====

Interest expense (A) \$ 13.7 \$ 10.6 \$ 10.3 Portion of rent representative of interest expense 0.6 0.6 0.6 -----  
 -----

----- Total fixed charges \$ 14.3 \$ 11.2 \$ 10.9 =====  
 =====

===== RATIO OF EARNINGS TO FIXED CHARGES 5.4

```

8.7 2.3
=====
Preferred
stock
dividend
requirements
$ 0.0 $ 0.0 $
0.0 Effective
percentage
for dividend
gross-up (1-
effective tax
rate) 0.0 0.0
0.0 ----- -
-----
-- Effective
preferred
stock
dividend
requirements
$ 0.0 $ 0.0 $
0.0 ----- -
-----
-- Total
fixed charges
and preferred
stock
dividends $
14.3 $ 11.2 $
10.9 =====
=====
===== RATIO
OF EARNINGS
TO FIXED
CHARGES AND
PREFERRED
STOCK
DIVIDENDS 5.4
8.7 2.3
=====
=====
=====

```

(A) Includes amortized premiums, discounts and capitalized expenses related to indebtedness.

(B) Due to the Registrant's loss in the 2001 period, the ratio coverage was less than 1:1.

CONSENT OF INDEPENDENT ACCOUNTANTS

We consent to the incorporation by reference in the Registration Statement on Form S-3 of White Mountains Insurance Group, Ltd. and Fund American Companies, Inc. of our report dated February 9, 2001, except for Note 17, which is as of March 16, 2001, relating to the 2000 and 1999 financial statements and financial statement schedules of White Mountains Insurance Group, Ltd. and its subsidiaries.

/s/ PricewaterhouseCoopers

Hamilton, Bermuda

November 8, 2001

CONSENT OF INDEPENDENT ACCOUNTANTS

We consent to the incorporation by reference in the Registration Statement on Form S-3 of White Mountains Insurance Group, Ltd. and Fund American Companies, Inc. of our report dated January 25, 2000, except for Note 22, as to which the date is March 14, 2000, with respect to the consolidated financial statements of Financial Security Assurance Holdings, Ltd. and its subsidiaries as of December 31, 1999 and 1998 and for each of the three years in the period ended December 31, 1999 and our report dated February 2, 1999, except for Note 17, as to which the date is February 24, 1999, with respect to the consolidated financial statements of Folksamerica Holding Company, Inc. and its subsidiaries for the year ended December 31, 1998.

/s/ PricewaterhouseCoopers LLP

New York, New York

November 8, 2001

CONSENT OF INDEPENDENT ACCOUNTANTS

The Board of Directors  
White Mountains Insurance Group, Ltd.:

We consent to the incorporation by reference in the Registration Statement on Form S-3 of White Mountains Insurance Group, Ltd. and Fund American Companies, Inc. of our report dated February 12, 1999, with respect to the consolidated statements of income and comprehensive income, shareholders' equity, and cash flows of White Mountains Insurance Group, Ltd. and subsidiaries, and all related schedules, for the year ended December 31, 1998 which report appears in the December 31, 2000, annual report on Form 10-K of White Mountains Insurance Group, Ltd.

/s/ KPMG LLP  
Providence, Rhode Island  
November 8, 2001



4. A copy of the existing by-laws of the trustee.\*
5. Not Applicable.
6. The consent of the trustee required by Section 321(b) of the Act.
7. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority.
8. Not Applicable.
9. Not Applicable.

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Bank One, National Association, a national banking association organized and existing under the laws of the United States of America, has duly caused this Statement of Eligibility to be signed

on its behalf by the undersigned, thereunto duly authorized, all in the City of Chicago and the State of Illinois, on this 1st day of November, 2001.

BANK ONE, NATIONAL ASSOCIATION,  
TRUSTEE

By /s/ John R. Prendiville  
John R. Prendiville  
First Vice President

\* Exhibits 1, 2, 3, and 4 are herein incorporated by reference to Exhibits bearing identical numbers in Item 16 of the Form T-1 of Bank One, National Association, filed as Exhibit 25 to the Registration Statement on Form S-3 of Household Finance Corporation filed with the Securities and Exchange Commission on March 24, 2000 (Registration No. 333-33240).

EXHIBIT 6

THE CONSENT OF THE TRUSTEE REQUIRED  
BY SECTION 321(b) OF THE ACT

November 1, 2001

Securities and Exchange Commission  
Washington, D.C. 20549

Gentlemen:

In connection with the qualification of an indenture among White Mountains Insurance Group, Ltd., Fund American Companies, Inc. and Bank One, National Association, the undersigned, in accordance with Section 321(b) of the Trust Indenture Act of 1939, as amended, hereby consents that the reports of examinations of the undersigned, made by Federal or State authorities authorized to make such examinations, may be furnished by such authorities to the Securities and Exchange Commission upon its request therefor.

Very truly yours,

BANK ONE, NATIONAL ASSOCIATION

By /s/ John R. Prendiville  
John R. Prendiville  
First Vice President

EXHIBIT 7

Call Date: 03/31/01 ST-BK: 17-1630 FFIEC 031  
Page RC-1

Legal Title of Bank: Bank One, NA  
Address: 1 Bank One Plaza, Ste 0303  
City, State Zip: Chicago, IL 60670  
FDIC Certificate No.: 0/3/6/1/8

CONSOLIDATED REPORT OF CONDITION FOR INSURED COMMERCIAL  
AND STATE-CHARTERED SAVINGS BANKS FOR MARCH 31, 2001

All schedules are to be reported in thousands of dollars. Unless otherwise indicated, report the amount outstanding of the last business day of the quarter.

SCHEDULE RC--BALANCE SHEET

DOLLAR AMOUNTS IN THOUSANDS C400 ---- RCFD BIL MIL THOU ASSETS 1.  
Cash and balances due from depository institutions (from Schedule RCFD RC-A): ---- a. Noninterest-bearing balances and currency and  
coin(1) 0081 7,994,185 1.a b. Interest-bearing  
balances(2)..... 0071

1,910,093 1.b 2. Securities a. Held-to-maturity securities (from Schedule RC-B, column A) ..... 1754 0 2.a b. Available-for-sale securities (from Schedule RC-B, column D)..... 1773 23,762,627 2.b 3. Federal funds sold and securities purchased under agreements to resell

.....

1350 16,702,281 3. 4. Loans and lease financing receivables (from Schedule RC-C): A. LOANS AND LEASES HELD FOR SALE..... 5369 344,709 4.a B. LOANS AND LEASES, NET OF UNEARNED INCOME..... B528 82,078,753 4.b c. LESS: Allowance for loan and lease losses..... 3128 1,928,789 4.c d. LOANS AND LEASES, NET OF UNEARNED INCOME AND ALLOWANCE (ITEM 4.B MINUS 4.C)..... B529 80,146,964 4.d 5. Trading assets (from Schedule RD-D)..... 3545 4,915,723 5. 6. Premises and fixed assets (including capitalized leases) ..... 2145 766,510 6. 7. Other real estate owned (from Schedule RC-M) ..... 2150 10,983 7. 8. Investments in unconsolidated subsidiaries and associated companies (from Schedule RC-M)..... 2130 396,660 8. 9. Customers' liability to this bank on acceptances outstanding ..... 2155 224,739 9. 10. Intangible assets..... A. GOODWILL ..... 3163 455,924 10.a B. OTHER INTANGIBLE ASSETS (FROM SCHEDULE RC-M)..... 0426 4,069 10.b 11. Other assets (from Schedule RC-F)..... 2160 3,800,668 11. 12. Total assets (sum of items 1 through 11)..... 2170 141,439,135 12.

- (1) Includes cash items in process of collection and unposted debits.
- (2) Includes time certificates of deposit not held for trading.

Call Date: 03/31/01 ST-BK: 17-1630 FFIEC 031  
Page RC-2

Legal Title of Bank: Bank One, NA  
Address: 1 Bank One Plaza, Ste 0303  
City, State Zip: Chicago, IL 60670  
FDIC Certificate No.: 0/3/6/1/8

SCHEDULE RC-CONTINUED

DOLLAR AMOUNTS IN THOUSANDS LIABILITIES 13.  
Deposits: RCON a. In domestic offices (sum of totals of columns A and C ---- from Schedule RC-E, part 1) ..... 2200 54,375,506 13.a (1) Noninterest-bearing(1) ..... 6631 17,419,591 13.a1 (2) Interest-bearing ..... 6636 36,955,915 13.a2 RCFN b. In foreign offices, Edge and Agreement subsidiaries, and ---- IBFs (from Schedule RC-E, part II) ..... 2200 32,455,591 13.b (1) Noninterest bearing ..... 6631 763,957 13.b1 (2) Interest-bearing ..... 6636 31,691,634 13.b2 14. Federal funds purchased and securities sold under agreements to repurchase: ..... RCFD 2800 6,144,086 14 15. Trading liabilities (from Schedule RC-D ..... RCFD 3548 3,957,785 15 16 OTHER BORROWED MONEY (INCLUDES MORTGAGE INDEBTEDNESS AND OBLIGATIONS UNDER CAPITALIZED LEASES)(FROM SCHEDULE RC-M RCFD 3190 22,957,605 16 17. Not applicable 18. Bank's liability on acceptance executed and outstanding .... 2920 224,739 18. 19. Subordinated notes and debentures ..... 3200 3,861,811 19. 20. Other liabilities (from Schedule RC-G) ..... 2930 8,947,634 20. 21. Total liabilities (sum of items 13 through 20) ..... 2948 132,924,757 21. 22. MINORITY INTEREST IN CONSOLIDATED SUBSIDIARIES ..... 3000 26 22. EQUITY CAPITAL 23. Perpetual preferred stock and related surplus ..... 3838 0 23. 24. Common stock ..... 3230 200,858 24. 25. Surplus (exclude all surplus related to preferred stock) ... 3839 5,493,189 25. 26. a. Retained earnings 3632 2,827,092 26.a B. ACCUMULATED OTHER COMPREHENSIVE INCOME (3) ..... B530



(6,787) 26.b 27. OTHER EQUITY CAPITAL  
 COMPONENTS (4) A130 0 27. 28. Total equity  
 capital (sum of items 23 through 27)  
 ..... 3210 8,514,352 28. 29. Total  
 liabilities, minority interest, and equity  
 capital (sum of items 21, 22, and 28)  
 ..... 3300  
 141,439,165 29.

Memorandum

To be reported only with the March Report of Condition.

1. Indicate in the box at the right the number of the STATEMENT below that best describes the most comprehensive level of auditing work performed for the bank by independent external auditors as of any date during 1996.....
- 1 = Independent audit of the bank conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the bank
  - 2 = Independent audit of the bank's parent holding company conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the consolidated holding company (but not on the bank separately)
  - 3 = DIRECTORS' EXAMINATION OF THE BANK CONDUCTED IN ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS BY A CERTIFIED PUBLIC ACCOUNTING FIRM (MAY BE REQUIRED BY STATE CHARTERING AUTHORITY)
  - 4 = Directors' examination of the bank performed by other external auditors (may be required by state chartering authority)
  - 5 = Review of the bank's financial statements by external auditors
  - 6 = Compilation of the bank's financial statements by external auditors
  - 7 = Other audit procedures (excluding tax preparation work)
  - 8 = No external audit work

RCFD 6724..... 2

-----  
 Number  
 M.1  
 -----

- - - - -
- (1) Includes total demand deposits and noninterest-bearing time and savings deposits.
  - (2) Includes limited-life preferred stock and related surplus.
  - (3) Includes net unrealized holding gains (losses) on available-for-sale securities, accumulated net gains (losses) on cash flow hedges, cumulative foreign currency translation adjustments, and minimum pension liability adjustments.
  - (4) Includes treasury stock and unearned Employee Stock Ownership Plan shares.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

## 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)

-----  
BANK ONE, NATIONAL ASSOCIATION  
(EXACT NAME OF TRUSTEE AS SPECIFIED IN ITS CHARTER)

A NATIONAL BANKING ASSOCIATION	36-0899825 (I.R.S. EMPLOYER IDENTIFICATION NUMBER)
1 BANK ONE PLAZA, CHICAGO, ILLINOIS (ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)	60670-0801 (ZIP CODE)

BANK ONE, NATIONAL ASSOCIATION  
1 BANK ONE PLAZA, SUITE IL1-0801  
CHICAGO, ILLINOIS 60670  
ATTN: JOHN R. PRENDIVILLE (312) 732-1830  
(NAME, ADDRESS AND TELEPHONE NUMBER OF AGENT FOR SERVICE)

-----  
WHITE MOUNTAINS INSURANCE GROUP, LTD.  
(EXACT NAME OF OBLIGOR AS SPECIFIED IN ITS CHARTER)

BERMUDA  
(STATE OR OTHER JURISDICTION OF  
INCORPORATION OR ORGANIZATION)

94-2708455  
(I.R.S. EMPLOYER  
IDENTIFICATION NUMBER)

80 SOUTH MAIN STREET  
HANOVER, NEW HAMPSHIRE 03755-2053  
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)

FUND AMERICAN COMPANIES, INC.  
(EXACT NAME OF OBLIGOR AS SPECIFIED IN ITS CHARTER)

DELAWARE  
(STATE OR OTHER JURISDICTION OF  
INCORPORATION OR ORGANIZATION)

52-2272489  
(I.R.S. EMPLOYER  
IDENTIFICATION NUMBER)

ONE BEACON STREET  
BOSTON, MASSACHUSETTS 02108-3100  
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)

SUBORDINATED DEBT SECURITIES  
(TITLE OF 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.

