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

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

ACHIEVE LIFE SCIENCES, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

95-4343413
(I.R.S. Employer
Identification No.)

**1001 W. Broadway, Suite 400
Vancouver, British Columbia, V6H 4B1
(604) 736-3678**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Richard Stewart
Chairman and Chief Executive Officer
Achieve Life Sciences, Inc.
1001 W. Broadway, Suite 400
Vancouver, British Columbia, V6H 4B1
(604) 736-3678**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

**Alan C. Smith
Robert A. Freedman
Amanda L. Rose
Fenwick & West LLP
1191 Second Avenue, 10th Floor
Seattle, Washington 98101
(206) 389-4510**

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

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

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

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

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

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

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

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

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of Securities Act.

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price ⁽¹⁾⁽²⁾	Amount of Registration Fee ⁽³⁾
Common Stock, \$0.001 par value per share		
Preferred Stock, \$0.001 par value per share		
Senior Debt Securities		
Subordinated Debt Securities		
Warrants		
Subscription Rights		
Units		
Total	\$100,000,000	\$12,120

- (1) There is being registered hereunder an indeterminate number of shares of (a) common stock, (b) preferred stock, (c) debt securities, (d) warrants to purchase debt securities, common stock or preferred stock, (e) subscription rights to purchase common stock, preferred stock or debt securities, and (f) units, consisting of some or all of these securities in any combination, as may be sold from time to time by the Registrant; but in no event will the aggregate offering price exceed \$100,000,000. If any debt securities are issued at an original issue discount, then the offering price of such debt securities shall be in such greater principal amount as shall result in an aggregate offering price not to exceed \$100,000,000, less the aggregate dollar amount of all securities previously issued hereunder. Any securities registered hereunder may be sold separately or as units with other securities registered hereunder. The securities registered also include such indeterminate amount and number of shares of common stock as may be issued upon conversion of preferred stock or pursuant to the antidilution provisions of any such securities. The securities registered also include such indeterminate amount and number of shares of common stock as may be issued upon exercise of warrants or pursuant to the antidilution provisions of any such securities. The securities registered also include such indeterminate amount and number of shares of common stock and debt securities as may be issued upon conversion of or exchange for debt securities that provide for conversion or exchange or pursuant to the antidilution provisions of any such securities.
- (2) Unspecified pursuant to General Instruction II.D to Form S-3 under the Securities Act.
- (3) Calculated in accordance with Rule 457(o) under the Securities Act.

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.

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.

SUBJECT TO COMPLETION, DATED DECEMBER 26, 2018

PROSPECTUS



Achieve Life Sciences, Inc.

Common Stock, Preferred Stock, Debt Securities, Warrants, Subscription Rights and Units

We may offer and sell common stock, preferred stock, debt securities, warrants, subscription rights and units, or any combination thereof, with a total value of up to \$100,000,000.

This prospectus provides a general description of securities we may offer and sell from time to time. Each time we sell those securities, we will provide their specific terms in a supplement to this prospectus. This prospectus supplement and any free writing prospectus may also add, update or change information contained in this prospectus. You should read carefully this prospectus and the applicable prospectus supplement and any related free writing prospectus, as well as any documents incorporated by reference, before you invest in any securities. This prospectus is not an offer and may not be used to consummate a sale of securities unless accompanied by the applicable prospectus supplement.

The aggregate market value of our outstanding common stock held by non-affiliates was approximately \$14.5 million, which was calculated based on 6,466,406 shares of outstanding common stock held by non-affiliates as of November 7, 2018, and a price per share of \$2.25, the closing price of our common stock on November 7, 2018. Pursuant to General Instruction I.B.6 of Form S-3, in no event will we sell securities pursuant to this registration statement with a value more than one-third of the aggregate market value of our common stock held by non-affiliates in any 12-month period, so long as the aggregate market value of our common stock held by non-affiliates is less than \$75.0 million. In the event that subsequent to the effective date of this registration statement, the aggregate market value of our outstanding common stock held by non-affiliates equals or exceeds \$75.0 million, then the one-third limitation on sales shall not apply to additional sales made pursuant to this registration statement. We have sold an aggregate amount of \$7.1 million of securities pursuant to General Instruction I.B.6 of Form S-3 during the 12 calendar months prior to, and including, the date of this registration statement.

We may offer and sell these securities, from time to time, to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis, at prices and on other terms to be determined at the time of offering. If we use agents, underwriters or dealers to sell the securities, we will name them and describe their compensation in a prospectus supplement.

Our common stock is listed on The Nasdaq Capital Market under the symbol "ACHV." On December 24, 2018, the last reported sale price of our common stock on The Nasdaq Capital Market was \$1.27 per share. None of the other securities we may offer are currently traded on any securities exchange. The applicable prospectus supplement and any related free writing prospectus will contain information, where applicable, as to any other listing on The Nasdaq Capital Market or any securities market or exchange of the securities covered by the applicable prospectus supplement and any related free writing prospectus.

An investment in our securities involves a high degree of risk. You should carefully consider the information under the heading "[Risk Factors](#)" beginning on page 3 of this prospectus before investing in our securities.

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

The date of this prospectus is December 26, 2018

TABLE OF CONTENTS

<u>ABOUT THIS PROSPECTUS</u>	i
<u>PROSPECTUS SUMMARY</u>	1
<u>RISK FACTORS</u>	3
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	3
<u>INCORPORATION OF INFORMATION BY REFERENCE</u>	4
<u>FORWARD-LOOKING STATEMENTS</u>	5
<u>USE OF PROCEEDS</u>	6
<u>PLAN OF DISTRIBUTION</u>	7
<u>DESCRIPTION OF CAPITAL STOCK</u>	9
<u>DESCRIPTION OF DEBT SECURITIES</u>	11
<u>DESCRIPTION OF WARRANTS</u>	18
<u>DESCRIPTION OF SUBSCRIPTION RIGHTS</u>	20
<u>DESCRIPTION OF UNITS</u>	20
<u>CERTAIN PROVISIONS OF DELAWARE LAW AND THE COMPANY'S CERTIFICATE OF INCORPORATION AND BYLAWS</u>	21
<u>LEGAL MATTERS</u>	22
<u>EXPERTS</u>	22

ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or the SEC, using a “shelf” registration process. Under this shelf registration process, from time to time, we may sell any combination of the securities described in this prospectus in one or more offerings, up to an aggregate dollar amount of \$100,000,000, subject to any applicable limits prescribed by General Instruction I.B.6. of Form S-3. We have provided to you in this prospectus a general description of the securities we may offer. Each time we sell securities under this shelf registration process, we will provide a prospectus supplement that will contain specific information about the terms of the offering. We may also add, update or change in the applicable prospectus supplement any of the information contained in this prospectus. To the extent there is a conflict between the information contained in this prospectus and the applicable prospectus supplement, you should rely on the information in the applicable prospectus supplement; provided that, if any statement in one of these documents is inconsistent with a statement in another document having a later date (for example, a document incorporated by reference in this prospectus or any applicable prospectus supplement), the statement in the document having the later date modifies or supersedes the earlier statement. You should read both this prospectus and any applicable prospectus supplement together with additional information described under the heading “Where You Can Find More Information.”

You should rely only on the information contained in or incorporated by reference into this prospectus or any applicable prospectus supplement. No dealer, salesperson or any other person is authorized to give any information or to make any representation other than the information and representations contained in or incorporated by reference into this prospectus or any applicable prospectus supplement. If different information is given or different representations are made, you may not rely on that information or those representations as having been authorized by us. You may not imply from the delivery of this prospectus and any applicable prospectus supplement, nor from a sale made under this prospectus and any applicable prospectus supplement, that our affairs are unchanged since the date of this prospectus and any applicable prospectus supplement or that the information contained in any document incorporated by reference is accurate as of any date other than the date of the document incorporated by reference, regardless of the time of delivery of this prospectus and any applicable prospectus supplement or any sale of a security. This prospectus and any applicable prospectus supplement may only be used where it is legal to sell the securities.

THIS PROSPECTUS MAY NOT BE USED TO OFFER AND SELL SECURITIES UNLESS IT IS ACCOMPANIED BY A PROSPECTUS SUPPLEMENT.

Unless the context indicates otherwise, as used in this prospectus, the terms “Achieve Life Sciences,” “Achieve,” “the Company,” “Registrant,” “we,” “us” and “our” refer to Achieve Life Sciences, Inc., a Delaware corporation, and its subsidiaries taken as a whole, unless otherwise noted.

This prospectus includes trademarks, service marks and trade names owned by us or other companies. All trademarks, service marks and trade names included in this prospectus are the property of their respective owners. This prospectus and the information incorporated herein by reference contains references to trademarks, service marks and trade names referred to in this prospectus and the information incorporated herein, including logos, artwork, and other visual displays, may appear without the ® or TM symbols, but such references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or the rights of the applicable licensor to these trademarks, service marks or trade names. We do not intend our use or display of other companies’ trade names, trademarks or service marks to imply a relationship with, or endorsement or sponsorship of us by, these other companies. All trademarks, service marks and trade names included or incorporated by reference into this prospectus, any applicable prospectus supplement or any related free writing prospectus are the property of their respective owners.

PROSPECTUS SUMMARY

This summary may not contain all the information that you should consider before investing in securities. You should read the entire prospectus and the information incorporated by reference in this prospectus carefully, including "Risk Factors" and the financial data and related notes and other information incorporated by reference, before making an investment decision.

Company Overview

We are a clinical-stage pharmaceutical company committed to the global (excluding Central & Eastern Europe plus other territories) development and commercialization of cytisinicline for smoking cessation. Our focus is to address the global smoking health epidemic, which is a leading cause of preventable death and is responsible for approximately seven million deaths annually worldwide.

Cytisinicline is an established 25-day smoking cessation treatment that has been approved and marketed in Central and Eastern Europe by Sopharma AD for over 20 years under the brand name Tabex™. It is estimated that over 20 million people have used cytisinicline to help treat nicotine addiction, including over 2,000 patients in investigator-conducted, Phase 3 clinical trials in Europe and New Zealand. Both trials were published in the New England Journal of Medicine in September 2011 and December 2014, respectively.