Comptroller of Currency, Washington, D.C., Federal Deposit Insurance Corporation, Washington, D.C., The Board of Governors of the Federal Reserve System, Washington D.C.

(B) WHETHER IT IS AUTHORIZED TO EXERCISE CORPORATE TRUST POWERS.

The trustee is authorized to exercise corporate trust powers.

ITEM 2. AFFILIATIONS WITH THE OBLIGOR. IF THE OBLIGOR IS AN AFFILIATE OF THE TRUSTEE, DESCRIBE EACH SUCH AFFILIATION.

No such affiliation exists with the trustee.

ITEM 16. LIST OF EXHIBITS. LIST BELOW ALL EXHIBITS FILED AS A PART OF THIS STATEMENT OF ELIGIBILITY.

1. A copy of the articles of association of the trustee now in

effect.\*

2. A copy of the certificates of authority of the trustee to commence business.\*
3. A copy of the authorization of the trustee to exercise corporate trust powers.\*
4. A copy of the existing by-laws of the trustee.\*
5. Not Applicable.
6. The consent of the trustee required by Section 321(b) of the Act.
7. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority.
8. Not Applicable.
9. Not Applicable.

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Bank One, National Association, a national banking association organized and existing under the laws of the United States of America, has duly caused this Statement of Eligibility to be signed

on its behalf by the undersigned, thereunto duly authorized, all in the City of Chicago and the State of Illinois, on this 1st day of November, 2001.

BANK ONE, NATIONAL ASSOCIATION,  
TRUSTEE

By /s/ John R. Prendiville  
John R. Prendiville  
First Vice President

\* Exhibits 1, 2, 3, and 4 are herein incorporated by reference to Exhibits bearing identical numbers in Item 16 of the Form T-1 of Bank One, National Association, filed as Exhibit 25 to the Registration Statement on Form S-3 of Household Finance Corporation filed with the Securities and Exchange Commission on March 24, 2000 (Registration No. 333-33240).

EXHIBIT 6

THE CONSENT OF THE TRUSTEE REQUIRED  
BY SECTION 321(b) OF THE ACT

November 1, 2001

Securities and Exchange Commission  
Washington, D.C. 20549

Gentlemen:

In connection with the qualification of an indenture among White Mountains Insurance Group, Ltd., Fund American Companies, Inc. and Bank One, National Association, the undersigned, in accordance with Section 321(b) of the Trust Indenture Act of 1939, as amended, hereby consents that the reports of examinations of the undersigned, made by Federal or State authorities authorized to make such examinations, may be furnished by such authorities to the Securities and Exchange Commission upon its request therefor.

Very truly yours,

BANK ONE, NATIONAL ASSOCIATION

By /s/ John R. Prendiville  
John R. Prendiville  
First Vice President

EXHIBIT 7

Call Date: 03/31/01 ST-BK: 17-1630 FFIEC 031  
Page RC-1

Legal Title of Bank: Bank One, NA  
Address: 1 Bank One Plaza, Ste 0303  
City, State Zip: Chicago, IL 60670  
FDIC Certificate No.: 0/3/6/1/8

CONSOLIDATED REPORT OF CONDITION FOR INSURED COMMERCIAL  
AND STATE-CHARTERED SAVINGS BANKS FOR MARCH 31, 2001

All schedules are to be reported in thousands of dollars. Unless otherwise indicated, report the amount outstanding of the last business day of the quarter.

SCHEDULE RC--BALANCE SHEET

DOLLAR AMOUNTS IN THOUSANDS C400 ---- RCFD BIL MIL THOU ASSETS

1. Cash and balances due from depository institutions (from Schedule RC-A): ---- a. Noninterest-bearing balances and currency and coin(1) ..... 0081 7,994,185 1.a b. Interest-bearing balances(2)..... 0071 1,910,093 1.b 2. Securities a. Held-to-maturity securities(from Schedule RC-B, column A) ..... 1754 0 2.a b. Available-for-sale securities (from Schedule RC-B, column D)..... 1773 23,762,627 2.b 3. Federal funds sold and securities purchased under agreements to resell 1350 16,702,281 3. 4. Loans and lease financing receivables (from Schedule RC-C): A. LOANS AND LEASES HELD FOR SALE..... 5369 344,709 4.a B. LOANS AND LEASES, NET OF UNEARNED INCOME..... B528 82,078,753 4.b c. LESS: Allowance for loan and lease losses..... 3128 1,928,789 4.c d. LOANS AND LEASES, NET OF UNEARNED INCOME AND ALLOWANCE (ITEM 4.B MINUS 4.C)..... B529 80,146,964 4.d 5. Trading assets (from Schedule RD-D)..... 3545 4,915,723 5. 6. Premises and fixed assets (including capitalized leases) ..... 2145 766,510 6. 7. Other real estate owned (from Schedule RC-M) ..... 2150 10,983 7. 8. Investments in unconsolidated subsidiaries and associated companies (from Schedule RC-M)..... 2130 396,660 8. 9. Customers' liability to this bank on acceptances outstanding ..... 2155 224,739 9. 10. Intangible assets A. GOODWILL ..... 3163 455,924 10.a B. OTHER INTANGIBLE ASSETS (FROM SCHEDULE RC-M)..... 0426 4,069 10.b 11. Other assets (from Schedule RC-F)..... 2160 3,800,668 11. 12. Total assets (sum of items 1 through 11)..... 2170 141,439,135 12.

-----  
(1) Includes cash items in process of collection and unposted debits.  
(2) Includes time certificates of deposit not held for trading.

Call Date: 03/31/01 ST-BK: 17-1630 FFIEC 031  
Page RC-2

Legal Title of Bank: Bank One, NA  
Address: 1 Bank One Plaza, Ste 0303  
City, State Zip: Chicago, IL 60670  
FDIC Certificate No.: 0/3/6/1/8

SCHEDULE RC-CONTINUED

DOLLAR AMOUNTS IN THOUSANDS ----- LIABILITIES 13. Deposits: RCON a. In domestic offices (sum of totals of columns A and C ---- from Schedule RC-E, part 1)..... 2200 54,375,506 13.a (1) Noninterest-bearing(1)..... 6631 17,419,591 13.a1 (2) Interest-bearing..... 6636 36,955,915 13.a2 RCFN b. In foreign offices, Edge and Agreement subsidiaries, and ---- IBFs (from Schedule RC-E, part II)..... 2200 32,455,591 13.b (1) Noninterest bearing..... 6631 763,957 13.b1 (2) Interest-bearing..... 6636 31,691,634 13.b2 14. Federal funds purchased and securities sold under agreements to repurchase: RCFD 2800 6,144,086 14 15. Trading liabilities (from Schedule RC-D)..... RCFD 3548 3,957,785 15 16. OTHER BORROWED MONEY (INCLUDES MORTGAGE INDEBTEDNESS AND OBLIGATIONS UNDER CAPITALIZED LEASES)(FROM SCHEDULE RC-M)..... RCFD 3190 22,957,605 16 17. Not applicable 18. Bank's liability on acceptance executed and outstanding ..... 2920 224,739 18. 19. Subordinated notes and debentures..... 3200 3,861,811 19. 20. Other liabilities (from Schedule RC-G)..... 2930 8,947,634 20. 21. Total liabilities (sum of items 13 through 20)..... 2948 132,924,757 21. 22. MINORITY INTEREST IN CONSOLIDATED SUBSIDIARIES..... 3000 26 22. EQUITY CAPITAL 23. Perpetual preferred stock and related surplus..... 3838 0 23. 24. Common stock..... 3230 200,858 24. 25. Surplus (exclude all surplus related to preferred stock) 3839 5,493,189 25. 26. a. Retained earnings ..... 3632 2,827,092 26.a B. ACCUMULATED OTHER COMPREHENSIVE INCOME (3)..... B530 (6,787) 26.b 27. OTHER EQUITY CAPITAL COMPONENTS (4) ..... A130 0 27. 28. Total equity capital (sum of items 23 through 27) ..... 3210

8,514,352 28. 29. Total liabilities, minority interest, and equity capital (sum of items 21, 22, and 28)..... 3300 141,439,165 29.

Memorandum  
 To be reported only with the March Report of Condition.

1. Indicate in the box at the right the number of the STATEMENT below that best describes the most comprehensive level of auditing work performed for the bank by independent external auditors as of any date during 1996..... RCFD 6724 2 M.1 Number

- 1 = Independent audit of the bank conducted in accordance with generally accepted auditing standards by a certified external auditors (may be required by state chartering public accounting firm which submits a report on the bank authority)
- 2 = Independent audit of the bank's parent holding company financial statements by external conducted in accordance with generally accepted auditing standards by a certified public accounting firm which financial statements by external submits a report on the consolidated holding company (but not on the bank separately)
- 3 = DIRECTORS' EXAMINATION OF THE BANK CONDUCTED IN ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS BY A CERTIFIED PUBLIC ACCOUNTING FIRM (MAY BE REQUIRED BY STATE CHARTERING AUTHORITY)
- 4 = Directors' examination of the bank performed by other external auditors (may be required by state chartering authority)
- 5 = Review of the bank's financial statements by external auditors
- 6 = Compilation of the bank's financial statements by external auditors
- 7 = Other audit procedures (excluding tax preparation work)
- 8 = No external audit work

- - - - -
- (1) Includes total demand deposits and noninterest-bearing time and savings deposits.
  - (2) Includes limited-life preferred stock and related surplus.
  - (3) Includes net unrealized holding gains (losses) on available-for-sale securities, accumulated net gains (losses) on cash flow hedges, cumulative foreign currency translation adjustments, and minimum pension liability adjustments.
  - (4) Includes treasury stock and unearned Employee Stock Ownership Plan shares.



6. The consent of the trustee required by Section 321(b) of the Act.
7. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority.
8. Not Applicable.
9. Not Applicable.

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Bank One, National Association, a national banking association organized and existing under the laws of the United States of America, has duly caused this Statement of Eligibility to be signed

on its behalf by the undersigned, thereunto duly authorized, all in the City of Chicago and the State of Illinois, on this 1st day of November, 2001.

BANK ONE, NATIONAL ASSOCIATION,  
TRUSTEE

By /s/ John R. Prendiville  
John R. Prendiville  
First Vice President

\* Exhibits 1, 2, 3, and 4 are herein incorporated by reference to Exhibits bearing identical numbers in Item 16 of the Form T-1 of Bank One, National Association, filed as Exhibit 25 to the Registration Statement on Form S-3 of Household Finance Corporation filed with the Securities and Exchange Commission on March 24, 2000 (Registration No. 333-33240).

EXHIBIT 6

THE CONSENT OF THE TRUSTEE REQUIRED  
BY SECTION 321(b) OF THE ACT

November 1, 2001

Securities and Exchange Commission  
Washington, D.C. 20549

Gentlemen:

In connection with the qualification of an indenture among White Mountains Insurance Group, Ltd., Fund American Companies, Inc. and Bank One, National Association, the undersigned, in accordance with Section 321(b) of the Trust Indenture Act of 1939, as amended, hereby consents that the reports of examinations of the undersigned, made by Federal or State authorities authorized to make such examinations, may be furnished by such authorities to the Securities and Exchange Commission upon its request therefor.