Cytisinicline is a naturally occurring, plant-based alkaloid from the seeds of the Laburnum anagyroides plant. Cytisinicline is structurally similar to nicotine and has a well-defined, dual-acting mechanism of action that is both agonistic and antagonistic. It is believed to aid in smoking cessation by interacting with nicotine receptors in the brain by reducing the severity of nicotine withdrawal symptoms through agonistic binding to nicotine receptors and by reducing the reward and satisfaction associated with smoking through antagonistic properties. The cytisinicline dosing schedule reflects that of an anti-addiction medication, with downward dose titration over a period of 25 days.

The Securities We May Offer

With this prospectus, we may offer common stock, preferred stock, debt securities, warrants, subscription rights and units, or any combination of the foregoing. The aggregate offering price of securities that we offer with this prospectus will not exceed \$100,000,000, subject to any applicable limits prescribed by General Instruction I.B.6. of Form S-3. Each time we offer securities with this prospectus, we will provide offerees with a prospectus supplement that will contain the specific terms of the securities being offered. The following is a summary of the securities we may offer with this prospectus.

Common Stock

We may offer shares of our common stock, par value \$0.001 per share.

Preferred Stock

We may offer shares of our preferred stock, par value \$0.001 per share, in one or more series. Our board of directors will determine the dividend, voting, conversion and other rights of the series of shares of preferred stock being offered.

Debt Securities

We may offer general obligations, which may be secured or unsecured, senior or subordinated and convertible into shares of our common stock or preferred stock. In this prospectus, we refer to the senior debt securities and the subordinated debt securities together as the "debt securities." The senior debt securities will have the same rank as all of our other indebtedness that is not subordinated. The subordinated debt securities will be entitled to payment only after payment on our senior debt. In addition, the subordinated debt securities will be effectively subordinated to creditors. Our board of directors will determine the terms of each series of debt securities being offered.

We will issue the debt securities under an indenture or indentures between us and a trustee. In this document, we have summarized general features of the debt securities from the indentures. We encourage you to read the indentures, which are exhibits to the registration statement of which this prospectus is a part.

Warrants

We may offer warrants for the purchase of debt securities, shares of preferred stock or shares of common stock. Our board of directors will determine the terms of the warrants.

Subscription Rights

We may offer subscription rights to purchase our common stock, preferred stock or debt securities. We may issue subscription rights independently or together with other securities. Our board of directors or a committee designated by our board of directors will determine the terms of the subscription rights.

Units

We may offer units consisting of some or all of the securities described above, in any combination, including common stock, preferred stock, warrants and/or debt securities. The terms of these units will be set forth in a prospectus supplement. The description of the terms of these units in the related prospectus supplement will not necessarily be complete. You should refer to the applicable form of unit and unit agreement for complete information with respect to these units.

Corporate Information

We were incorporated in California in October 1991 and subsequently reorganized as a Delaware corporation in March 1995. Our principal executive offices are located at 400 – 1001 W. Broadway, Vancouver, B.C., Canada V6H 4B1, and our telephone number is (604) 736-3678.

In August 2017, our company, then named OncoGenex Pharmaceuticals, Inc., completed its merger, or the Arrangement, with Achieve, as contemplated by the Merger Agreement between the companies. We then changed our name to Achieve Life Sciences, Inc. As a result of the Arrangement, Achieve became our wholly owned subsidiary. Achieve was formed in 2015 as a Delaware corporation and has one direct wholly-owned subsidiary, Extab Corporation, a Delaware corporation, which was formed in 2009. Extab Corporation in turn has one direct wholly-owned subsidiary, Achieve Pharma UK Limited, a United Kingdom company, which was formed in 2009.

RISK FACTORS

An investment in our securities involves a high degree of risk. The prospectus supplement applicable to each offering of securities will contain a discussion of the risks applicable to an investment in our securities. Prior to making a decision about investing in our securities, you should carefully consider the specific factors discussed under the heading "Risk Factors" in the applicable prospectus supplement, together with all of the other information contained or incorporated by reference in the prospectus supplement or appearing or incorporated by reference in this prospectus, including in (i) our Annual Report on Form 10-K for the fiscal year ended December 31, 2017 and our Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2018, and (ii) other documents we file with the SEC that are deemed incorporated by reference into this prospectus, which may be amended, supplemented, or superseded from time to time by other reports we file with the SEC in the future. The risks and uncertainties we have described are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also affect our operations.

WHERE YOU CAN FIND MORE INFORMATION

We are subject to the informational requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and are required to file annual, quarterly, and other reports, proxy statements, and other information with the SEC. The SEC maintains an Internet site (<http://www.sec.gov>) that contains reports, proxy and information statements, and various other of our information. You may also inspect the documents described herein at our principal executive offices, 1001 W. Broadway, Suite 400, Vancouver, BC V6H 4B1, during normal business hours.

Our Internet address is www.achievelifesciences.com. There we make available free of charge, on or through the investor relations section of our website, annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act as soon as reasonably practicable after we electronically file such material with the Securities and Exchange Commission. The information found on our website is not part of this prospectus and investors should not rely on any such information in deciding whether to invest.

INCORPORATION OF INFORMATION BY REFERENCE

The SEC allows us to “incorporate by reference” information that we file with the SEC, which means that we can disclose important information to you by referring you to those other documents. The information incorporated by reference is an important part of this prospectus, and information we file later with the SEC will automatically update and supercede this information. We incorporate by reference the documents listed below and any future filings we make with the SEC under Section 13(a), 13(c), 14, or 15(d) of the Exchange Act prior to the termination of any offering of securities made by this prospectus:

- our Annual Report on Form 10-K (File No. 033-80623) for the year ended December 31, 2017 filed with the SEC on March 1, 2018, including certain information incorporated by reference therein from our Definitive Proxy Statement on Schedule 14A for our 2018 annual meeting of stockholders filed with the SEC on April 19, 2018;
- our Quarterly Reports on Form 10-Q (File Nos. 033-80623) for the quarter ended March 31, 2018, filed with the SEC on May 9, 2018 and amended on May 23, 2018, and for the quarters ended June 30, 2018 and September 30, 2018, filed with the SEC on August 8, 2018 and November 7, 2018, respectively;
- our current reports on Form 8-K (File Nos. 033-80623) filed with the SEC on January 24, 2018, May 23, 2018, June 20, 2018, September 21, 2018, September 28, 2018, and October 1, 2018;
- the description of our common stock contained in our registration statement on Form 8-A (File No. 000-21243) filed with the Commission on September 27, 1995 under Section 12 of the Exchange Act, including any amendment or report filed for the purpose of updating such description; and
- filings we make with the SEC pursuant to the Exchange Act after the date of the initial registration statement, of which this prospectus is a part, and prior to the effectiveness of the registration statement.

Upon written or oral request, we will provide without charge to each person, including any beneficial owner, to whom this prospectus is delivered, a copy of any or all of such documents that are incorporated herein by reference (other than exhibits to such documents unless such exhibits are specifically incorporated by reference into the documents that this prospectus incorporates). Written or oral requests for copies should be directed to Achieve Life Sciences, Inc., 1001 W. Broadway, Suite 400, Vancouver, BC V6H 4B1, Attn: Sandra Thomson, telephone number (604) 736-3678.

Any statement contained in this prospectus, or in a document all or a portion of which is incorporated by reference, shall be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus, any prospectus supplement or any document incorporated by reference modifies or supersedes such statement. Any such statement so modified or superseded shall not, except as so modified or superseded, constitute a part of this prospectus.

FORWARD-LOOKING STATEMENTS

This prospectus and documents incorporated herein by reference contain “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements involve a number of risks and uncertainties. We caution readers that any forward-looking statement is not a guarantee of future performance and that actual results could differ materially from those contained in the forward-looking statement. These statements are based on current expectations of future events. Such statements include, but are not limited to, statements about future financial and operating results, plans, objectives, expectations and intentions, costs and expenses, interest rates, outcome of contingencies, financial condition, results of operations, liquidity, business strategies, cost savings, objectives of management and other statements that are not historical facts. You can find many of these statements by looking for words like “believes,” “expects,” “anticipates,” “estimates,” “may,” “should,” “will,” “could,” “plan,” “intend,” or similar expressions in this prospectus or in documents incorporated by reference into this prospectus. We intend that such forward-looking statements be subject to the safe harbors created thereby. Examples of these forward-looking statements include, but are not limited to:

- progress and preliminary and future results of clinical trials conducted by us or our collaborators;
- anticipated regulatory filings and requirements and future clinical trials conducted by us or our collaborators;
- timing and amount of future contractual payments, product revenue and operating expenses;
- market acceptance of our products and the estimated potential size of these markets; and
- our anticipated future capital requirements and the terms of any capital financing agreements.

These forward-looking statements are based on the current beliefs and expectations of our management and are subject to significant risks and uncertainties. If underlying assumptions prove inaccurate or unknown risks or uncertainties materialize, actual results may differ materially from current expectations and projections. Factors that might cause such a difference include those discussed in Item 1A “Risk Factors” in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2018, as well as those discussed in this prospectus and in the documents incorporated by reference into this prospectus. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this prospectus or, in the case of documents referred to or incorporated by reference, the date of those documents.

All subsequent written or oral forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. We do not undertake any obligation to release publicly any revisions to these forward-looking statements to reflect events or circumstances after the date of this prospectus or to reflect the occurrence of unanticipated events, except as may be required under applicable U.S. securities law. If we do update one or more forward-looking statements, no inference should be drawn that we will make additional updates with respect to those or other forward-looking statements.

USE OF PROCEEDS

We will retain broad discretion over the use of the net proceeds to us from the sale of our securities under this prospectus. Unless otherwise provided in the applicable prospectus supplement, we intend to use the net proceeds from the sale of securities under this prospectus for general corporate purposes, which may include funding research and development, sales and marketing activities, increasing our working capital, reducing indebtedness, acquisitions or investments in businesses, products, or technologies that are complementary to our own and capital expenditures. We will set forth in the prospectus supplement our intended use for the net proceeds received from the sale of any securities. Pending the application of the net proceeds, we intend to invest the net proceeds in short-term, long-term, investment-grade, interest-bearing securities.

PLAN OF DISTRIBUTION

We may sell the securities covered by this prospectus to one or more underwriters for public offering and sale by them, and may also sell the securities to investors directly or through agents. We will name any underwriter or agent involved in the offer and sale of securities in the applicable prospectus supplement. We have reserved the right to sell or exchange securities directly to investors on our own behalf in jurisdictions where we are authorized to do so. We may distribute the securities from time to time in one or more transactions:

- at a fixed price or prices, which may be changed;
- at market prices prevailing at the time of sale;
- at prices related to such prevailing market prices; or
- at negotiated prices.

We may solicit directly offers to purchase the securities being offered by this prospectus. We may also designate agents to solicit offers to purchase the securities from time to time. We will name in a prospectus supplement any agent involved in the offer or sale of our securities. Unless otherwise indicated in a prospectus supplement, an agent will be acting on a best efforts basis, and a dealer will purchase securities as a principal for resale at varying prices to be determined by the dealer.

If we utilize an underwriter in the sale of the securities being offered by this prospectus, we will execute an underwriting agreement with the underwriter at the time of sale and we will provide the name of any underwriter in the prospectus supplement that the underwriter will use to make resales of the securities to the public. In connection with the sale of the securities, we, or the purchasers of securities for whom the underwriter may act as agent, may compensate the underwriter in the form of underwriting discounts or commissions. The underwriter may sell the securities to or through dealers, and those dealers may receive compensation in the form of discounts, concessions, or commissions from the underwriters or commissions from the purchasers for whom they may act as agent.

We will provide in the applicable prospectus supplement any compensation we pay to underwriters, dealers, or agents in connection with the offering of the securities, and any discounts, concessions, or commissions allowed by underwriters to participating dealers. Underwriters, dealers, and agents participating in the distribution of the securities may be deemed to be underwriters within the meaning of the Securities Act, and any discounts and commissions received by them and any profit realized by them on resale of the securities may be deemed to be underwriting discounts and commissions. We may enter into agreements to indemnify underwriters, dealers, and agents against civil liabilities, including liabilities under the Securities Act, and to reimburse them for certain expenses. We may grant underwriters who participate in the distribution of our securities under this prospectus an option to purchase additional securities to cover any over-allotments in connection with the distribution.

The securities we offer under this prospectus may or may not be listed on a national securities exchange. To facilitate the offering of securities, certain persons participating in the offering may engage in transactions that stabilize, maintain, or otherwise affect the price of the securities. This may include short sales of the securities, which involves the sale by persons participating in the offering of more securities than we sold to them. In these circumstances, these persons would cover such short positions by making purchases in the open market or by exercising their option to purchase additional securities. In addition, these persons may stabilize or maintain the price of the securities by bidding for or purchasing securities in the open market or by imposing penalty bids, whereby selling concessions allowed to dealers participating in the offering may be reclaimed if securities sold by them are repurchased in connection with stabilization transactions. The effect of these transactions may be to stabilize or maintain the market price of the securities at a level above that which might otherwise prevail in the open market. These transactions may be discontinued at any time.

We may enter into derivative transactions with third parties, or sell securities not covered by this prospectus to third parties in privately negotiated transactions. If the applicable prospectus supplement indicates, in connection with those derivatives, the third parties may sell securities covered by this prospectus and the applicable prospectus supplement, including short sale transactions. If so, the third party may use securities pledged by us or borrowed from us or others to settle those sales or to close out any related open borrowings of stock, and they may use securities received from us in settlement of those derivatives to close out any related open borrowings of stock. The third party in these sale transactions will be an underwriter and will be identified in the applicable prospectus supplement. In addition, we may otherwise loan or pledge securities to a financial institution or other third party that in turn may sell the securities short using this prospectus. The financial institution or other third party may transfer its economic short position to investors in our securities or in connection with a concurrent offering of other securities.

We will file a prospectus supplement to describe the terms of any offering of our securities covered by this prospectus. The prospectus supplement will disclose:

- the terms of the offer;
- the names of any underwriters, including any managing underwriters, as well as any dealers or agents;
- the purchase price of the securities from us;
- the net proceeds to us from the sale of the securities;
- any delayed delivery arrangements;
- the nature of the underwriters' obligations to take the securities;
- any over-allotment or other options under which underwriters, if any, may purchase additional securities from us;
- any underwriting discounts, commissions or other items constituting underwriters' compensation, and any commissions paid to agents;
- in a subscription rights offering, whether we have engaged dealer-managers to facilitate the offering or subscription, including their name or names and compensation;
- any securities exchanges or markets on which such securities may be listed;
- any public offering price; and
- other facts material to the transaction.

We will bear all or substantially all of the costs, expenses, and fees in connection with the registration of our securities under this prospectus. The underwriters, dealers, and agents may engage in transactions with us, or perform services for us, in the ordinary course of business.

DESCRIPTION OF CAPITAL STOCK

General

As of the date of this prospectus, our authorized capital stock consists of 155,000,000 shares. Those shares consist of 150,000,000 shares of common stock, par value of \$0.001 per share, and 5,000,000 shares of preferred stock, par value of \$0.001 per share. As of September 30, 2018, there were 4,901,095 shares of common stock issued and outstanding. In addition, as of September 30, 2018, we had reserved, pursuant to various plans, 1,294,091 shares of our common stock for issuance upon exercise of stock options and settlement of restricted stock units by our employees, directors, officers and consultants, of which 665,585 were reserved for outstanding options, 15,156 were reserved for outstanding restricted stock units and 613,350 were available for future equity grants.

As of September 30, 2018, there were warrants outstanding to purchase an aggregate of 3,173,764 shares of our common stock at a weighted-average exercise price of \$8.57 per share. Our common stock is traded on The Nasdaq Capital Market under the symbol "ACHV."

The following description summarizes the material terms of our capital stock. This summary is, however, subject to the provisions of our certificate of incorporation and bylaws. For greater detail about our capital stock, please refer to our certificate of incorporation and bylaws.

Common Stock

Voting Rights. For all matters submitted to a vote of stockholders, each holder of our common stock is entitled to one vote for each share registered in his or her name. Except as may be required by law and in connection with some significant actions, such as mergers, consolidations, or amendments to our certificate of incorporation that affect the rights of stockholders, holders of our common stock vote together as a single class. There is no cumulative voting in the election of our directors, which means that, subject to any rights to elect directors that are granted to the holders of any class or series of preferred stock, a plurality of the votes cast at a meeting of stockholders at which a quorum is present is sufficient to elect a director.

Liquidation. In the event we are liquidated, dissolved or our affairs are wound up, after we pay or make adequate provision for all of our known debts and liabilities, each holder of our common stock will be entitled to share ratably in all assets that remain, subject to any rights that are granted to the holders of any class or series of preferred stock.

Dividends. Subject to preferential dividend rights of any other class or series of stock, the holders of shares of our common stock are entitled to receive dividends, including dividends of our stock, as and when declared by our board of directors, subject to any limitations imposed by law and to the rights of the holders, if any, of our preferred stock. We have never paid cash dividends on our common stock. We do not anticipate paying periodic cash dividends on our common stock for the foreseeable future. Any future determination about the payment of dividends will be made at the discretion of our board of directors and will depend upon our earnings, if any, capital requirements, operating and financial conditions and on such other factors as the board of directors deems relevant.

Other Rights and Restrictions. Subject to the preferential rights of any other class or series of stock, all shares of our common stock have equal dividend, distribution, liquidation and other rights, and have no preference, appraisal or exchange rights, except for any appraisal rights provided by Delaware law. Furthermore, holders of our common stock have no conversion, sinking fund or redemption rights, or preemptive rights to subscribe for any of our securities. Our certificate of incorporation and our bylaws do not restrict the ability of a holder of our common stock to transfer his or her shares of our common stock.

The rights, powers, preferences and privileges of holders of our common stock are subject to, and may be adversely affected by, the rights of holders of shares of any series of preferred stock which we may designate and issue in the future.

Listing. Our common stock is listed on The Nasdaq Capital Market under the symbol "ACHV."

Transfer Agent and Registrar. The transfer agent for our common stock is American Stock Transfer & Trust Company, LLC.

Preferred Stock

The following description of preferred stock and the description of the terms of any particular series of preferred stock that we choose to issue hereunder and that will be set forth in the related prospectus supplement are not complete. These descriptions are qualified in their entirety by reference to the certificate of designation relating to that series. The rights, preferences, privileges, and restrictions of the preferred stock of each series will be fixed by the certificate of designation relating to that series.

The board of directors has the authority, without stockholder approval, subject to limitations prescribed by law, to provide for the issuance of the shares of preferred stock in one or more series, and by filing a certificate pursuant to the applicable law of the State of Delaware, to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences, and rights of the shares of each series and the qualifications, limitations, or restrictions, including, but not limited to, the following:

- the number of shares constituting that series;
- dividend rights and rates;
- voting rights;
- conversion terms;
- rights and terms of redemption (including sinking fund provisions); and
- rights of the series in the event of liquidation, dissolution, or winding up.

All shares of preferred stock offered hereby will, when issued, be fully paid and nonassessable and will not have any preemptive or similar rights. Our board of directors could authorize the issuance of shares of preferred stock with terms and conditions that could have the effect of discouraging a takeover or other transaction that might involve a premium price for holders of the shares or which holders might believe to be in their best interests.

We will set forth in a prospectus supplement relating to the series of preferred stock being offered the following items:

- the title and stated value of the preferred stock;
- the number of shares of the preferred stock offered, the liquidation preference per share, and the offering price of the preferred stock;
- the dividend rate(s), period(s), and/or payment date(s) or method(s) of calculation applicable to the preferred stock;
- whether dividends are cumulative or non-cumulative and, if cumulative, the date from which dividends on the preferred stock will accumulate;
- the procedures for any auction and remarketing, if any, for the preferred stock;
- the provisions for a sinking fund, if any, for the preferred stock;
- the provision for redemption, if applicable, of the preferred stock;
- any listing of the preferred stock on any securities exchange;
- the terms and conditions, if applicable, upon which the preferred stock will be convertible into common stock, including the conversion price (or manner of calculation) and conversion period;
- voting rights, if any, of the preferred stock;
- a discussion of any material and/or special United States federal income tax considerations applicable to the preferred stock;
- the relative ranking and preferences of the preferred stock as to dividend rights and rights upon the liquidation, dissolution, or winding up of our affairs;
- any limitations on issuance of any class or series of preferred stock ranking senior to or on a parity with the class or series of preferred stock as to dividend rights and rights upon liquidation, dissolution, or winding up of our affairs; and
- any other specific terms, preferences, rights, limitations, or restrictions of the preferred stock.