Very truly yours,

BANK ONE, NATIONAL ASSOCIATION

By /s/ John R. Prendiville  
John R. Prendiville  
First Vice President

EXHIBIT 7

Call Date: 03/31/01 ST-BK: 17-1630 FFIEC 031  
Page RC-1

Legal Title of Bank: Bank One, NA  
Address: 1 Bank One Plaza, Ste 0303  
City, State Zip: Chicago, IL 60670  
FDIC Certificate No.: 0/3/6/1/8  
-----

CONSOLIDATED REPORT OF CONDITION FOR INSURED COMMERCIAL  
AND STATE-CHARTERED SAVINGS BANKS FOR MARCH 31, 2001

All schedules are to be reported in thousands of dollars. Unless otherwise indicated, report the amount outstanding of the last business day of the quarter.

SCHEDULE RC--BALANCE SHEET

DOLLAR AMOUNTS IN THOUSANDS C400 ---- RCFD BIL MIL THOU  
ASSETS 1. Cash and balances due from depository  
institutions (from Schedule RCFD RC-A): ---- a.  
Noninterest-bearing balances and currency and coin(1)  
..... 0081 7,994,185 1.a b. Interest-bearing  
balances(2) ..... 0071  
1,910,093 1.b 2. Securities a. Held-to-maturity  
securities(from Schedule RC-B, column A) ..... 1754  
0 2.a b. Available-for-sale securities (from Schedule  
RC-B, column D) ..... 1773 23,762,627 2.b 3. Federal

funds sold and securities purchased under agreements to resell 1350 16,702,281 3. 4. Loans and lease financing receivables (from Schedule RC-C): a. LOANS AND LEASES HELD FOR SALE ..... 5369 344,709 4.a b. LOANS AND LEASES, NET OF UNEARNED INCOME ..... B528 82,078,753 4.b c. LESS: Allowance for loan and lease losses ..... 3128 1,928,789 4.c d. LOANS AND LEASES, NET OF UNEARNED INCOME AND ALLOWANCE (ITEM 4.B MINUS 4.C) ..... B529 80,146,964 4.d 5. Trading assets (from Schedule RD-D) ..... 3545 4,915,723 5. 6. Premises and fixed assets (including capitalized leases) ..... 2145 766,510 6. 7. Other real estate owned (from Schedule RC-M) ..... 2150 10,983 7. 8. Investments in unconsolidated subsidiaries and associated companies (from Schedule RC-M) ..... 2130 396,660 8. 9. Customers' liability to this bank on acceptances outstanding ..... 2155 224,739 9. 10. Intangible assets a. GOODWILL ..... 3163 455,924 10.a b. OTHER INTANGIBLE ASSETS (FROM SCHEDULE RC-M) ..... 0426 4,069 10.b 11. Other assets (from Schedule RC-F) ..... 2160 3,800,668 11. 12. Total assets (sum of items 1 through 11) ..... 2170 141,439,135 12.

- (1) Includes cash items in process of collection and unposted debits.  
(2) Includes time certificates of deposit not held for trading.

Call Date: 03/31/01 ST-BK: 17-1630 FFIEC 031  
Page RC-2

Legal Title of Bank: Bank One, NA  
Address: 1 Bank One Plaza, Ste 0303  
City, State Zip: Chicago, IL 60670  
FDIC Certificate No.: 0/3/6/1/8  
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SCHEDULE RC-CONTINUED

DOLLAR AMOUNTS IN THOUSANDS ----- LIABILITIES  
13. Deposits: RCON a. In domestic offices (sum of totals of columns A and C ---- from Schedule RC-E, part 1) ..... 2200 54,375,506 13.a (1) Noninterest-bearing(1) ..... 6631 17,419,591 13.a1 (2) Interest-bearing ..... 6636 36,955,915 13.a2 b. In foreign offices, Edge and Agreement subsidiaries, and RCFN ---- IBFs (from Schedule RC-E, part II) ..... 2200 32,455,591 13.b (1) Noninterest bearing ..... 6631 763,957 13.b1 (2) Interest-bearing ..... 6636 31,691,634 13.b2 14. Federal funds purchased and securities sold under agreements to repurchase: RCFD 2800 6,144,086 14 15. Trading liabilities (from Schedule RC-D) ..... RCFD 3548 3,957,785 15 16. OTHER BORROWED MONEY (INCLUDES MORTGAGE INDEBTEDNESS AND OBLIGATIONS UNDER CAPITALIZED LEASES)(FROM SCHEDULE RC-M ... RCFD 3190 22,957,605 16 17. Not applicable 18. Bank's liability on acceptance executed and outstanding ..... 2920 224,739 18. 19. Subordinated notes and debentures ..... 3200 3,861,811 19. 20. Other liabilities (from Schedule RC-G) ..... 2930 8,947,634 20. 21. Total liabilities (sum of items 13 through 20) ..... 2948 132,924,757 21. 22. MINORITY INTEREST IN CONSOLIDATED SUBSIDIARIES ..... 3000 26 22. EQUITY CAPITAL 23. Perpetual preferred stock and related surplus ..... 3838 0 23. 24. Common stock ..... 3230 200,858 24. 25. Surplus (exclude all surplus related to preferred stock) ..... 3839 5,493,189 25. 26. a. Retained earnings ..... 3632 2,827,092 26.a b. ACCUMULATED OTHER COMPREHENSIVE INCOME (3) ..... B530 (6,787) 26.b 27. OTHER EQUITY CAPITAL COMPONENTS (4) ..... A130 0 27. 28. Total



equity capital (sum of items 23 through 27)  
 ..... 3210 8,514,352 28. 29. Total  
 liabilities, minority interest, and equity capital  
 (sum of items 21, 22, and 28)  
 ..... 3300  
 141,439,165 29.

Memorandum  
 To be reported only with the March Report of Condition.

1. Indicate in the box at the right the number of the STATEMENT below that best describes the most comprehensive level of auditing work performed for the bank by independent external auditors as of any date during 1996 ..... RCFD 6724 ..... 2

-----  
 Number  
 M.1  
 -----

- 1 = Independent audit of the bank conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the bank
- 2 = Independent audit of the bank's parent holding company conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the consolidated holding company (but not on the bank separately)
- 3 = DIRECTORS' EXAMINATION OF THE BANK CONDUCTED IN ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS BY A CERTIFIED PUBLIC ACCOUNTING FIRM (MAY BE REQUIRED BY STATE CHARTERING AUTHORITY)
- 4.= Directors' examination of the bank performed by other external auditors (may be required by state chartering authority)
- 5 = Review of the bank's financial statements by external auditors
- 6 = Compilation of the bank's financial statements by external auditors
- 7 = Other audit procedures (excluding tax preparation work)
- 8 = No external audit work

- -----
- (1) Includes total demand deposits and noninterest-bearing time and savings deposits.
  - (2) Includes limited-life preferred stock and related surplus.
  - (3) Includes net unrealized holding gains (losses) on available-for-sale securities, accumulated net gains (losses) on cash flow hedges, cumulative foreign currency translation adjustments, and minimum pension liability adjustments.
  - (4) Includes treasury stock and unearned Employee Stock Ownership Plan shares.

SECURITIES AND EXCHANGE COMMISSION  
 WASHINGTON, D.C. 20549

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)

-----  
 BANK ONE, NATIONAL ASSOCIATION  
 (EXACT NAME OF TRUSTEE AS SPECIFIED IN ITS CHARTER)

A NATIONAL BANKING ASSOCIATION	36-0899825 (I.R.S. EMPLOYER IDENTIFICATION NUMBER)
--------------------------------	--

1 BANK ONE PLAZA, CHICAGO, ILLINOIS (ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)	60670-0126 (ZIP CODE)
---	--------------------------

BANK ONE, NATIONAL ASSOCIATION  
 1 BANK ONE PLAZA, SUITE IL1-08201  
 CHICAGO, ILLINOIS 60670  
 ATTN: JOHN R. PRENDIVILLE (312) 732-1830  
 (NAME, ADDRESS AND TELEPHONE NUMBER OF AGENT FOR SERVICE)

-----  
 FUND AMERICAN TRUST I  
 (EXACT NAME OF OBLIGOR AS SPECIFIED IN ITS CHARTER)

DELAWARE (STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)	TO BE APPLIED FOR (I.R.S. EMPLOYER IDENTIFICATION NUMBER)
---	---

ONE BEACON STREET BOSTON, MASSACHUSETTS (ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)	02108-3100 (ZIP CODE)
--	--------------------------

PREFERRED SECURITIES  
 (TITLE OF 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.
- Comptroller of Currency, Washington, D.C., Federal Deposit Insurance Corporation, Washington, D.C., The Board of Governors of the Federal Reserve System, Washington D.C.
- (B) WHETHER IT IS AUTHORIZED TO EXERCISE CORPORATE TRUST POWERS.
- The trustee is authorized to exercise corporate trust powers.
- ITEM 2. AFFILIATIONS WITH THE OBLIGOR. IF THE OBLIGOR IS AN AFFILIATE OF THE TRUSTEE, DESCRIBE EACH SUCH AFFILIATION.
- No such affiliation exists with the trustee.
- ITEM 16. LIST OF EXHIBITS. LIST BELOW ALL EXHIBITS FILED AS A PART OF THIS STATEMENT OF ELIGIBILITY.
1. A copy of the articles of association of the trustee now in effect.\*
  2. A copy of the certificates of authority of the trustee to commence business.\*
  3. A copy of the authorization of the trustee to exercise corporate trust powers.\*
  4. A copy of the existing by-laws of the trustee.\*
  5. Not Applicable.
  6. The consent of the trustee required by Section 321(b) of the Act.
  7. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority.

8. Not Applicable.

9. Not Applicable.

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Bank One, National Association, a national banking association organized and existing under the laws of the United States of America, has duly caused this Statement of Eligibility to be signed

on its behalf by the undersigned, thereunto duly authorized, all in the City of Chicago and the State of Illinois, on this 1st day of November, 2001.

BANK ONE, NATIONAL ASSOCIATION,  
TRUSTEE

By /s/ John R. Prendiville  
John R. Prendiville  
First Vice President

\* Exhibits 1, 2, 3, and 4 are herein incorporated by reference to Exhibits bearing identical numbers in Item 16 of the Form T-1 of Bank One, National Association, filed as Exhibit 25 to the Registration Statement on Form S-3 of Household Finance Corporation filed with the Securities and Exchange Commission on March 24, 2000 (Registration No. 333-33240).

EXHIBIT 6

THE CONSENT OF THE TRUSTEE REQUIRED  
BY SECTION 321(b) OF THE ACT

November 1, 2001

Securities and Exchange Commission  
Washington, D.C. 20549

Gentlemen:

In connection with the qualification of an indenture between Fund American Trust I and Bank One, National Association, the undersigned, in accordance with Section 321(b) of the Trust Indenture Act of 1939, as amended, hereby consents that the reports of examinations of the undersigned, made by Federal or State authorities authorized to make such examinations, may be furnished by such authorities to the Securities and Exchange Commission upon its request therefor.

Very truly yours,

BANK ONE, NATIONAL ASSOCIATION

By /s/ John R. Prendiville  
John R. Prendiville  
First Vice President

EXHIBIT 7

Call Date: 03/31/01 ST-BK: 17-1630 FFIEC 031  
Page RC-1

Legal Title of Bank: Bank One, NA  
Address: 1 Bank One Plaza, Ste 0303  
City, State Zip: Chicago, IL 60670  
FDIC Certificate No.: 0/3/6/1/8

CONSOLIDATED REPORT OF CONDITION FOR INSURED COMMERCIAL  
AND STATE-CHARTERED SAVINGS BANKS FOR MARCH 31, 2001

All schedules are to be reported in thousands of dollars. Unless otherwise indicated, report the amount outstanding of the last business day of the quarter.