The transfer agent and registrar for any series of preferred stock will be set forth in the applicable prospectus supplement.

DESCRIPTION OF DEBT SECURITIES

The following description of the terms of the debt securities summarizes some general terms that will apply to the debt securities. The description is not complete, and we refer you to the indentures which we filed with the SEC as exhibits to the registration statement of which this prospectus is a part.

General

The debt securities will be either our senior debt securities or our subordinated debt securities. We will issue our debt securities under one or more separate indentures between us and a trustee. Senior debt securities will be issued under a senior indenture and subordinated securities will be issued under a subordinated indenture. A copy of the form of each type of indenture has been filed as an exhibit to the registration statement of which this prospectus is a part. The indentures may be supplemented by one or more supplemental indentures. We refer to the senior indenture and the subordinated indenture, together with any supplemental indentures, as the “indentures” throughout the remainder of this prospectus.

The indentures do not limit the amount of debt securities that we may issue. The indentures provide that debt securities may be issued up to the principal amount that we authorize from time to time. The senior debt securities will be secured or unsecured and will have the same rank as all of our other indebtedness that is not subordinated. The subordinated debt securities will be secured or unsecured and will be subordinated and junior to all senior indebtedness. The terms of the indentures do not contain any covenants or other provisions designed to give holders of any debt securities protection against changes in our operations, financial condition or transactions involving us, but those provisions may be included in the documents that include the specific terms of the debt securities.

We may issue the debt securities in one or more separate series of senior debt securities and subordinated debt securities. The prospectus supplement relating to the particular series of debt securities being offered will specify the particular amounts, prices and terms of those debt securities. These terms may include:

- the title of the debt securities;
- any limit upon the aggregate principal amount of the debt securities;
- if other than United States dollars, the currency or currencies, including the euro and other composite currencies, in which payments on the debt securities will be payable and whether the holder may elect payment to be made in a different currency;
- the date or dates when payments on the principal must be made or the method of determining that date or dates;
- interest rates, and the dates from which interest, if any, will accrue, and the dates when interest is payable and the maturity;
- the right, if any, to extend the interest payment periods and the duration of the extensions;
- the places where payments may be made and the manner of payments;
- any mandatory or optional redemption provisions;
- any subordination provisions;
- the denominations in which debt securities will be issued;
- the terms applicable to any debt securities issued at a discount from their stated principal amount;
- the currency or currencies of payment of principal or interest and the period, if any, during which a holder may elect to pay in a currency other than the currency in which the debt securities are denominated;
- if the amount of payments of principal or interest is to be determined by reference to an index or formula, or based on a coin or currency other than that in which the debt securities are stated to be payable, the manner in which these amounts are determined and the calculation agent, if any;
- whether the debt securities will be secured or unsecured;
- whether the debt securities will be issued in the form of one or more global securities in temporary or definitive form;
- whether and on what terms we will pay additional amounts to holders of the debt securities that are not United States persons in respect of any tax, assessment or governmental charge withheld or deducted and, if so, whether and on what terms we will have the option to redeem the debt securities rather than pay the additional amounts;
- the certificates or forms required for the issuance of debt securities in definitive form;

- the trustees, depositaries, authenticating or paying agents, transfer agents or registrars of the debt securities;
- any deletions of, or changes or additions to, the events of default or covenants;
- conversion or exchange provisions, if any, including conversion or exchange prices or rates and adjustments to those prices and rates; and
- any other specific terms of the debt securities.

If any debt securities are sold for any foreign currency or currency unit or if any payments on the debt securities are payable in any foreign currency or currency unit, the prospectus supplement will contain any restrictions, elections, tax consequences, specific terms and other information with respect to the debt securities and the foreign currency or currency unit.

Some of the debt securities may be issued as original issue discount debt securities. Original issue discount securities may bear no interest or bear interest at below-market rates and will be sold at a discount below their stated principal amount and may bear no or below market interest. The applicable prospectus supplement will also contain any special tax, accounting or other information relating to original issue discount securities other kinds of debt securities that may be offered, including debt securities linked to an index or payable in currencies other than United States dollars.

Senior Debt Securities

Payment of the principal of, premium, if any, and interest on senior debt securities will rank on a parity with all of our other indebtedness that is not subordinated.

Subordinated Debt Securities

Payment of the principal of, premium, if any, and interest on subordinated debt securities will be junior in right of payment to the prior payment in full of all of our unsubordinated debt, including senior debt securities. We will state in the applicable prospectus supplement relating to any subordinated debt securities the subordination terms of the securities as well as the aggregate amount of outstanding debt, as of the most recent practicable date, that by its terms would be senior to the subordinated debt securities. We will also state in such prospectus supplement limitations, if any, on issuance of additional senior debt.

Registrar and Paying Agent

The debt securities may be presented for registration of transfer or for exchange at the corporate trust office of the security registrar or at any other office or agency that we maintain for those purposes. In addition, the debt securities may be presented for payment of principal, interest and any premium at the office of the paying agent or at any office or agency that we maintain for those purposes.

Global Securities

We may issue the debt securities of a series in whole or in part in the form of one or more global certificates that will be deposited with a depositary we will identify in a prospectus supplement. We may issue global debt securities in either temporary or definitive form. We will describe the specific terms of the depositary arrangement with respect to any series of debt securities in the prospectus supplement.

Conversion or Exchange Rights

Debt securities may be convertible into or exchangeable for shares of our common stock. The terms and conditions of conversion or exchange will be stated in the applicable prospectus supplement. The terms will include, among others, the following:

- the conversion or exchange price;
- the conversion or exchange period;
- provisions regarding the convertibility or exchangeability of the debt securities, including who may convert or exchange;
- events requiring adjustment to the conversion or exchange price;
- provisions affecting conversion or exchange in the event of our redemption of the debt securities; and
- any anti-dilution provisions, if applicable.

Registered Global Securities

Unless and until it is exchanged in whole or in part for debt securities in definitive registered form, a registered global security may not be transferred except as a whole:

- by the depositary for that registered global security to its nominee;
- by a nominee of the depositary to the depositary or another nominee of the depositary; or
- by the depositary or its nominee to a successor of the depositary or a nominee of the successor.

The prospectus supplement relating to a series of debt securities will describe the specific terms of the depositary arrangement involving any portion of the series represented by a registered global security.

We anticipate that the following provisions will apply to all depositary arrangements for debt securities:

- ownership of beneficial interests in a registered global security will be limited to persons that have accounts with the depositary for that registered global security, these persons being referred to as “participants,” or persons that may hold interests through participants;
- upon the issuance of a registered global security, the depositary for the registered global security will credit, on its book-entry registration and transfer system, the participants’ accounts with the respective principal amounts of the debt securities represented by the registered global security beneficially owned by the participants;
- any dealers, underwriters or agents participating in the distribution of the debt securities will designate the accounts to be credited; and
- ownership of beneficial interest in that registered global security will be shown on, and the transfer of that ownership interest will be effected only through, records maintained by the depositary for that registered global security for interests of participants and on the records of participants for interests of persons holding through participants.

The laws of some states may require that specified purchasers of securities take physical delivery of the securities in definitive form. These laws may limit the ability of those persons to own, transfer or pledge beneficial interests in registered global securities.

So long as the depositary for a registered global security, or its nominee, is the registered owner of that registered global security, the depositary or that nominee will be considered the sole owner or holder of the debt securities represented by the registered global security for all purposes under the indenture. Except as stated below, owners of beneficial interests in a registered global security:

- will not be entitled to have the debt securities represented by a registered global security registered in their names;
- will not receive or be entitled to receive physical delivery of the debt securities in definitive form; and
- will not be considered the owners or holders of the debt securities under the indenture.

Accordingly, each person owning a beneficial interest in a registered global security must rely on the procedures of the depositary for the registered global security and, if the person is not a participant, on the procedures of a participant through which the person owns its interest, to exercise any rights of a holder under the indenture.

We understand that under existing industry practices, if we request any action of holders or if an owner of a beneficial interest in a registered global security desires to give or take any action that a holder is entitled to give or take under the indenture, the depositary for the registered global security would authorize the participants holding the relevant beneficial interests to give or take the action, and the participants would authorize beneficial owners owning through the participants to give or take the action or would otherwise act upon the instructions of beneficial owners holding through them.

We will make payments of principal and premium, if any, and interest, if any, on debt securities represented by a registered global security registered in the name of a depositary or its nominee to the depositary or its nominee as the registered owners of the registered global security. None of us, the trustee or any other of our agents or agents of the trustee will be responsible or liable for any aspect of the records relating to, or payments made on account of, beneficial ownership interests in the registered global security or for maintaining, supervising or reviewing any records relating to the beneficial ownership interests.

We expect that the depositary for any debt securities represented by a registered global security, upon receipt of any payments of principal and premium, if any, and interest, if any, in respect of the registered global security, will immediately credit participants’ accounts with payments in amounts proportionate to their respective beneficial interests in the registered global security as shown on

the records of the depository. We also expect that standing customer instructions and customary practices will govern payments by participants to owners of beneficial interests in the registered global security held through the participants, as is now the case with the securities held for the accounts of customers in bearer form or registered in "street name." We also expect that any of these payments will be the responsibility of the participants.

If the depository for any debt securities represented by a registered global security is at any time unwilling or unable to continue as depository or stops being a clearing agency registered under the Exchange Act, we will appoint an eligible successor depository. If we fail to appoint an eligible successor depository within 90 days, we will issue the debt securities in definitive form in exchange for the registered global security. In addition, we may at any time and in our sole discretion decide not to have any of the debt securities of a series represented by one or more registered global securities. In that event, we will issue debt securities of the series in a definitive form in exchange for all of the registered global securities representing the debt securities. The trustee will register any debt securities issued in definitive form in exchange for a registered global security in the name or names as the depository, based upon instructions from its participants, will instruct the trustee.

Merger, Consolidation or Sale of Assets

Under the terms of the indentures, we may consolidate or merge with another company, or sell, lease or convey all or substantially all our assets to another company, if:

- we are the continuing entity; or
- (i) we are not the continuing entity, (ii) the successor entity is organized under the laws of the United States of America and expressly assumes all payments on all of the debt securities and the performance and observance of all the covenants and conditions of the applicable indenture, and (iii) the merger, sale of assets or other transaction must not cause a default on the debt securities and we must not already be in default.

Events of Default

Unless otherwise provided for in the prospectus supplement, the term "event of default," when used in the indentures means any of the following:

- failure to pay interest for 30 days after the date payment is due and payable; however, if we extend an interest payment period under the terms of the debt securities, the extension will not be a failure to pay interest;
- failure to pay principal or premium, if any, on any debt security when due, either at maturity, upon any redemption, by declaration or otherwise;
- failure to perform other covenants for 60 days after notice that performance was required;
- certain events in bankruptcy, insolvency or reorganization of our company; or
- any other event of default provided in the applicable resolution of our board of directors or the supplemental indenture under which we issue a series of debt securities.

An event of default for a particular series of debt securities does not necessarily constitute an event of default for any other series of debt securities issued under an indenture. If an event of default relating to the payment of interest, principal or any sinking fund installment involving any series of debt securities has occurred and is continuing, the trustee or the holders of not less than 25% in aggregate principal amount of the debt securities of each affected series may declare the entire principal of all the debt securities of that series to be due and payable immediately.

If an event of default relating to the performance of other covenants occurs and is continuing for a period of 60 days after notice of that event of default, or if any other event of default occurs and is continuing involving all of the series of senior debt securities, then the trustee or the holders of not less than 25% in aggregate principal amount of all of the series of senior debt securities may declare the entire principal amount of all of the series of senior debt securities due and payable immediately.

Similarly, if an event of default relating to the performance of other covenants occurs and is continuing for a period of 60 days after notice, or if any other event of default occurs and is continuing involving all of the series of subordinated debt securities, then the trustee or the holders of not less than 25% in aggregate principal amount of all of the series of subordinated debt securities may declare the entire principal amount of all of the series of subordinated debt securities due and payable immediately.

If, however, the event of default relating to the performance of other covenants or any other event of default that has occurred and is continuing is for less than all of the series of senior debt securities or subordinated debt securities, then, the trustee or the holders of not less than 25% in aggregate principal amount of each affected series of the senior debt securities or the subordinated debt

securities, as the case may be, may declare the entire principal amount of all debt securities of that affected series due and payable immediately. The holders of not less than a majority, or any applicable supermajority, in aggregate principal amount of the debt securities of a series may, after satisfying conditions, rescind and annul any of the above-described declarations and consequences involving the series.

If an event of default relating to events in bankruptcy, insolvency or reorganization occurs and is continuing, then the principal amount of all of the debt securities outstanding, and any accrued interest, will automatically become due and payable immediately, without any declaration or other act by the trustee or any holder.

Each indenture imposes limitations on suits brought by holders of debt securities against us. Except for actions for payment of overdue principal or interest, no holder of debt securities of any series may institute any action against us under each indenture unless:

- the holder has previously given to the trustee written notice of default and continuance of that default;
- the holders of at least 25% in principal amount of the outstanding debt securities of the affected series have requested that the trustee institute the action;
- the requesting holders have offered the trustee reasonable indemnity for expenses and liabilities that may be incurred by bringing the action;
- the trustee has not instituted the action within 60 days of the request; and
- the trustee has not received inconsistent direction by the holders of a majority in principal amount of the outstanding debt securities of the series.

We will be required to file annually with the trustee a certificate, signed by an officer of our company, stating whether or not the officer knows of any default by us in the performance, observance or fulfillment of any condition or covenant of an indenture.

Discharge, Defeasance and Covenant Defeasance

We can discharge or defease our obligations under the indentures as stated below or as provided in the prospectus supplement.

Unless otherwise provided in the applicable prospectus supplement, we may discharge obligations to holders of any series of debt securities that have not already been delivered to the trustee for cancellation and that have either become due and payable or are by their terms to become due and payable, or are scheduled for redemption, within one year. We may effect a discharge by irrevocably depositing with the trustee cash or United States government obligations, as trust funds, in an amount certified to be enough to pay when due, whether at maturity, upon redemption or otherwise, the principal of, premium, if any, and interest on the debt securities and any mandatory sinking fund payments.

Unless otherwise provided in the applicable prospectus supplement, we may also discharge any and all of our obligations to holders of any series of debt securities at any time, which we refer to as “defeasance.” We may also be released from the obligations imposed by any covenants of any outstanding series of debt securities and provisions of the indentures, and we may omit to comply with those covenants without creating an event of default under the trust declaration, which we refer to as “covenant defeasance.” We may effect defeasance and covenant defeasance only if, among other things:

- we irrevocably deposit with the trustee cash or United States government obligations, as trust funds, in an amount certified to be enough to pay at maturity, or upon redemption, the principal, premium, if any, and interest on all outstanding debt securities of the series;
- we deliver to the trustee an opinion of counsel from a nationally recognized law firm to the effect that (i) in the case of covenant defeasance, the holders of the series of debt securities will not recognize

income, gain or loss for United States federal income tax purposes as a result of the defeasance, and will be subject to tax in the same manner and at the same times as if no covenant defeasance had occurred and (ii) in the case of defeasance, either we have received from, or there has been published by, the Internal Revenue Service a ruling or there has been a change in applicable United States federal income tax law, and based on that ruling or change, the holders of the series of debt securities will not recognize income, gain or loss for United States federal income tax purposes as a result of the defeasance and will be subject to tax in the same manner as if no defeasance had occurred; and

- in the case of subordinated debt securities, no event or condition will exist that, based on the subordination provisions applicable to the series, would prevent us from making payments of principal of, premium, if any, and interest on any of the applicable subordinated debt securities at the date of the irrevocable deposit referred to above or at any time during the period ending on the 91st day after the deposit date.

Although we may discharge or decrease our obligations under the indentures as described in the two preceding paragraphs, we may not avoid, among other things, our duty to register the transfer or exchange of any series of debt securities, to replace any temporary, mutilated, destroyed, lost or stolen series of debt securities or to maintain an office or agency in respect of any series of debt securities.

Modification of the Indenture

Except as provided in the prospectus supplement, each indenture provides that we and the trustee may enter into supplemental indentures without the consent of the holders of debt securities to:

- secure any debt securities;
- evidence the assumption by a successor corporation of our obligations and the conversion of any debt securities into the capital stock of that successor corporation, if the terms of those debt securities so provide;
- add covenants for the protection of the holders of debt securities;
- cure any ambiguity or correct any inconsistency in the indenture;
- establish the forms or terms of debt securities of any series; and
- evidence and provide for the acceptance of appointment by a successor trustee.

Each indenture also provides that we and the trustee may, with the consent of the holders of not less than a majority in aggregate principal amount of debt securities of all series of senior debt securities or of subordinated debt securities then outstanding and affected, voting as one class, add any provisions to, or change in any manner, eliminate or modify in any way the provisions of, the indenture or modify in any manner the rights of the holders of the debt securities. We and the trustee may not, however, without the consent of the holder of each outstanding debt security affected:

- extend the stated maturity of any debt security;
- reduce the principal amount or premium, if any;
- reduce the rate or extend the time of payment of interest;
- reduce any amount payable on redemption;
- change the currency in which the principal, unless otherwise provided for a series, premium, if any, or interest is payable;
- reduce the amount of the principal of any debt security issued with an original issue discount that is payable upon acceleration or provable in bankruptcy;
- impair the right to institute suit for the enforcement of any payment on any debt security when due; or
- reduce the percentage of holders of debt securities of any series whose consent is required for any modification of the indenture for any such series.

Concerning the Trustee

Each indenture provides that there may be more than one trustee under the indenture, each for one or more series of debt securities. If there are different trustees for different series of debt securities, each trustee will be a trustee of a trust under the indentures separate and apart from the trust administered by any other trustee under the indenture. Except as otherwise indicated in this prospectus or any prospectus supplement, any action permitted to be taken by a trustee may be taken by that trustee only on the one or more series of debt securities for which it is the trustee under the indenture. Any trustee under the indentures may resign or be removed from one or more series of debt securities. All payments of principal of, premium, if any, and interest on, and all registration, transfer, exchange, authentication and delivery of, the debt securities of a series may be effected by the trustee for that series at an office or agency designated by the trustee of that series.

If the trustee becomes a creditor of our company, each indenture places limitations on the right of the trustee to obtain payment of claims or to realize on property received in respect of any such claim as security or otherwise. The trustee may engage in other transactions. If it acquires any conflicting interest relating to any duties concerning the debt securities, however, it must eliminate the conflict or resign as trustee.

The holders of a majority in aggregate principal amount of any series of debt securities then outstanding will have the right to direct the time, method and place of conducting any proceeding for exercising any remedy available to the trustee concerning the applicable series of debt securities, so long as the direction:

- would not conflict with any rule of law or with the applicable indenture;
- would not be unduly prejudicial to the rights of another holder of the debt securities; and
- would not involve any trustee in personal liability.

Each indenture provides that if an event of default occurs, is not cured and is known to any trustee, the trustee must use the same degree of care as a prudent person would use in the conduct of his or her own affairs in the exercise of the trust's power. The trustee will be under no obligation to exercise any of its rights or powers under the indenture at the request of any of the holders of the debt securities, unless they have offered to the trustee security and indemnity satisfactory to the trustee.

No Individual Liability of Incorporators, Stockholders, Officers or Directors

Each indenture provides that no incorporator and no past, present or future stockholder, officer or director of our company or any successor corporation in those capacities will have any individual liability for any of our obligations, covenants or agreements under the debt securities or such indenture.

Governing Law

The indentures and the debt securities will be governed by, and construed in accordance with, the laws of the State of New York.