SCHEDULE RC--BALANCE SHEET

DOLLAR AMOUNTS IN THOUSANDS C400 ---- RCFD BIL MIL THOU  
ASSETS 1. Cash and balances due from depository  
institutions (from Schedule RC-A): RCFD ---- a.  
Noninterest-bearing balances and currency and coin(1)  
..... 0081 7,994,185 1.a b. Interest-bearing  
balances(2) ..... 0071  
1,910,093 1.b 2. Securities a. Held-to-maturity  
securities(from Schedule RC-B, column A) .... 1754 0 2.a  
b. Available-for-sale securities (from Schedule RC-B,  
column D) . 1773 23,762,627 2.b 3. Federal funds sold and  
securities purchased under agreements to resell  
.....  
1350 16,702,281 3. 4. Loans and lease financing  
receivables (from Schedule RC-C): a. LOANS AND LEASES  
HELD FOR SALE ..... 5369  
344,709 4.a b. LOANS AND LEASES, NET OF UNEARNED INCOME

..... B528 82,078,753 4.b c. LESS:  
 Allowance for loan and lease losses .....  
 3128 1,928,789 4.c d. LOANS AND LEASES, NET OF UNEARNED  
 INCOME AND ALLOWANCE (ITEM 4.B MINUS 4.C)  
 ..... B529 80,146,964  
 4.d 5. Trading assets (from Schedule RD-D)  
 ..... 3545 4,915,723 5. 6.  
 Premises and fixed assets (including capitalized leases)  
 ..... 2145 766,510 6. 7. Other real estate owned (from  
 Schedule RC-M) ..... 2150 10,983 7. 8.  
 Investments in unconsolidated subsidiaries and associated  
 companies (from Schedule RC-M)  
 ..... 2130 396,660 8. 9.  
 Customers' liability to this bank on acceptances  
 outstanding .... 2155 224,739 9. 10. Intangible assets a.  
 GOODWILL  
 .....  
 3163 455,924 10.a b. OTHER INTANGIBLE ASSETS (FROM  
 SCHEDULE RC-M) ..... 0426 4,069 10.b 11.  
 Other assets (from Schedule RC-F)  
 ..... 2160 3,800,668 11. 12.  
 Total assets (sum of items 1 through 11)  
 ..... 2170 141,439,135 12.

- 
- (1) Includes cash items in process of collection and unposted debits.
  - (2) Includes time certificates of deposit not held for trading.

Call Date: 03/31/01 ST-BK: 17-1630 FFIEC 031  
 Page RC-2

Legal Title of Bank: Bank One, NA  
 Address: 1 Bank One Plaza, Ste 0303  
 City, State Zip: Chicago, IL 60670  
 FDIC Certificate No.: 0/3/6/1/8

SCHEDULE RC-CONTINUED

DOLLAR AMOUNTS IN THOUSANDS -----  
 LIABILITIES 13. Deposits: RCON a. In domestic  
 offices (sum of totals of columns A and C ----  
 from Schedule RC-E, part 1)  
 ..... 2200  
 54,375,506 13.a (1) Noninterest-bearing(1)  
 ..... 6631  
 17,419,591 13.a1 (2) Interest-bearing  
 ..... 6636  
 36,955,915 13.a2 RCFN b. In foreign offices,  
 Edge and Agreement subsidiaries, and ---- IBFs  
 (from Schedule RC-E, part II)  
 ..... 2200 32,455,591 13.b  
 (1) Noninterest bearing  
 ..... 6631 763,957  
 13.b1 (2) Interest-bearing  
 ..... 6636  
 31,691,634 13.b2 14. Federal funds purchased and  
 securities sold under agreements to repurchase:  
 .....  
 RCFD 2800 6,144,086 14 15. Trading liabilities  
 (from Schedule RC-D ..... RCFD  
 3548 3,957,785 15 16. OTHER BORROWED MONEY  
 (INCLUDES MORTGAGE INDEBTEDNESS AND AND  
 OBLIGATIONS UNDER CAPITALIZED LEASES)(FROM  
 SCHEDULE RC-M . RCFD 3190 22,957,605 16 17. Not  
 applicable 18. Bank's liability on acceptance  
 executed and outstanding ..... 2920 224,739 18.  
 19. Subordinated notes and debentures  
 ..... 3200 3,861,811 19.  
 20. Other liabilities (from Schedule RC-G)  
 ..... 2930 8,947,634 20. 21.  
 Total liabilities (sum of items 13 through 20)  
 ..... 2948 132,924,757 21. 22.  
 MINORITY INTEREST IN CONSOLIDATED SUBSIDIARIES  
 ..... 3000 26 22. EQUITY CAPITAL 23.  
 Perpetual preferred stock and related surplus  
 ..... 3838 0 23. 24. Common stock  
 .....  
 3230 200,858 24. 25. Surplus (exclude all  
 surplus related to preferred stock) ..... 3839  
 5,493,189 25. 26. a. Retained earnings  
 ..... 3632  
 2,827,092 26.a b. ACCUMULATED OTHER  
 COMPREHENSIVE INCOME (3) ..... B530  
 (6,787) 26.b 27. OTHER EQUITY CAPITAL COMPONENTS  
 (4) ..... A130 0 27. 28.  
 Total equity capital (sum of items 23 through  
 27) ..... 3210 8,514,352 28. 29. Total  
 liabilities, minority interest, and equity  
 capital (sum of items 21, 22, and 28)  
 ..... 3300  
 141,439,165 29.

Memorandum

To be reported only with the March Report of Condition.

1. Indicate in the box at the right the number of the STATEMENT below that best describes the most comprehensive level of auditing work performed for the bank by independent external auditors as of any date during 1996 ..... RCFD 6724.... 2

-----  
Number  
M.1  
-----

- 1 = Independent audit of the bank conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the bank
- 2 = Independent audit of the bank's parent holding company conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the consolidated holding company (but not on the bank separately)
- 3 = DIRECTORS' EXAMINATION OF THE BANK CONDUCTED IN ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS BY A CERTIFIED PUBLIC ACCOUNTING FIRM (MAY BE REQUIRED BY STATE CHARTERING AUTHORITY)
- 4. = Directors' examination of the bank performed by other external auditors (may be required by state chartering authority)
- 5 = Review of the bank's financial statements by external auditors
- 6 = Compilation of the bank's financial statements by external auditors
- 7 = Other audit procedures (excluding tax preparation work)
- 8 = No external audit work

- 
- (1) Includes total demand deposits and noninterest-bearing time and savings deposits.
  - (2) Includes limited-life preferred stock and related surplus.
  - (3) Includes net unrealized holding gains (losses) on available-for-sale securities, accumulated net gains (losses) on cash flow hedges, cumulative foreign currency translation adjustments, and minimum pension liability adjustments.
  - (4) Includes treasury stock and unearned Employee Stock Ownership Plan shares.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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)

-----  
BANK ONE, NATIONAL ASSOCIATION  
(EXACT NAME OF TRUSTEE AS SPECIFIED IN ITS CHARTER)

A NATIONAL BANKING ASSOCIATION	36-0899825 (I.R.S. EMPLOYER IDENTIFICATION NUMBER)
--------------------------------	--

1 BANK ONE PLAZA, CHICAGO, ILLINOIS (ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)	60670-0126 (ZIP CODE)
---	--------------------------

BANK ONE, NATIONAL ASSOCIATION  
1 BANK ONE PLAZA, SUITE IL1-0801  
CHICAGO, ILLINOIS 60670  
ATTN: JOHN R. PRENDIVILLE (312) 732-1830  
(NAME, ADDRESS AND TELEPHONE NUMBER OF AGENT FOR SERVICE)

-----  
FUND AMERICAN TRUST II  
(EXACT NAME OF OBLIGOR AS SPECIFIED IN ITS CHARTER)

DELAWARE (STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)	TO BE APPLIED FOR (I.R.S. EMPLOYER IDENTIFICATION NUMBER)
---	---

ONE BEACON STREET BOSTON, MASSACHUSETTS (ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)	02108-3100 (ZIP CODE)
--	--------------------------

PREFERRED SECURITIES  
(TITLE OF 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.

Comptroller of Currency, Washington, D.C., Federal Deposit Insurance Corporation, Washington, D.C., The Board of Governors of the Federal Reserve System, Washington D.C.

(B) WHETHER IT IS AUTHORIZED TO EXERCISE CORPORATE TRUST POWERS.

The trustee is authorized to exercise corporate trust powers.

ITEM 2. AFFILIATIONS WITH THE OBLIGOR. IF THE OBLIGOR IS AN AFFILIATE OF THE TRUSTEE, DESCRIBE EACH SUCH AFFILIATION.

No such affiliation exists with the trustee.

ITEM 16. LIST OF EXHIBITS. LIST BELOW ALL EXHIBITS FILED AS A PART OF THIS STATEMENT OF ELIGIBILITY.

1. A copy of the articles of association of the trustee now in effect.\*
2. A copy of the certificates of authority of the trustee to commence business.\*
3. A copy of the authorization of the trustee to exercise corporate trust powers.\*
4. A copy of the existing by-laws of the trustee.\*
5. Not Applicable.
6. The consent of the trustee required by Section 321(b) of the Act.
7. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority.

8. Not Applicable.

9. Not Applicable.

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Bank One, National Association, a national banking association organized and existing under the laws of the United States of America, has duly caused this Statement of Eligibility to be signed

on its behalf by the undersigned, thereunto duly authorized, all in the City of Chicago and the State of Illinois, on this 1st day of November, 2001.

BANK ONE, NATIONAL ASSOCIATION,  
TRUSTEE

By /s/ John R. Prendiville  
John R. Prendiville  
First Vice President

\* Exhibits 1, 2, 3, and 4 are herein incorporated by reference to Exhibits bearing identical numbers in Item 16 of the Form T-1 of Bank One, National Association, filed as Exhibit 25 to the Registration Statement on Form S-3 of Household Finance Corporation filed with the Securities and Exchange Commission on March 24, 2000 (Registration No. 333-33240).

EXHIBIT 6

THE CONSENT OF THE TRUSTEE REQUIRED  
BY SECTION 321(b) OF THE ACT

November 1, 2001

Securities and Exchange Commission  
Washington, D.C. 20549

Gentlemen:

In connection with the qualification of an indenture between Fund American Trust II and Bank One, National Association, the undersigned, in accordance with Section 321(b) of the Trust Indenture Act of 1939, as amended, hereby consents that the reports of examinations of the undersigned, made by Federal or State authorities authorized to make such examinations, may be furnished by such authorities to the Securities and Exchange Commission upon its request therefor.

Very truly yours,

BANK ONE, NATIONAL ASSOCIATION

By /s/ John R. Prendiville  
John R. Prendiville  
First Vice President

EXHIBIT 7

Call Date: 03/31/01 ST-BK: 17-1630 FFIEC 031  
Page RC-1

Legal Title of Bank: Bank One, NA  
Address: 1 Bank One Plaza, Ste 0303  
City, State Zip: Chicago, IL 60670  
FDIC Certificate No.: 0/3/6/1/8

CONSOLIDATED REPORT OF CONDITION FOR INSURED COMMERCIAL  
AND STATE-CHARTERED SAVINGS BANKS FOR MARCH 31, 2001

All schedules are to be reported in thousands of dollars. Unless otherwise indicated, report the amount outstanding of the last business day of the quarter.

SCHEDULE RC--BALANCE SHEET

DOLLAR AMOUNTS IN THOUSANDS C400 ---- RCFD BIL MIL THOU  
ASSETS 1. Cash and balances due from depository institutions (from Schedule RCFD RC-A): ---- a. Noninterest-bearing balances and currency and coin(1) ..... 0081 7,994,185 1.a b. Interest-bearing balances(2) ..... 0071 1,910,093 1.b 2. Securities a. Held-to-maturity securities(from Schedule RC-B, column A) ..... 1754 0 2.a b. Available-for-sale securities (from Schedule RC-B, column D) ..... 1773 23,762,627 2.b 3. Federal funds sold and securities purchased under agreements to resell 1350 16,702,281 3. 4. Loans and lease financing receivables (from Schedule RC-C): A. LOANS AND LEASES HELD FOR SALE ..... 5369 344,709 4.a B. LOANS AND LEASES, NET OF UNEARNED INCOME ..... B528 82,078,753 4.b c. LESS: Allowance for loan and lease losses

..... 3128 1,928,789 4.c d. LOANS  
AND LEASES, NET OF UNEARNED INCOME AND ALLOWANCE (ITEM  
4.B MINUS 4.C)  
..... B529  
80,146,964 4.d 5. Trading assets (from Schedule RD-D)  
..... 3545 4,915,723 5. 6.  
Premises and fixed assets (including capitalized  
leases) ..... 2145 766,510 6. 7. Other real  
estate owned (from Schedule RC-M)  
..... 2150 10,983 7. 8. Investments  
in unconsolidated subsidiaries and associated companies  
(from Schedule RC-M)  
..... 2130 396,660 8.  
9. Customers' liability to this bank on acceptances  
outstanding ..... 2155 224,739 9. 10. Intangible  
assets  
..... A.  
GOODWILL  
.....  
3163 455,924 10.a B. OTHER INTANGIBLE ASSETS (FROM  
SCHEDULE RC-M) ..... 0426 4,069 10.b 11.  
Other assets (from Schedule RC-F)  
..... 2160 3,800,668 11.  
12. Total assets (sum of items 1 through 11)  
..... 2170 141,439,135 12.