DESCRIPTION OF WARRANTS

General

We may issue warrants for the purchase of our debt securities, preferred stock or common stock, or any combination thereof. Warrants may be issued independently or together with our debt securities, preferred stock, or common stock and may be attached to or separate from any offered securities. Each series of warrants will be issued under a separate warrant agreement to be entered into between us and a bank or trust company, as warrant agent. The warrant agent will act solely as our agent in connection with the warrants. The warrant agent will not have any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants. This summary of certain provisions of the warrants is not complete. For the terms of a particular series of warrants, you should refer to the prospectus supplement for that series of warrants and the warrant agreement for that particular series.

Debt Warrants

The prospectus supplement relating to a particular issue of warrants to purchase debt securities will describe the terms of the debt warrants, including the following:

- the title of the debt warrants;
- the offering price for the debt warrants, if any;
- the aggregate number of the debt warrants;
- the designation and terms of the debt securities, including any conversion rights, purchasable upon exercise of the debt warrants;
- if applicable, the date from and after which the debt warrants and any debt securities issued with them will be separately transferable;
- the principal amount of debt securities that may be purchased upon exercise of a debt warrant and the exercise price for the warrants, which may be payable in cash, securities, or other property;
- the dates on which the right to exercise the debt warrants will commence and expire;
- if applicable, the minimum or maximum amount of the debt warrants that may be exercised at any one time;
- whether the debt warrants represented by the debt warrant certificates or debt securities that may be issued upon exercise of the debt warrants will be issued in registered or bearer form;
- information with respect to book-entry procedures, if any; the currency or currency units in which the offering price, if any, and the exercise price are payable;
- if applicable, a discussion of material U.S. federal income tax considerations;
- the antidilution provisions of the debt warrants, if any;
- the redemption or call provisions, if any, applicable to the debt warrants;
- any provisions with respect to the holder's right to require us to repurchase the warrants upon a change in control or similar event; and
- any additional terms of the debt warrants, including procedures, and limitations relating to the exchange, exercise, and settlement of the debt warrants.

Debt warrant certificates will be exchangeable for new debt warrant certificates of different denominations. Debt warrants may be exercised at the corporate trust office of the warrant agent or any other office indicated in the prospectus supplement. Prior to the exercise of their debt warrants, holders of debt warrants will not have any of the rights of holders of the debt securities purchasable upon exercise and will not be entitled to payment of principal or any premium, if any, or interest on the debt securities purchasable upon exercise.

Equity Warrants

The prospectus supplement relating to a particular series of warrants to purchase our common stock or preferred stock will describe the terms of the warrants, including the following:

- the title of the warrants;
- the offering price for the warrants, if any;
- the aggregate number of warrants;
- the designation and terms of the common stock or preferred stock that may be purchased upon exercise of the warrants;
- if applicable, the designation and terms of the securities with which the warrants are issued and the number of warrants issued with each security;
- if applicable, the date from and after which the warrants and any securities issued with the warrants will be separately transferable;
- the number of shares of common stock or preferred stock that may be purchased upon exercise of a warrant and the exercise price for the warrants;
- the dates on which the right to exercise the warrants shall commence and expire;
- if applicable, the minimum or maximum amount of the warrants that may be exercised at any one time;
- the currency or currency units in which the offering price, if any, and the exercise price are payable;
- if applicable, a discussion of material U.S. federal income tax considerations;
- the antidilution provisions of the warrants, if any;
- the redemption or call provisions, if any, applicable to the warrants;
- any provisions with respect to holder's right to require us to repurchase the warrants upon a change in control or similar event; and
- any additional terms of the warrants, including procedures, and limitations relating to the exchange, exercise, and settlement of the warrants.

Holders of equity warrants will not be entitled:

- to vote, consent, or receive dividends;
- receive notice as stockholders with respect to any meeting of stockholders for the election of our directors or any other matter; or
- exercise any rights as stockholders of Achieve.

DESCRIPTION OF SUBSCRIPTION RIGHTS

We may issue subscription rights to purchase our common stock, preferred stock or debt securities. These subscription rights may be offered independently or together with any other security offered hereby and may or may not be transferable by the stockholder receiving the subscription rights in such offering. In connection with any offering of subscription rights, we may enter into a standby arrangement with one or more underwriters or other purchasers pursuant to which the underwriters or other purchasers may be required to purchase any securities remaining unsubscribed for after such offering.

The applicable prospectus supplement relating to any subscription rights we offer, if any, will, to the extent applicable, include specific terms relating to the offering, including some or all of the following:

- the price, if any, for the subscription rights;
- the exercise price payable for our common stock, preferred stock or debt securities upon the exercise of the subscription rights;
- the number of subscription rights to be issued to each stockholder;
- the number and terms of our common stock, preferred stock or debt securities which may be purchased per each subscription right;
- the extent to which the subscription rights are transferable;
- any other terms of the subscription rights, including the terms, procedures and limitations relating to the exchange and exercise of the subscription rights;
- the date on which the right to exercise the subscription rights shall commence, and the date on which the subscription rights shall expire;
- the extent to which the subscription rights may include an over-subscription privilege with respect to unsubscribed securities or an over-allotment privilege to the extent the securities are fully subscribed; and
- if applicable, the material terms of any standby underwriting or purchase arrangement which may be entered into by us in connection with the offering of subscription rights.

The description in the applicable prospectus supplement of any subscription rights we offer will not necessarily be complete and will be qualified in its entirety by reference to the applicable subscription rights certificate, which will be filed with the SEC if we offer subscription rights. We urge you to read the applicable subscription rights certificate and any applicable prospectus supplement in their entirety.

DESCRIPTION OF UNITS

We may issue units consisting of some or all of the securities described above, in any combination, including common stock, preferred stock, warrants and/or debt securities. The terms of these units will be set forth in a prospectus supplement. The description of the terms of these units in the related prospectus supplement will not necessarily be complete. You should refer to the applicable form of unit and unit agreement for complete information with respect to these units.

CERTAIN PROVISIONS OF DELAWARE LAW AND THE COMPANY'S CERTIFICATE OF INCORPORATION AND BYLAWS

The following paragraphs summarize certain provisions of the Delaware General Corporation Law, or the DGCL, and our certificate of incorporation and bylaws. The summary does not purport to be complete and is subject to and qualified in its entirety by reference to the DGCL and to our certificate of incorporation and bylaws, copies of which are on file with the SEC as exhibits to documents previously filed by us. See "Where You Can Find More Information."

Our certificate of incorporation limits the personal liability of our directors to Achieve and our stockholders to the fullest extent permitted by the DGCL. The inclusion of this provision in our certificate of incorporation may reduce the likelihood of derivative litigation against directors and may discourage or deter stockholders or management from bringing a lawsuit against directors for breach of their duty of care.

Our certificate of incorporation and bylaws include a number of provisions that could deter hostile takeovers or delay or prevent changes in control of our company, including the following:

- only the chairman of the board, the chief executive officer, the president or a majority of our board of directors may call special meetings of stockholders, and the business transacted at special meetings of stockholders is limited to the business stated in the notice of such meetings;
- advance notice procedures for stockholders seeking to bring business before our annual meeting of stockholders or to nominate candidates for election as directors at our annual meeting of stockholders, including certain requirements regarding the form and content of a stockholder's notice;
- our board of directors may designate the terms of and issue new series of preferred stock;
- unless otherwise required by our bylaws, our certificate of incorporation or by law, our board of directors may amend our bylaws without stockholder approval; and
- only our board of directors may fill vacancies on our board of directors.

In addition, we are subject to Section 203 of the DGCL, which prohibits a Delaware corporation from engaging in any "business combination" with an "interested stockholder," for a period of three years after the date of the transaction in which a person became an "interested stockholder," unless:

- prior to such date the board of directors of the corporation approved either the "business combination" or the transaction that resulted in the stockholder becoming an "interested stockholder";
- upon consummation of the transaction which resulted in the stockholder becoming an "interested stockholder," the "interested stockholder" owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of voting shares outstanding (but not the voting shares owned by the "interested stockholder") those shares owned (1) by persons who are directors and also officers and (2) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- at or subsequent to such time the "business combination" is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of a least 66 2/3% of the outstanding voting stock that is not owned by the "interested stockholder."

A "business combination" includes mergers, stock or asset sales and other transactions resulting in a financial benefit to the "interested stockholders." An "interested stockholder" is a person who, together with affiliates and associates, owns (or within three years, did own) 15% or more of the corporation's voting stock. Although Section 203 permits us to elect not to be governed by its provisions, we have not made this election. As a result of the application of Section 203, our potential acquirers may be discouraged from attempting to effect an acquisition transaction with us, thereby possibly depriving holders of our securities of certain opportunities to sell or otherwise dispose of such securities at above-market prices pursuant to such transactions.

LEGAL MATTERS

Fenwick & West LLP, Seattle, Washington, will issue an opinion about certain legal matters with respect to the securities. Any underwriters or agents will be advised about legal matters relating to any offering by their own counsel.

EXPERTS

The financial statements incorporated in this prospectus by reference to the Annual Report on Form 10-K for the year ended December 31, 2017 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.



\$100,000,000

**Common Stock
Preferred Stock
Debt Securities
Warrants
Subscription Rights
Units**

PROSPECTUS

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 14. Other Expenses of Issuance and Distribution

The following table sets forth estimated expenses in connection with the issuance and distribution of the securities being registered:

SEC registration fee	\$	12,120
Legal fees and expenses*		50,000
Transfer Agent and Depository*		5,000
Printing*		10,000
Accounting fees and expenses*		25,000
Miscellaneous*		20,000
Total	\$	<u>122,120</u>

* Estimated for purposes of completing the information required pursuant to this item 14.

Item 15. Indemnification of Officers and Directors

As permitted by the DGCL, the Company's certificate of incorporation eliminates the liability of directors to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent otherwise required by the DGCL.

The certificate of incorporation further provides that the Company will indemnify any person who is or was made a party to any proceeding by reason of the fact that such person is or was a director or officer of the Company against expenses, judgments, fines, penalties, and amounts paid in settlement incurred in connection therewith to the fullest extent authorized by the DGCL. The Company's bylaws provide for a similar indemnity to directors and officers of the Company to the fullest extent authorized by the DGCL.

The Company's bylaws authorize the Company's board of directors to enter into indemnification contracts with each of its officers and directors. The Company has entered into indemnification contracts with each of its directors and executive officers. The indemnification contracts provide for the indemnification of directors and officers against all expenses, liability, and loss actually reasonably incurred to the fullest extent permitted by the Company's certificate of incorporation, bylaws, and applicable law.

The Company's bylaws also authorize the Company to maintain insurance to protect any director or officer against any expense, liability, or loss, whether or not the Company would have the power to indemnify such person against such expense, liability, or loss under the DGCL. The Company maintains such insurance.

Item 16. Exhibits

A list of exhibits filed with this registration statement on Form S-3 is set forth below.

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
1.1*	Form of Underwriting Agreement					
3.1	Second Amended and Restated Certificate of Incorporation of OncoGenex Pharmaceuticals, Inc.	8-K	033-80623	3.1	May 29, 2013	
3.2	Certificate of Amendment to Amended and Restated Certificate of Incorporation of OncoGenex Pharmaceuticals, Inc.	8-K	033-80623	3.1	May 22, 2015	
3.3	Certificate of Amendment (Reverse Stock Split) to Second Amended and Restated Certificate of Incorporation filed on August 1, 2017	8-K	033-80623	3.1	August 2, 2017	
3.4	Certificate of Amendment (Name Change) to Second Amended and Restated Certificate of Incorporation filed on August 1, 2017	8-K	033-80623	3.2	August 2, 2017	
3.5	Certificate of Amendment (Elimination of Cumulative Voting) to Second Amended and Restated Certificate of Incorporation filed on October 31, 2017	8-K	033-80623	3.1	November 1, 2017	
3.6	Certificate of Amendment (Reverse Stock Split) to the Second Amended and Restated Certificate of Incorporation filed on May 22, 2018	8-K	033-80623	3.1	May 23, 2018	
3.7	Certificate of Amendment (Increase in Authorized Shares) to the Second Amended and Restated Certificate of Incorporation filed on May 22, 2018	8-K	033-80623	3.2	May 23, 2018	
3.8	Sixth Amended and Restated Bylaws	8-K	033-80623	3.1	January 5, 2017	
3.9	Amendment to Sixth Amended and Restated Bylaws	10-Q	000-21243	3.1	November 7, 2018	
4.1	Specimen Common Stock Certificate	10-Q	000-21243	4.1	November 10, 2008	
4.2	Form of Series A Warrant	8-K	033-80623	4.1	June 27, 2014	
4.3	Form of Pre-Funded Series B Warrant	8-K	033-80623	4.2	June 27, 2014	
4.4	Form of Series B Warrant	8-K	033-80623	4.3	June 27, 2014	
4.5*	Specimen Preferred Stock Certificate					
4.6	Form of Senior Debt Security					X
4.7	Form of Senior Indenture					X
4.8	Form of Subordinated Debt Security					X
4.9	Form of Subordinated Indenture					X
4.10*	Form of Warrant					
4.11*	Form of Warrant Agreement					
5.1	Opinion of Fenwick & West LLP					X
23.1	Consent of Independent Registered Public Accounting Firm					X

23.2	Consent of Fenwick & West LLP (included as Exhibit 5.1)	X
24.1	Power of Attorney (included on the signature page hereto)	X
25.1**	Statement of Eligibility of Trustee on Form T-1	
*	To be filed by amendment or as an exhibit to a current report on Form 8-K of the Company and incorporated by reference herein.	
**	To be filed in accordance with the requirements of Section 305(b)(2) of the Trust Indenture Act of 1939 and Rule 5b-3 thereunder.	

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

(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 subparagraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

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

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

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

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

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

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

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) 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 is 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.

(d) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers, and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act 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 Securities Act and will be governed by the final adjudication of such issue.

(e) If and when applicable, the Registrant hereby further undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Securities and Exchange Commission under Section 305(b)(2) of the Trust Indenture 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 City of Vancouver, British Columbia, on December 26, 2018.

ACHIEVE LIFE SCIENCES, INC.

By: /s/ Richard Stewart
Richard Stewart
Chairman and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Richard Stewart and John Bencich, or each one of them individually, as the undersigned's true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution for such person and in such person's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments, exhibits thereto, and other documents in connection therewith to this registration statement and any later registration statement filed by the registrant under Rule 462(b) of the Securities Act of 1933, which relates to this registration statement) and to file the same with exhibits thereto and other documents in connection therewith with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as such person might or could do in person, hereby ratifying and confirming all that each of said attorney-in-fact and agent, or their substitute or substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Richard Stewart</u> Richard Stewart	Chief Executive Officer, Chairman and Director (Principal Executive Officer)	December 26, 2018
<u>/s/ John Bencich</u> John Bencich	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	December 26, 2018
<u>/s/ Anthony Clarke</u> Anthony Clarke	Director	December 26, 2018
<u>/s/ Scott Cormack</u> Scott Cormack	Director	December 26, 2018
<u>/s/ Donald Joseph</u> Donald Joseph	Director	December 26, 2018
<u>/s/ Martin Mattingly</u> Martin Mattingly	Director	December 26, 2018
<u>/s/ Jay Moyes</u> Jay Moyes	Director	December 26, 2018
<u>/s/ H. Stewart Parker</u> H. Stewart Parker	Director	December 26, 2018

FORM OF SENIOR DEBT SECURITY

[Face of Security]

ACHIEVE LIFE SCIENCES, INC.

[If applicable, insert—FOR PURPOSES OF THE ORIGINAL ISSUE DISCOUNT PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986, THE ISSUE PRICE OF THIS SECURITY IS % OF ITS PRINCIPAL AMOUNT AT STATED MATURITY SET FORTH BELOW (ITS “PRINCIPAL AMOUNT”), THE AMOUNT OF ORIGINAL ISSUE DISCOUNT IS % OF ITS PRINCIPAL AMOUNT, THE YIELD TO MATURITY IS % AND THE ISSUE DATE IS]

[IF THE SECURITY IS A GLOBAL SECURITY, INSERT—THIS NOTE IS A GLOBAL SECURITY. IT IS EXCHANGEABLE FOR NOTES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY (AS HEREINAFTER DEFINED) OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES HEREINAFTER DESCRIBED AND 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 A NOMINEE OF THE DEPOSITARY TO A SUCCESSOR OF THE DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.]

[Unless this Security is presented by an authorized representative of The Depository Trust Company (55 Water Street, New York, New York) to the issuer or its agent for registration of transfer, exchange or payment and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.]

No.

§
CUSIP No.

Achieve Life Sciences, Inc., a Delaware Corporation (herein called the “Company”, which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received, hereby promises to pay to, or registered assigns, the principal sum of Dollars on [if Security is to bear interest prior to maturity, insert—, and to pay interest thereon from or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually on and in each year, commencing , at the rate of % per annum, until the principal hereof is paid or made available for payment [if applicable, insert —, provided that any principal and premium, and any such installment of interest, which is overdue shall bear interest at the rate of % per annum (to the extent that the payment of such interest shall be legally enforceable), from the dates such amounts are due until they are paid or made available for payment, and such interest shall be payable on demand]. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Record Date for such interest, which shall be the or (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Record Date and may either be paid to the Person this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities of this series not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture. [If the Security is not to bear interest prior to maturity, insert—The principal of this Security shall not bear interest except in the case of a default in payment of principal upon acceleration, upon redemption or at Stated Maturity and in such case the overdue principal and any overdue premium shall bear interest at the rate of % per annum (to the extent that the payment

of such interest shall be legally enforceable), from the dates such amounts are due until they are paid or made available for payment. Interest on any overdue principal or premium shall be payable on demand. [Any such interest on overdue principal or premium which is not paid on demand shall bear interest at the rate of % per annum (to the extent that the payment of such interest on interest shall be legally enforceable), from the date of such demand until the amount so demanded is paid or made available for payment. Interest on any overdue interest shall be payable on demand.]].

Payment of the principal of (and premium, if any, on) and [any such] interest on this Security will be made at the office or agency of the Company maintained for that purpose in , in such coin or currency of [the United States of America] as at the time of payment is legal tender for payment of public and private debts [; provided, however, that at the option of the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Register].

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been manually executed by or on behalf of the Trustee under the Indenture referred to on the reverse hereof, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

Dated: ACHIEVE LIFE SCIENCES, INC.

By

_____ [Title]

Attest and Countersign

Secretary

ACHIEVE LIFE SCIENCES, INC.

This Security is one of a duly authorized issue of securities of the Company (herein called the "Securities"), issued and to be issued in one or more series under an Indenture dated as of _____, (herein called the "Indenture," which term shall have the meaning assigned to it in such instrument), between the Company and _____, as trustee (herein called the "Trustee", which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations or rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the face hereof [, limited in aggregate principal amount to \$ _____].

[If the Security is to be subordinated, insert—The indebtedness evidenced by this Security is, to the extent and in the manner set forth in the Indenture, expressly subordinated and subject in right of payment to the prior payment in full of all Senior Indebtedness (as defined in the Indenture) of the Company. This Security is issued subject to such provisions of the Indenture, and each Holder of this Security, by accepting the same, agrees to and shall be bound by such provisions and authorizes and directs the Trustee on the Holder's behalf to take such action as may be necessary or appropriate to acknowledge or effectuate such subordination as provided in the Indenture and appoints the Trustee such Holder's attorney-in-fact for any and all such purposes.]

[If the Security is to be subject to redemption only at the option of the Company, insert—The Securities of this series are subject to redemption upon not less than 30 days' notice provided in the manner set forth in the Indenture, [(1) on _____ in any year commencing with the year _____ and ending with the year _____ at the Redemption Price equal to 100% of the principal amount, and (2)] at any time [on or after _____], as a whole or in part, at the election of the principal the following Redemption Prices (expressed as percentages of the principal amount): If redeemed [on or before _____, _____%, and if redeemed] during the 12-month period beginning _____ of the years indicated,

Year	Redemption Price	Year	Redemption Price
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and thereafter at a Redemption Price equal to _____% of the principal amount together in the case of any such redemption with accrued interest to the Redemption Date, but interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities of record at the close of business on the relevant record dates referred to on the face hereof, all as provided in the Indenture.]