- (1) Includes cash items in process of collection and unposted debits.  
(2) Includes time certificates of deposit not held for trading.

Call Date: 03/31/01 ST-BK: 17-1630 FFIEC 031  
Page RC-2

Legal Title of Bank: Bank One, NA  
Address: 1 Bank One Plaza, Ste 0303  
City, State Zip: Chicago, IL 60670  
FDIC Certificate No.: 0/3/6/1/8

SCHEDULE RC-CONTINUED

DOLLAR AMOUNTS IN THOUSANDS ----- LIABILITIES 13.  
Deposits: RCON a. In domestic offices (sum of totals of  
columns A and C ---- from Schedule RC-E, part 1)  
..... 2200 54,375,506  
13.a (1) Noninterest-bearing(1)  
..... 6631 17,419,591  
13.a1 (2) Interest-bearing  
..... 6636  
36,955,915 13.a2 RCFN b. In foreign offices, Edge and  
Agreement subsidiaries, and ---- IBFs (from Schedule  
RC-E, part II) ..... 2200  
32,455,591 13.b (1) Noninterest bearing  
..... 6631 763,957  
13.b1 (2) Interest-bearing  
..... 6636  
31,691,634 13.b2 14. Federal funds purchased and  
securities sold under agreements to repurchase: RCFD  
2800 6,144,086 14 15. Trading liabilities (from  
Schedule RC-D ..... RCFD 3548  
3,957,785 15 16. OTHER BORROWED MONEY (INCLUDES  
MORTGAGE INDEBTEDNESS AND AND OBLIGATIONS UNDER  
CAPITALIZED LEASES)(FROM SCHEDULE RC-M ..... RCFD  
3190 22,957,605 16 17. Not applicable 18. Bank's  
liability on acceptance executed and outstanding  
..... 2920 224,739 18. 19. Subordinated notes  
and debentures ..... 3200  
3,861,811 19. 20. Other liabilities (from Schedule RC-  
G) ..... 2930 8,947,634 20.  
21. Total liabilities (sum of items 13 through 20)  
..... 2948 132,924,757 21. 22.  
MINORITY INTEREST IN CONSOLIDATED SUBSIDIARIES  
..... 3000 26 22. EQUITY CAPITAL 23.  
Perpetual preferred stock and related surplus  
..... 3838 0 23. 24. Common stock  
.....  
3230 200,858 24. 25. Surplus (exclude all surplus  
related to preferred stock) ..... 3839 5,493,189  
25. 26. a. Retained earnings  
..... 3632  
2,827,092 26.a B. ACCUMULATED OTHER COMPREHENSIVE  
INCOME (3) ..... B530 (6,787) 26.b  
27. OTHER EQUITY CAPITAL COMPONENTS (4)  
..... A130 0 27. 28. Total  
equity capital (sum of items 23 through 27)  
..... 3210 8,514,352 28. 29. Total  
liabilities, minority interest, and equity capital (sum  
of items 21, 22, and 28)  
..... 3300  
141,439,165 29.



To be reported only with the March Report of Condition.

		-----	
		Number	
		-----	
1.	Indicate in the box at the right the number of the STATEMENT below that best describes the most comprehensive level of auditing work performed for the bank by independent external auditors as of any date during 1996 .....	RCFD 6724....	2 M.1
1 =	Independent audit of the bank conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the bank		
2 =	Independent audit of the bank's parent holding company conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the consolidated holding company (but not on the bank separately)		
3 =	DIRECTORS' EXAMINATION OF THE BANK CONDUCTED IN ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS BY A CERTIFIED PUBLIC ACCOUNTING FIRM (MAY BE REQUIRED BY STATE CHARTERING AUTHORITY)		
4 =	Directors' examination of the bank performed by other external auditors (may be required by state chartering authority)		
5 =	Review of the bank's financial statements by external auditors		
6 =	Compilation of the bank's financial statements by external auditors		
7 =	Other audit procedures (excluding tax preparation work)		
8 =	No external audit work		

- 
- (1) Includes total demand deposits and noninterest-bearing time and savings deposits.
  - (2) Includes limited-life preferred stock and related surplus.
  - (3) Includes net unrealized holding gains (losses) on available-for-sale securities, accumulated net gains (losses) on cash flow hedges, cumulative foreign currency translation adjustments, and minimum pension liability adjustments.
  - (4) Includes treasury stock and unearned Employee Stock Ownership Plan shares.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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)

-----  
BANK ONE, NATIONAL ASSOCIATION  
(EXACT NAME OF TRUSTEE AS SPECIFIED IN ITS CHARTER)

A NATIONAL BANKING ASSOCIATION	36-0899825 (I.R.S. EMPLOYER IDENTIFICATION NUMBER)
--------------------------------	--

1 BANK ONE PLAZA, CHICAGO, ILLINOIS (ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)	60670-0126 (ZIP CODE)
---	--------------------------

BANK ONE, NATIONAL ASSOCIATION  
1 BANK ONE PLAZA, SUITE IL1-0801  
CHICAGO, ILLINOIS 60670  
ATTN: JOHN R. PRENDIVILLE (312) 732-1830  
(NAME, ADDRESS AND TELEPHONE NUMBER OF AGENT FOR SERVICE)

-----  
FUND AMERICAN TRUST III  
(EXACT NAME OF OBLIGOR AS SPECIFIED IN ITS CHARTER)

DELAWARE (STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)	TO BE APPLIED FOR (I.R.S. EMPLOYER IDENTIFICATION NUMBER)
---	---

ONE BEACON STREET BOSTON, MASSACHUSETTS (ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)	02108-3100 (ZIP CODE)
--	--------------------------

PREFERRED SECURITIES  
(TITLE OF 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.

Comptroller of Currency, Washington, D.C., Federal Deposit Insurance Corporation, Washington, D.C., The Board of Governors of the Federal Reserve System, Washington D.C.

(B) WHETHER IT IS AUTHORIZED TO EXERCISE CORPORATE TRUST POWERS.

The trustee is authorized to exercise corporate trust powers.

ITEM 2. AFFILIATIONS WITH THE OBLIGOR. IF THE OBLIGOR IS AN AFFILIATE OF THE TRUSTEE, DESCRIBE EACH SUCH AFFILIATION.

No such affiliation exists with the trustee.

ITEM 16. LIST OF EXHIBITS. LIST BELOW ALL EXHIBITS FILED AS A PART OF THIS STATEMENT OF ELIGIBILITY.

1. A copy of the articles of association of the trustee now in effect.\*
2. A copy of the certificates of authority of the trustee to commence business.\*
3. A copy of the authorization of the trustee to exercise corporate trust powers.\*
4. A copy of the existing by-laws of the trustee.\*
5. Not Applicable.
6. The consent of the trustee required by Section 321(b) of the Act.
7. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority.

8. Not Applicable.

9. Not Applicable.

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Bank One, National Association, a national banking association organized and existing under the laws of the United States of America, has duly caused this Statement of Eligibility to be signed

on its behalf by the undersigned, thereunto duly authorized, all in the City of Chicago and the State of Illinois, on this 1st day of November, 2001.

BANK ONE, NATIONAL ASSOCIATION,  
TRUSTEE

By /s/ John R. Prendiville  
John R. Prendiville  
First Vice President

\* Exhibits 1, 2, 3, and 4 are herein incorporated by reference to Exhibits bearing identical numbers in Item 16 of the Form T-1 of Bank One, National Association, filed as Exhibit 25 to the Registration Statement on Form S-3 of Household Finance Corporation filed with the Securities and Exchange Commission on March 24, 2000 (Registration No. 333-33240).

EXHIBIT 6

THE CONSENT OF THE TRUSTEE REQUIRED  
BY SECTION 321(b) OF THE ACT

November 1, 2001

Securities and Exchange Commission  
Washington, D.C. 20549

Gentlemen:

In connection with the qualification of an indenture between Fund American Trust III and Bank One, National Association, the undersigned, in accordance with Section 321(b) of the Trust Indenture Act of 1939, as amended, hereby consents that the reports of examinations of the undersigned, made by Federal or State authorities authorized to make such examinations, may be furnished by such authorities to the Securities and Exchange Commission upon its request therefor.

Very truly yours,

BANK ONE, NATIONAL ASSOCIATION

By /s/ John R. Prendiville  
John R. Prendiville  
First Vice President

EXHIBIT 7

Call Date: 03/31/01 ST-BK: 17-1630 FFIEC 031  
Page RC-1

Legal Title of Bank: Bank One, NA  
Address: 1 Bank One Plaza, Ste 0303  
City, State Zip: Chicago, IL 60670  
FDIC Certificate No.: 0/3/6/1/8

CONSOLIDATED REPORT OF CONDITION FOR INSURED COMMERCIAL  
AND STATE-CHARTERED SAVINGS BANKS FOR MARCH 31, 2001

All schedules are to be reported in thousands of dollars. Unless otherwise indicated, report the amount outstanding of the last business day of the quarter.

SCHEDULE RC--BALANCE SHEET

DOLLAR AMOUNTS IN THOUSANDS C400 ---- RCFD BIL MIL THOU  
ASSETS 1. Cash and balances due from depository institutions  
(from Schedule RCFD RC-A): ---- a. Noninterest-bearing  
balances and currency and coin(1) ..... 0081 7,994,185  
1.a b. Interest-bearing balances(2)  
..... 0071 1,910,093 1.b 2.  
Securities a. Held-to-maturity securities(from Schedule RC-  
B, column A) ..... 1754 0 2.a b. Available-for-sale  
securities (from Schedule RC-B, column D) .... 1773  
23,762,627 2.b 3. Federal funds sold and securities  
purchased under agreements to resell  
.....  
1350 16,702,281 3. 4. Loans and lease financing receivables  
(from Schedule RC-C): A. LOANS AND LEASES HELD FOR SALE  
..... 5369 344,709 4.a B. LOANS  
AND LEASES, NET OF UNEARNED INCOME .....  
B528 82,078,753 4.b c. LESS: Allowance for loan and lease  
losses ..... 3128 1,928,789 4.c d. LOANS

AND LEASES, NET OF UNEARNED INCOME AND ALLOWANCE (ITEM 4.B MINUS 4.C) ..... B529  
80,146,964 4.d 5. Trading assets (from Schedule RD-D) ..... 3545 4,915,723 5. 6.  
Premises and fixed assets (including capitalized leases) ..... 2145 766,510 6. 7. Other real estate owned (from Schedule RC-M) ..... 2150 10,983 7. 8.  
Investments in unconsolidated subsidiaries and associated companies (from Schedule RC-M) ..... 2130 396,660 8. 9.  
Customers' liability to this bank on acceptances outstanding ..... 2155 224,739 9. 10. Intangible assets A. GOODWILL .....  
3163 455,924 10.a B. OTHER INTANGIBLE ASSETS (FROM SCHEDULE RC-M) ..... 0426 4,069 10.b 11. Other assets (from Schedule RC-F) ..... 2160 3,800,668 11. 12. Total assets (sum of items 1 through 11) ..... 2170 141,439,135 12.

- (1) Includes cash items in process of collection and unposted debits.
- (2) Includes time certificates of deposit not held for trading.

Call Date: 03/31/01 ST-BK: 17-1630 FFIEC 031  
Page RC-2

Legal Title of Bank: Bank One, NA  
Address: 1 Bank One Plaza, Ste 0303  
City, State Zip: Chicago, IL 60670  
FDIC Certificate No.: 0/3/6/1/8

SCHEDULE RC-CONTINUED

DOLLAR AMOUNTS IN THOUSANDS ----- LIABILITIES  
13. Deposits: RCON a. In domestic offices (sum of totals of columns A and C ---- from Schedule RC-E, part 1) 2200 54,375,506 13.a (1) Noninterest-bearing(1) ..... 6631 17,419,591 13.a1 (2) Interest-bearing ..... 6636 36,955,915 13.a2 RCFN b. In foreign offices, Edge and Agreement subsidiaries, and ---- IBFs (from Schedule RC-E, part II) ..... 2200 32,455,591 13.b (1) Noninterest bearing ..... 6631 763,957 13.b1 (2) Interest-bearing ..... 6636 31,691,634 13.b2 14. Federal funds purchased and securities sold under agreements to repurchase: RCFD 2800 6,144,086 14 15. Trading liabilities (from Schedule RC-D ..... RCFD 3548 3,957,785 15 16. OTHER BORROWED MONEY (INCLUDES MORTGAGE INDEBTEDNESS AND OBLIGATIONS UNDER CAPITALIZED LEASES)(FROM SCHEDULE RC-M .... RCFD 3190 22,957,605 16 17. Not applicable 18. Bank's liability on acceptance executed and outstanding ..... 2920 224,739 18. 19. Subordinated notes and debentures ..... 3200 3,861,811 19. 20. Other liabilities (from Schedule RC-G) ..... 2930 8,947,634 20. 21. Total liabilities (sum of items 13 through 20) ..... 2948 132,924,757 21. 22. MINORITY INTEREST IN CONSOLIDATED SUBSIDIARIES ..... 3000 26 22. EQUITY CAPITAL 23. Perpetual preferred stock and related surplus ..... 3838 0 23. 24. Common stock ..... 3230 200,858 24. 25. Surplus (exclude all surplus related to preferred stock) ..... 3839 5,493,189 25. 26. a. Retained earnings ..... 3632 2,827,092 26.a B. ACCUMULATED OTHER COMPREHENSIVE INCOME (3) ..... B530 (6,787) 26.b 27. OTHER EQUITY CAPITAL COMPONENTS (4) ..... A130 0 27. 28. Total equity capital (sum of items 23 through 27) ..... 3210 8,514,352 28. 29. Total liabilities, minority interest, and equity capital (sum of items 21, 22, and 28) ..... 3300 141,439,165 29.

Memorandum  
To be reported only with the March Report of Condition.

below that best describes the most comprehensive level of auditing work performed for the bank by independent external auditors as of any date during 1996 .....

RCFD 6724.... 2 M.1

-----  
Number  
-----

- 1 = Independent audit of the bank conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the bank
- 2 = Independent audit of the bank's parent holding company conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the consolidated holding company (but not on the bank separately)
- 3 = DIRECTORS' EXAMINATION OF THE BANK CONDUCTED IN ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS BY A CERTIFIED PUBLIC ACCOUNTING FIRM (MAY BE REQUIRED BY STATE CHARTERING AUTHORITY)
- 4. = Directors' examination of the bank performed by other external auditors (may be required by state chartering authority)
- 5 = Review of the bank's financial statements by external auditors
- 6 = Compilation of the bank's financial statements by external auditors
- 7 = Other audit procedures (excluding tax preparation work)
- 8 = No external audit work

- - - - -
- (1) Includes total demand deposits and noninterest-bearing time and savings deposits.
  - (2) Includes limited-life preferred stock and related surplus.
  - (3) Includes net unrealized holding gains (losses) on available-for-sale securities, accumulated net gains (losses) on cash flow hedges, cumulative foreign currency translation adjustments, and minimum pension liability adjustments.
  - (4) Includes treasury stock and unearned Employee Stock Ownership Plan shares.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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)

-----  
BANK ONE, NATIONAL ASSOCIATION  
(EXACT NAME OF TRUSTEE AS SPECIFIED IN ITS CHARTER)

A NATIONAL BANKING ASSOCIATION 36-0899825  
(I.R.S. EMPLOYER  
IDENTIFICATION NUMBER)

1 BANK ONE PLAZA, CHICAGO, ILLINOIS 60670-0126  
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES) (ZIP CODE)

BANK ONE, NATIONAL ASSOCIATION  
1 BANK ONE PLAZA, SUITE IL1-0801  
CHICAGO, ILLINOIS 60670  
ATTN: JOHN R. PRENDIVILLE (312) 732-1830  
(NAME, ADDRESS AND TELEPHONE NUMBER OF AGENT FOR SERVICE)

-----  
WHITE MOUNTAINS INSURANCE GROUP, LTD.  
(EXACT NAME OF OBLIGOR AS SPECIFIED IN ITS CHARTER)

BERMUDA 94-2708455  
(STATE OR OTHER JURISDICTION OF  
INCORPORATION OR ORGANIZATION) (I.R.S. EMPLOYER  
IDENTIFICATION NUMBER)

80 SOUTH MAIN STREET  
HANOVER, NEW HAMPSHIRE 03755-2053  
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES) (ZIP CODE)

GUARANTEE OF PREFERRED SECURITIES  
OF FUND AMERICAN TRUST I  
(TITLE OF 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.

Comptroller of Currency, Washington, D.C., Federal Deposit Insurance Corporation, Washington, D.C., The Board of Governors of the Federal Reserve System, Washington D.C.

(B) WHETHER IT IS AUTHORIZED TO EXERCISE CORPORATE TRUST POWERS.

The trustee is authorized to exercise corporate trust powers.

ITEM 2. AFFILIATIONS WITH THE OBLIGOR. IF THE OBLIGOR IS AN AFFILIATE OF THE TRUSTEE, DESCRIBE EACH SUCH AFFILIATION.

No such affiliation exists with the trustee.

ITEM 16. LIST OF EXHIBITS. LIST BELOW ALL EXHIBITS FILED AS A PART OF THIS STATEMENT OF ELIGIBILITY.

1. A copy of the articles of association of the trustee now in effect.\*
2. A copy of the certificates of authority of the trustee to commence business.\*
3. A copy of the authorization of the trustee to exercise corporate trust powers.\*
4. A copy of the existing by-laws of the trustee.\*
5. Not Applicable.
6. The consent of the trustee required by Section 321(b) of the Act.
7. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority.

8. Not Applicable.

9. Not Applicable.

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Bank One, National Association, a national banking association organized and existing under the laws of the United States of America, has duly caused this Statement of Eligibility to be signed

on its behalf by the undersigned, thereunto duly authorized, all in the City of Chicago and the State of Illinois, on this 1st day of November, 2001.

BANK ONE, NATIONAL ASSOCIATION,  
TRUSTEE

By /s/ John R. Prendiville  
John R. Prendiville  
First Vice President

\* Exhibits 1, 2, 3, and 4 are herein incorporated by reference to Exhibits bearing identical numbers in Item 16 of the Form T-1 of Bank One, National Association, filed as Exhibit 25 to the Registration Statement on Form S-3 of Household Finance Corporation filed with the Securities and Exchange Commission on March 24, 2000 (Registration No. 333-33240).

EXHIBIT 6

THE CONSENT OF THE TRUSTEE REQUIRED  
BY SECTION 321(b) OF THE ACT

November 1, 2001

Securities and Exchange Commission  
Washington, D.C. 20549

Gentlemen:

In connection with the qualification of a guaranty agreement between White Mountains Insurance Group, Ltd. and Bank One, National Association, the undersigned, in accordance with Section 321(b) of the Trust Indenture Act of 1939, as amended, hereby consents that the reports of examinations of the undersigned, made by Federal or State authorities authorized to make such examinations, may be furnished by such authorities to the Securities and Exchange Commission upon its request therefor.

Very truly yours,

BANK ONE, NATIONAL ASSOCIATION

By /s/ John R. Prendiville  
John R. Prendiville  
First Vice President

EXHIBIT 7

Call Date: 03/31/01 ST-BK: 17-1630 FFIEC 031  
Page RC-1

Legal Title of Bank: Bank One, NA  
Address: 1 Bank One Plaza, Ste 0303  
City, State Zip: Chicago, IL 60670  
FDIC Certificate No.: 0/3/6/1/8

CONSOLIDATED REPORT OF CONDITION FOR INSURED COMMERCIAL  
AND STATE-CHARTERED SAVINGS BANKS FOR MARCH 31, 2001

All schedules are to be reported in thousands of dollars. Unless otherwise indicated, report the amount outstanding of the last business day of the quarter.

SCHEDULE RC--BALANCE SHEET

DOLLAR AMOUNTS IN THOUSANDS C400 ---- RCFD BIL MIL  
THOU ASSETS 1. Cash and balances due from depository  
institutions (from Schedule RCFD RC-A): ---- a.  
Noninterest-bearing balances and currency and coin(1)  
..... 0081 7,994,185 1.a b. Interest-bearing  
balances(2)..... 0071  
1,910,093 1.b 2. Securities a. Held-to-maturity  
securities(from Schedule RC-B, column A) ..... 1754  
0 2.a b. Available-for-sale securities (from Schedule  
RC-B, column D) .... 1773 23,762,627 2.b 3. Federal  
funds sold and securities purchased under agreements  
to resell 1350 16,702,281 3. 4. Loans and lease  
financing receivables (from Schedule RC-C): A. LOANS  
AND LEASES HELD FOR SALE  
..... 5369 344,709 4.a  
B. LOANS AND LEASES, NET OF UNEARNED INCOME  
..... B528 82,078,753 4.b c. LESS:  
Allowance for loan and lease losses

3128 1,928,789 4.c d. LOANS  
 AND LEASES, NET OF UNEARNED INCOME AND ALLOWANCE  
 (ITEM 4.B MINUS 4.C) ..... B529  
 80,146,964 4.d 5. Trading assets (from Schedule RD-D)  
 ..... 3545 4,915,723 5. 6.  
 Premises and fixed assets (including capitalized  
 leases) ..... 2145 766,510 6. 7. Other real  
 estate owned (from Schedule RC-M)  
 ..... 2150 10,983 7. 8. Investments  
 in unconsolidated subsidiaries and associated  
 companies (from Schedule RC-M)  
 ..... 2130 396,660 8.  
 9. Customers' liability to this bank on acceptances  
 outstanding ..... 2155 224,739 9. 10. Intangible  
 assets  
 ..... A.  
 GOODWILL  
 .....  
 3163 455,924 10.a B. OTHER INTANGIBLE ASSETS (FROM  
 SCHEDULE RC-M) ..... 0426 4,069 10.b  
 11. Other assets (from Schedule RC-F)  
 ..... 2160 3,800,668 11.  
 12. Total assets (sum of items 1 through 11)  
 ..... 2170 141,439,135 12.

- (1) Includes cash items in process of collection and unposted debits.  
 (2) Includes time certificates of deposit not held for trading.

Call Date: 03/31/01 ST-BK: 17-1630 FFIEC 031  
 Page RC-2

Legal Title of Bank: Bank One, NA  
 Address: 1 Bank One Plaza, Ste 0303  
 City, State Zip: Chicago, IL 60670  
 FDIC Certificate No.: 0/3/6/1/8

SCHEDULE RC-CONTINUED

DOLLAR AMOUNTS IN THOUSANDS ----- LIABILITIES 13.  
 Deposits: RCON a. In domestic offices (sum of totals  
 of columns A and C ---- from Schedule RC-E, part 1)  
 ..... 2200 54,375,506  
 13.a (1) Noninterest-bearing(1)  
 ..... 6631 17,419,591  
 13.a1 (2) Interest-bearing  
 ..... 6636  
 36,955,915 13.a2 RCFN b. In foreign offices, Edge and  
 Agreement subsidiaries, and ---- IBFs (from Schedule  
 RC-E, part II) ..... 2200  
 32,455,591 13.b (1) Noninterest bearing  
 ..... 6631 763,957  
 13.b1 (2) Interest-bearing  
 ..... 6636  
 31,691,634 13.b2 14. Federal funds purchased and  
 securities sold under agreements to repurchase: RCFD  
 2800 6,144,086 14 15. Trading liabilities (from  
 Schedule RC-D ..... RCFD 3548  
 3,957,785 15 16. OTHER BORROWED MONEY (INCLUDES  
 MORTGAGE INDEBTEDNESS AND OBLIGATIONS UNDER  
 CAPITALIZED LEASES)(FROM SCHEDULE RC-M ..... RCFD  
 3190 22,957,605 16 17. Not applicable 18. Bank's  
 liability on acceptance executed and outstanding  
 ..... 2920 224,739 18. 19. Subordinated notes  
 and debentures ..... 3200  
 3,861,811 19. 20. Other liabilities (from Schedule RC-  
 G) ..... 2930 8,947,634 20.  
 21. Total liabilities (sum of items 13 through 20)  
 ..... 2948 132,924,757 21. 22.  
 MINORITY INTEREST IN CONSOLIDATED SUBSIDIARIES  
 ..... 3000 26 22. EQUITY CAPITAL 23.  
 Perpetual preferred stock and related surplus  
 ..... 3838 0 23. 24. Common stock  
 .....  
 3230 200,858 24. 25. Surplus (exclude all surplus  
 related to preferred stock) ..... 3839 5,493,189  
 25. 26. a. Retained earnings  
 ..... 3632  
 2,827,092 26.a B. ACCUMULATED OTHER COMPREHENSIVE  
 INCOME (3) ..... B530 (6,787) 26.b  
 27. OTHER EQUITY CAPITAL COMPONENTS (4)  
 ..... A130 0 27. 28. Total  
 equity capital (sum of items 23 through 27)  
 ..... 3210 8,514,352 28. 29. Total  
 liabilities, minority interest, and equity capital  
 (sum of items 21, 22, and 28)  
 ..... 3300  
 141,439,165 29.



To be reported only with the March Report of Condition.

1.	Indicate in the box at the right the number of the STATEMENT below that best describes the most comprehensive level of auditing work performed for the bank by independent external auditors as of any date during 1996 .....	RCFD 6724 ....	2	----- Number -----
1 =	Independent audit of the bank conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the bank			
2 =	Independent audit of the bank's parent holding company conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the consolidated holding company (but not on the bank separately)			
3 =	DIRECTORS' EXAMINATION OF THE BANK CONDUCTED IN ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS BY A CERTIFIED PUBLIC ACCOUNTING FIRM (MAY BE REQUIRED BY STATE CHARTERING AUTHORITY)			
4 =	Directors' examination of the bank performed by other external auditors (may be required by state chartering authority)			
5 =	Review of the bank's financial statements by external auditors			
6 =	Compilation of the bank's financial statements by external auditors			
7 =	Other audit procedures (excluding tax preparation work)			
8 =	No external audit work			

- 
- (1) Includes total demand deposits and noninterest-bearing time and savings deposits.
  - (2) Includes limited-life preferred stock and related surplus.
  - (3) Includes net unrealized holding gains (losses) on available-for-sale securities, accumulated net gains (losses) on cash flow hedges, cumulative foreign currency translation adjustments, and minimum pension liability adjustments.
  - (4) Includes treasury stock and unearned Employee Stock Ownership Plan shares.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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)

-----  
BANK ONE, NATIONAL ASSOCIATION  
(EXACT NAME OF TRUSTEE AS SPECIFIED IN ITS CHARTER)

A NATIONAL BANKING ASSOCIATION	36-0899825 (I.R.S. EMPLOYER IDENTIFICATION NUMBER)
--------------------------------	--

1 BANK ONE PLAZA, CHICAGO, ILLINOIS (ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)	60670-0126 (ZIP CODE)
---	--------------------------

BANK ONE, NATIONAL ASSOCIATION  
1 BANK ONE PLAZA, SUITE IL1-0801  
CHICAGO, ILLINOIS 60670  
ATTN: JOHN R. PRENDIVILLE (312) 732-1830  
(NAME, ADDRESS AND TELEPHONE NUMBER OF AGENT FOR SERVICE)

-----  
WHITE MOUNTAINS INSURANCE GROUP, LTD.  
(EXACT NAME OF OBLIGOR AS SPECIFIED IN ITS CHARTER)

BERMUDA (STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)	94-2708455 (I.R.S. EMPLOYER IDENTIFICATION NUMBER)
--	--

80 SOUTH MAIN STREET HANOVER, NEW HAMPSHIRE (ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)	03755-2053 (ZIP CODE)
--	--------------------------

GUARANTEE OF PREFERRED SECURITIES  
OF FUND AMERICAN TRUST II  
(TITLE OF 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.

Comptroller of Currency, Washington, D.C., Federal Deposit Insurance Corporation, Washington, D.C., The Board of Governors of the Federal Reserve System, Washington D.C.

(B) WHETHER IT IS AUTHORIZED TO EXERCISE CORPORATE TRUST POWERS.

The trustee is authorized to exercise corporate trust powers.

ITEM 2. AFFILIATIONS WITH THE OBLIGOR. IF THE OBLIGOR IS AN AFFILIATE OF THE TRUSTEE, DESCRIBE EACH SUCH AFFILIATION.

No such affiliation exists with the trustee.

ITEM 16. LIST OF EXHIBITS. LIST BELOW ALL EXHIBITS FILED AS A PART OF THIS STATEMENT OF ELIGIBILITY.

1. A copy of the articles of association of the trustee now in effect.\*
2. A copy of the certificates of authority of the trustee to commence business.\*
3. A copy of the authorization of the trustee to exercise corporate trust powers.\*
4. A copy of the existing by-laws of the trustee.\*
5. Not Applicable.
6. The consent of the trustee required by Section 321(b) of the Act.
7. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority.

8. Not Applicable.

9. Not Applicable.

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Bank One, National Association, a national banking association organized and existing under the laws of the United States of America, has duly caused this Statement of Eligibility to be signed

on its behalf by the undersigned, thereunto duly authorized, all in the City of Chicago and the State of Illinois, on this 1st day of November, 2001.

BANK ONE, NATIONAL ASSOCIATION,  
TRUSTEE

By /s/ John R. Prendiville  
John R. Prendiville  
First Vice President

\* Exhibits 1, 2, 3, and 4 are herein incorporated by reference to Exhibits bearing identical numbers in Item 16 of the Form T-1 of Bank One, National Association, filed as Exhibit 25 to the Registration Statement on Form S-3 of Household Finance Corporation filed with the Securities and Exchange Commission on March 24, 2000 (Registration No. 333-33240).

EXHIBIT 6

THE CONSENT OF THE TRUSTEE REQUIRED  
BY SECTION 321(b) OF THE ACT

November 1, 2001

Securities and Exchange Commission  
Washington, D.C. 20549

Gentlemen:

In connection with the qualification of a guaranty agreement between White Mountains Insurance Group, Ltd. and Bank One, National Association, the undersigned, in accordance with Section 321(b) of the Trust Indenture Act of 1939, as amended, hereby consents that the reports of examinations of the undersigned, made by Federal or State authorities authorized to make such examinations, may be furnished by such authorities to the Securities and Exchange Commission upon its request therefor.

Very truly yours,

BANK ONE, NATIONAL ASSOCIATION

By /s/ John R. Prendiville  
John R. Prendiville  
First Vice President

EXHIBIT 7

Call Date: 03/31/01 ST-BK: 17-1630 FFIEC 031  
Page RC-1

Legal Title of Bank: Bank One, NA  
Address: 1 Bank One Plaza, Ste 0303  
City, State Zip: Chicago, IL 60670  
FDIC Certificate No.: 0/3/6/1/8

CONSOLIDATED REPORT OF CONDITION FOR INSURED COMMERCIAL  
AND STATE-CHARTERED SAVINGS BANKS FOR MARCH 31, 2001

All schedules are to be reported in thousands of dollars. Unless otherwise indicated, report the amount outstanding of the last business day of the quarter.

SCHEDULE RC--BALANCE SHEET

DOLLAR AMOUNTS IN THOUSANDS C400 ---- RCFD BIL  
MIL THOU ASSETS 1. Cash and balances due from  
depository institutions (from Schedule RCFD RC-  
A): ---- a. Noninterest-bearing balances and  
currency and coin(1) ..... 0081 7,994,185  
1.a b. Interest-bearing balances(2)  
..... 0071  
1,910,093 1.b 2. Securities a. Held-to-maturity  
securities(from Schedule RC-B, column A) .....  
1754 0 2.a b. Available-for-sale securities (from  
Schedule RC-B, column D) .... 1773 23,762,627 2.b  
3. Federal funds sold and securities purchased  
under agreements to resell 1350 16,702,281 3. 4.  
Loans and lease financing receivables (from  
Schedule RC-C): A. LOANS AND LEASES HELD FOR SALE  
..... 5369 344,709  
4.a B. LOANS AND LEASES, NET OF UNEARNED INCOME  
..... B528 82,078,753 4.b c.

LESS: Allowance for loan and lease losses  
 ..... 3128 1,928,789 4.c d.  
 LOANS AND LEASES, NET OF UNEARNED INCOME AND  
 ALLOWANCE (ITEM 4.B MINUS 4.C)  
 ..... B529  
 80,146,964 4.d 5. Trading assets (from Schedule  
 RD-D) ..... 3545  
 4,915,723 5. 6. Premises and fixed assets  
 (including capitalized leases) ..... 2145  
 766,510 6. 7. Other real estate owned (from  
 Schedule RC-M) ..... 2150  
 10,983 7. 8. Investments in unconsolidated  
 subsidiaries and associated companies (from  
 Schedule RC-M)  
 ..... 2130  
 396,660 8. 9. Customers' liability to this bank  
 on acceptances outstanding ..... 2155 224,739  
 9. 10. Intangible assets  
 .....  
 A. GOODWILL .....  
 3163 455,924 10.a B. OTHER INTANGIBLE ASSETS  
 (FROM SCHEDULE RC-M) ..... 0426  
 4,069 10.b 11. Other assets (from Schedule RC-F)  
 ..... 2160 3,800,668  
 11. 12. Total assets (sum of items 1 through 11)  
 ..... 2170 141,439,135 12.

- (1) Includes cash items in process of collection and unposted debits.  
 (2) Includes time certificates of deposit not held for trading.

Call Date: 03/31/01 ST-BK: 17-1630 FFIEC 031  
 Page RC-2

Legal Title of Bank: Bank One, NA  
 Address: 1 Bank One Plaza, Ste 0303  
 City, State Zip: Chicago, IL 60670  
 FDIC Certificate No.: 0/3/6/1/8

SCHEDULE RC-CONTINUED

DOLLAR AMOUNTS IN THOUSANDS ----- LIABILITIES 13.  
 Deposits: RCON a. In domestic offices (sum of totals of  
 columns A and C ---- from Schedule RC-E, part 1)  
 ..... 2200 54,375,506 13.a  
 (1) Noninterest-bearing(1)  
 ..... 6631 17,419,591 13.a1  
 (2) Interest-bearing  
 ..... 6636 36,955,915  
 13.a2 RCFN b. In foreign offices, Edge and Agreement  
 subsidiaries, and ---- IBFs (from Schedule RC-E, part II)  
 ..... 2200 32,455,591 13.b (1)  
 Noninterest bearing  
 ..... 6631 763,957 13.b1  
 (2) Interest-bearing  
 ..... 6636 31,691,634  
 13.b2 14. Federal funds purchased and securities sold under  
 agreements to repurchase: RCFD 2800 6,144,086 14 15. Trading  
 liabilities (from Schedule RC-D.....  
 RCFD 3548 3,957,785 15 16. OTHER BORROWED MONEY (INCLUDES  
 MORTGAGE INDEBTEDNESS AND AND OBLIGATIONS UNDER CAPITALIZED  
 LEASES)(FROM SCHEDULE RC-M ..... RCFD 3190 22,957,605 16  
 17. Not applicable 18. Bank's liability on acceptance  
 executed and outstanding ..... 2920 224,739 18. 19.  
 Subordinated notes and debentures  
 ..... 3200 3,861,811 19. 20.  
 Other liabilities (from Schedule RC-G)  
 ..... 2930 8,947,634 20. 21. Total  
 liabilities (sum of items 13 through 20)  
 ..... 2948 132,924,757 21. 22. MINORITY  
 INTEREST IN CONSOLIDATED SUBSIDIARIES .....  
 3000 26 22. EQUITY CAPITAL 23. Perpetual preferred stock and  
 related surplus ..... 3838 0 23. 24. Common  
 stock.....  
 3230 200,858 24. 25. Surplus (exclude all surplus related to  
 preferred stock) ..... 3839 5,493,189 25. 26. a.  
 Retained earnings  
 ..... 3632  
 2,827,092 26.a B. ACCUMULATED OTHER COMPREHENSIVE INCOME  
 (3)..... B530 (6,787) 26.b 27. OTHER  
 EQUITY CAPITAL COMPONENTS (4)  
 ..... A130 0 27. 28. Total equity  
 capital (sum of items 23 through 27) ..... 3210  
 8,514,352 28. 29. Total liabilities, minority interest, and  
 equity capital (sum of items 21, 22, and 28)  
 ..... 3300 141,439,165 29.

1. Indicate in the box at the right the number of the STATEMENT below that best describes the most comprehensive level of auditing work performed for the bank by independent external auditors as of any date during 1996 ..... RCFD 6724 .... 2 M.1

- 1 = Independent audit of the bank conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the bank
- 2 = Independent audit of the bank's parent holding company conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the consolidated holding company (but not on the bank separately)
- 3 = DIRECTORS' EXAMINATION OF THE BANK CONDUCTED IN ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS BY A CERTIFIED PUBLIC ACCOUNTING FIRM (MAY BE REQUIRED BY STATE CHARTERING AUTHORITY)
- 4 = Directors' examination of the bank performed by other external auditors (may be required by state chartering authority)
- 5 = Review of the bank's financial statements by external auditors
- 6 = Compilation of the bank's financial statements by external auditors
- 7 = Other audit procedures (excluding tax preparation work)
- 8 = No external audit work

- (1) Includes total demand deposits and noninterest-bearing time and savings deposits.
- (2) Includes limited-life preferred stock and related surplus.
- (3) Includes net unrealized holding gains (losses) on available-for-sale securities, accumulated net gains (losses) on cash flow hedges, cumulative foreign currency translation adjustments, and minimum pension liability adjustments.
- (4) Includes treasury stock and unearned Employee Stock Ownership Plan shares.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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)

-----  
BANK ONE, NATIONAL ASSOCIATION  
(EXACT NAME OF TRUSTEE AS SPECIFIED IN ITS CHARTER)

A NATIONAL BANKING ASSOCIATION	36-0899825 (I.R.S. EMPLOYER IDENTIFICATION NUMBER)
--------------------------------	--

1 BANK ONE PLAZA, CHICAGO, ILLINOIS (ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)	60670-0126 (ZIP CODE)
---	--------------------------

BANK ONE, NATIONAL ASSOCIATION  
1 BANK ONE PLAZA, SUITE IL1-0801  
CHICAGO, ILLINOIS 60670  
ATTN: JOHN R. PRENDIVILLE (312) 732-1830  
(NAME, ADDRESS AND TELEPHONE NUMBER OF AGENT FOR SERVICE)

-----  
WHITE MOUNTAINS INSURANCE GROUP, LTD.  
(EXACT NAME OF OBLIGOR AS SPECIFIED IN ITS CHARTER)

BERMUDA (STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)	94-2708455 (I.R.S. EMPLOYER IDENTIFICATION NUMBER)
--	--

80 SOUTH MAIN STREET HANOVER, NEW HAMPSHIRE (ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)	03755-2053 (ZIP CODE)
--	--------------------------

GUARANTEE OF PREFERRED SECURITIES  
OF FUND AMERICAN TRUST III  
(TITLE OF 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.

Comptroller of Currency, Washington, D.C., Federal Deposit Insurance Corporation, Washington, D.C., The Board of Governors of the Federal Reserve System, Washington D.C.

(B) WHETHER IT IS AUTHORIZED TO EXERCISE CORPORATE TRUST POWERS.

The trustee is authorized to exercise corporate trust powers.

ITEM 2. AFFILIATIONS WITH THE OBLIGOR. IF THE OBLIGOR IS AN AFFILIATE OF THE TRUSTEE, DESCRIBE EACH SUCH AFFILIATION.

No such affiliation exists with the trustee.

ITEM 16. LIST OF EXHIBITS. LIST BELOW ALL EXHIBITS FILED AS A PART OF THIS STATEMENT OF ELIGIBILITY.

1. A copy of the articles of association of the trustee now in effect.\*
2. A copy of the certificates of authority of the trustee to commence business.\*
3. A copy of the authorization of the trustee to exercise corporate trust powers.\*
4. A copy of the existing by-laws of the trustee.\*
5. Not Applicable.
6. The consent of the trustee required by Section 321(b) of the Act.
7. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority.

8. Not Applicable.

9. Not Applicable.

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Bank One, National Association, a national banking association organized and existing under the laws of the United States of America, has duly caused this Statement of Eligibility to be signed

on its behalf by the undersigned, thereunto duly authorized, all in the City of Chicago and the State of Illinois, on this 1st day of November, 2001.

BANK ONE, NATIONAL ASSOCIATION,  
TRUSTEE

By /s/ John R. Prendiville  
John R. Prendiville  
First Vice President

\* Exhibits 1, 2, 3, and 4 are herein incorporated by reference to Exhibits bearing identical numbers in Item 16 of the Form T-1 of Bank One, National Association, filed as Exhibit 25 to the Registration Statement on Form S-3 of Household Finance Corporation filed with the Securities and Exchange Commission on March 24, 2000 (Registration No. 333-33240).

EXHIBIT 6

THE CONSENT OF THE TRUSTEE REQUIRED  
BY SECTION 321(b) OF THE ACT

November 1, 2001

Securities and Exchange Commission  
Washington, D.C. 20549

Gentlemen:

In connection with the qualification of a guaranty agreement between White Mountains Insurance Group, Ltd. and Bank One, National Association, the undersigned, in accordance with Section 321(b) of the Trust Indenture Act of 1939, as amended, hereby consents that the reports of examinations of the undersigned, made by Federal or State authorities authorized to make such examinations, may be furnished by such authorities to the Securities and Exchange Commission upon its request therefor.

Very truly yours,

BANK ONE, NATIONAL ASSOCIATION

By /s/ John R. Prendiville  
John R. Prendiville  
First Vice President

EXHIBIT 7

Call Date: 03/31/01 ST-BK: 17-1630 FFIEC 031  
Page RC-1

Legal Title of Bank: Bank One, NA  
Address: 1 Bank One Plaza, Ste 0303  
City, State Zip: Chicago, IL 60670  
FDIC Certificate No.: 0/3/6/1/8

CONSOLIDATED REPORT OF CONDITION FOR INSURED COMMERCIAL  
AND STATE-CHARTERED SAVINGS BANKS FOR MARCH 31, 2001

All schedules are to be reported in thousands of dollars. Unless otherwise indicated, report the amount outstanding of the last business day of the quarter.

SCHEDULE RC--BALANCE SHEET

DOLLAR AMOUNTS IN THOUSANDS C400 ---- RCFD BIL MIL  
THOU ASSETS 1. Cash and balances due from depository  
institutions (from Schedule RCFD RC-A): ---- a.  
Noninterest-bearing balances and currency and coin(1)  
..... 0081 7,994,185 1.a b. Interest-bearing  
balances(2) ..... 0071  
1,910,093 1.b 2. Securities a. Held-to-maturity  
securities(from Schedule RC-B, column A) ..... 1754  
0 2.a b. Available-for-sale securities (from Schedule  
RC-B, column D) .... 1773 23,762,627 2.b 3. Federal  
funds sold and securities purchased under agreements  
to resell 1350 16,702,281 3. 4. Loans and lease  
financing receivables (from Schedule RC-C): A. LOANS  
AND LEASES HELD FOR SALE  
..... 5369 344,709 4.a  
B. LOANS AND LEASES, NET OF UNEARNED INCOME  
..... B528 82,078,753 4.b c. LESS:  
Allowance for loan and lease losses

3128 1,928,789 4.c d. LOANS  
 AND LEASES, NET OF UNEARNED INCOME AND ALLOWANCE  
 (ITEM 4.B MINUS 4.C) ..... B529  
 80,146,964 4.d 5. Trading assets (from Schedule RD-D)  
 ..... 3545 4,915,723 5. 6.  
 Premises and fixed assets (including capitalized  
 leases) ..... 2145 766,510 6. 7. Other real  
 estate owned (from Schedule RC-M)  
 ..... 2150 10,983 7. 8. Investments  
 in unconsolidated subsidiaries and associated  
 companies (from Schedule RC-M)  
 ..... 2130 396,660 8.  
 9. Customers' liability to this bank on acceptances  
 outstanding ..... 2155 224,739 9. 10. Intangible  
 assets  
 ..... A.  
 GOODWILL  
 .....  
 3163 455,924 10.a B. OTHER INTANGIBLE ASSETS (FROM  
 SCHEDULE RC-M) ..... 0426 4,069 10.b  
 11. Other assets (from Schedule RC-F)  
 ..... 2160 3,800,668 11.  
 12. Total assets (sum of items 1 through 11)  
 ..... 2170 141,439,135 12.

- (1) Includes cash items in process of collection and unposted debits.  
 (2) Includes time certificates of deposit not held for trading.

Call Date: 03/31/01 ST-BK: 17-1630 FFIEC 031  
 Page RC-2

Legal Title of Bank: Bank One, NA  
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 FDIC Certificate No.: 0/3/6/1/8

SCHEDULE RC-CONTINUED

DOLLAR AMOUNTS IN THOUSANDS ----- LIABILITIES 13.  
 Deposits: RCON a. In domestic offices (sum of totals of  
 columns A and C ---- from Schedule RC-E, part 1)  
 ..... 2200 54,375,506  
 13.a (1) Noninterest-bearing(1)  
 ..... 6631  
 17,419,591 13.a1 (2) Interest-bearing  
 ..... 6636  
 36,955,915 13.a2 RCFN b. In foreign offices, Edge and  
 Agreement subsidiaries, and ---- IBFs (from Schedule  
 RC-E, part II) ..... 2200  
 32,455,591 13.b (1) Noninterest bearing  
 ..... 6631 763,957  
 13.b1 (2) Interest-bearing  
 ..... 6636  
 31,691,634 13.b2 14. Federal funds purchased and  
 securities sold under agreements to repurchase: RCFD  
 2800 6,144,086 14 15. Trading liabilities (from  
 Schedule RC-D ..... RCFD 3548  
 3,957,785 15 16. OTHER BORROWED MONEY (INCLUDES  
 MORTGAGE INDEBTEDNESS AND AND OBLIGATIONS UNDER  
 CAPITALIZED LEASES)(FROM SCHEDULE RC-M ..... RCFD  
 3190 22,957,605 16 17. Not applicable 18. Bank's  
 liability on acceptance executed and outstanding  
 ..... 2920 224,739 18. 19. Subordinated notes  
 and debentures ..... 3200  
 3,861,811 19. 20. Other liabilities (from Schedule RC-  
 G) ..... 2930 8,947,634 20.  
 21. Total liabilities (sum of items 13 through 20)  
 ..... 2948 132,924,757 21. 22.  
 MINORITY INTEREST IN CONSOLIDATED SUBSIDIARIES  
 ..... 3000 26 22. EQUITY CAPITAL 23.  
 Perpetual preferred stock and related surplus  
 ..... 3838 0 23. 24. Common stock  
 .....  
 3230 200,858 24. 25. Surplus (exclude all surplus  
 related to preferred stock) ..... 3839 5,493,189  
 25. 26. a. Retained earnings  
 ..... 3632  
 2,827,092 26.a B. ACCUMULATED OTHER COMPREHENSIVE  
 INCOME (3) ..... B530 (6,787) 26.b  
 27. OTHER EQUITY CAPITAL COMPONENTS (4)  
 ..... A130 0 27. 28. Total  
 equity capital (sum of items 23 through 27) 3210  
 8,514,352 28. 29. Total liabilities, minority interest,  
 and equity capital (sum of items 21, 22, and 28)  
 ..... 3300  
 141,439,165 29.



1. Indicate in the box at the right the number of the STATEMENT below that best describes the most comprehensive level of auditing work performed for the bank by independent external auditors as of any date during 1996 ..... RCFD 6724 .... 2

-----  
Number  
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- 1 = Independent audit of the bank conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the bank
- 2 = Independent audit of the bank's parent holding company conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the consolidated holding company (but not on the bank separately)
- 3 = DIRECTORS' EXAMINATION OF THE BANK CONDUCTED IN ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS BY A CERTIFIED PUBLIC ACCOUNTING FIRM (MAY BE REQUIRED BY STATE CHARTERING AUTHORITY)
- 4. = Directors' examination of the bank performed by other external auditors (may be required by state chartering authority)
- 5 = Review of the bank's financial statements by external auditors
- 6 = Compilation of the bank's financial statements by external auditors
- 7 = Other audit procedures (excluding tax preparation work)
- 8 = No external audit work

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- (1) Includes total demand deposits and noninterest-bearing time and savings deposits.
  - (2) Includes limited-life preferred stock and related surplus.
  - (3) Includes net unrealized holding gains (losses) on available-for-sale securities, accumulated net gains (losses) on cash flow hedges, cumulative foreign currency translation adjustments, and minimum pension liability adjustments.
  - (4) Includes treasury stock and unearned Employee Stock Ownership Plan shares.