[If the Security is to be redeemable in part, insert—In the event of redemption of this Security in part only, a new Security or Securities of this series for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.]

[If the Security is to be subject to repayment at the option of the Holder, insert—To be repaid at the option of the Holder, the Company must receive this Security, with the form of "Option to Elect Repayment" hereon duly completed, at an office or agency of the Company maintained for that purpose in _____ (or at such other place of which the Company shall from time to time notify the Holder of this Security) not less than nor more than _____ days prior to the Repayment Date. The exercise of the repayment option by the Holder shall be irrevocable.

[If the Security is not to be subject to redemption at the option of the Company, insert—The Securities are not redeemable at the option of the Company prior to Maturity.]

[If the Security is not to be an Original Issue Discount Security, insert—If an Event of Default with respect to Securities of this series shall occur and be continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.]

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities of each series under the Indenture to be affected at any time by the Company with the consent of the Holders of not less than 66-2/3% in principal amount of the Securities at the time Outstanding of each series to be affected. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities of each series at the time Outstanding, on behalf of the Holders of all Securities of such series, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent of waiver is made upon this Security.

As provided in and subject to the provisions of the indenture, the Holder of this Security shall not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Securities of this series, the Holders of not less than 25% in principal amount of the Securities of this series at the time Outstanding shall have made written request to the trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee reasonable indemnity satisfactory to it, and the Trustee shall not have received from the Holders of a majority in principal amount of Securities of this series at the time Outstanding a direction inconsistent with such request, and shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity. The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any payment of principal hereof or any premium or interest hereon on or after the respective due dates expressed herein.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of (and premium, if any, on) and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

[If the Security is to be registered form, insert—As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Register, upon surrender of this Security for registration of transfer at the office or agency of the Company in any place where the principal of (and premium, if any, on) and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and, thereupon one or more new Securities of this series, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.]

[The Securities of this series are issuable only in registered form in denominations of \$ [and any integral multiple] [or increments of \$ in excess] thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for a like aggregate principal amount of Securities of this series of a different authorized denomination, as requested by the Holder surrendering the same.]

[No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.]

[Prior to due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.]

[If the Security is a Global Security, insert—“Global Security” and “Global Securities” means a Security or Securities evidencing all or a part of a series of Securities, issued to the Depository (as hereinafter defined) for such Series or its nominee, and registered in the name of such Depository or its nominee. “Depository” means, with

respect to the Securities of any series issuable or issued in whole or in part in the form of one or more Global Securities, the person designated as the Depositary by the Company.

No holder of any beneficial interest in this Security held on its behalf by a Depositary or a nominee of such Depositary shall have any rights under the Indenture with respect to such Global Security, and such Depositary or nominee may be treated by the Company, the Trustee, and any agent of the Company or the Trustee as the owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall impair, as between a Depositary and such holders of beneficial interests, the operation of customary practices governing the exercise of the rights of the Depositary as Holder of any Security.

This Security is exchangeable, in whole but not in part, for Securities registered in the names of Persons other than the Depositary or its nominee or in the name of a successor to the Depositary or a nominee of such successor depositary only if (i) the Depositary notifies the Company that it is unwilling or unable to continue as Depositary for this Note or if at any time such Depositary ceases to be a clearing agency registered under the Securities Exchange Act of 1934, as amended, and, in either case, a successor depositary is not appointed by the Company within 90 days, (ii) the Company in its discretion at any time determines not to have all of the Securities of this series represented by one or more Global Security or Securities and notifies the Trustee thereof, or (iii) an Event of Default has occurred and is continuing with respect to the Securities of this series. If this Security is exchangeable pursuant to the preceding sentence, it shall be exchangeable for Securities issuable in authorized denominations and registered in such names as the Depositary holding this Security shall direct. Subject to the foregoing, this Security is not exchangeable, except for a Security or Securities of the same aggregate denominations to be registered in the name of such Depositary or its nominee or in the name of a successor to the Depositary or a nominee of such successor depositary.]

[The Indenture entitles Holders to receive annual reports with respect to the Trustee's eligibility and qualifications to serve as Trustee by filing their names and addresses with the Trustee for that purpose within two years preceding and mailing of any such annual report.]

No recourse shall be had for the payment of the principal of (and premium, if any, on) or interest on this Security, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture of any indenture supplemental thereto, against any incorporator, stockholder, officer or director, as such, past, present or future, of the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly waived and released.

All terms used in this Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

This Security, including without limitation the obligation of the Company contained herein to pay the principal of (and premium, if any, on) and interest on this Security in accordance with the terms hereof and of the Indenture, shall be construed in accordance with and governed by the laws of the State of New York.

[Trustee's Certificate of Authentication.]

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

_____, as
[Authenticating Agent for] the Trustee

By _____
Authorized Officer

**FORM OF
SENIOR INDENTURE
BETWEEN**

ACHIEVE LIFE SCIENCES, INC.

AND

,

AS TRUSTEE

Dated as of

TABLE OF CONTENTS

		<u>Page</u>
ARTICLE 1	DEFINITIONS	1
	Section 1.01. Certain Terms Defined	1
ARTICLE 2	ISSUE, DESCRIPTION, EXECUTION, REGISTRATION, TRANSFER AND EXCHANGE OF SECURITIES	5
	Section 2.01. Form of Securities and Trustee’s Certificate of Authentication	5
	Section 2.02. Form of Trustee’s Certificate of Authentication	6
	Section 2.03. Amount Unlimited, Issuable in Series	6
	Section 2.04. Authentication and Delivery of Securities; Supplemental Indentures for Secured Issues	8
	Section 2.05. Execution of Securities	9
	Section 2.06. Certificate of Authentication	9
	Section 2.07. Denominations; Payment of Interest on Securities	10
	Section 2.08. Registration, Transfer and Exchange of Securities	11
	Section 2.09. Mutilated, Defaced, Destroyed, Lost and Stolen Securities	12
	Section 2.10. Cancellation and Destruction of Surrendered Securities	12
	Section 2.11. Temporary Securities	12
	Section 2.12. Securities in Global Form	13
	Section 2.13. CUSIP Numbers	13
ARTICLE 3	REDEMPTION OF SECURITIES	14
	Section 3.01. Applicability of Article	14
	Section 3.02. Notice of Redemption; Partial Redemptions	14
	Section 3.03. Payment of Securities Called for Redemption	15
	Section 3.04. Exclusion of Certain Securities From Eligibility for Selection for Redemption	15
ARTICLE 4	PARTICULAR COVENANTS OF THE COMPANY	15
	Section 4.01. Payment of Principal of and Interest on Securities	15
	Section 4.02. Corporate Existence of the Company; Consolidation, Merger, Sale or Transfer	15
	Section 4.03. Maintenance of Offices or Agencies for Transfer, Registration, Exchange and Payment of Securities	16
	Section 4.04. Appointment to Fill a Vacancy in the Office of Trustee	16
	Section 4.05. Duties of Paying Agent	16
	Section 4.06. Notice of Default	17
	Section 4.07. Maintenance of Properties	17
	Section 4.08. Payment of Taxes and Other Claims	17

ARTICLE 5	SECURITYHOLDERS' LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE	17
	Section 5.01. Company to Furnish Trustee Information as to the Names and Addresses of Securityholders	17
	Section 5.02. Preservation of Information; Communication to Securityholders	17
	Section 5.03. Reports by Company	18
	Section 5.04. Reports by Trustee	19
ARTICLE 6	REMEDIES OF THE TRUSTEE AND SECURITYHOLDERS ON EVENT OF DEFAULT	20
	Section 6.01. Events of Default; Acceleration, Waiver of Default and Restoration of Position and Rights	20
	Section 6.02. Covenant of Company to Pay to Trustee Whole Amount Due on Securities on Default in Payment of Interest or Principal	22
	Section 6.03. Trustee May File Proofs of Claim	22
	Section 6.04. Trustee May Enforce Claims Without Possession of Securities	23
	Section 6.05. Application of Moneys Collected by Trustee	23
	Section 6.06. Limitation on Suits by Holders of Securities	23
	Section 6.07. Rights and Remedies Cumulative	24
	Section 6.08. Delay or Omission Not Waiver	24
	Section 6.09. Control by Holders; Waiver of Past Defaults	24
	Section 6.10. Trustee to Give Notice of Defaults Known to it, but May Withhold in Certain Circumstances	25
	Section 6.11. Requirement of an Undertaking to Pay Costs in Certain Suits Under the Indenture or Against the Trustee	25
	Section 6.12. Waiver of Stay or Extension Laws	25
ARTICLE 7	CONCERNING THE TRUSTEE	25
	Section 7.01. Certain Duties and Responsibilities of Trustee	25
	Section 7.02. Certain Rights of Trustee	26
	Section 7.03. Trustee Not Responsible for Recitals or Application of Proceeds	27
	Section 7.04. Trustee May Own Securities	27
	Section 7.05. Moneys Received by Trustee to be Held in Trust	27
	Section 7.06. Trustee Entitled to Compensation, Reimbursement and Indemnity	27
	Section 7.07. Right of Trustee to Rely on Officer's Certificate Where No Other Evidence Specifically Prescribed	28
	Section 7.08. Disqualification; Conflicting Interest	28
	Section 7.09. Requirements for Eligibility of Trustee	28
	Section 7.10. Resignation and Removal of Trustee; Appointment of Successor	28
	Section 7.11. Acceptance of Appointment by Successor Trustee	29

	Section 7.12.	Successor to Trustee by Merger, Consolidation or Succession to Business	30
	Section 7.13.	Preferential Collection of Claims Against Company	30
	Section 7.14.	Appointment of Authenticating Agent	30
ARTICLE 8		CONCERNING THE SECURITYHOLDERS	31
	Section 8.01.	Evidence of Action by Securityholders	31
	Section 8.02.	Proof of Execution of Instruments and of Holding of Securities	31
	Section 8.03.	Who May be Deemed Owners of Securities	32
	Section 8.04.	Securities Owned by the Company or Controlled or Controlling Persons Disregarded for Certain Purposes	32
	Section 8.05.	Instruments Executed by Securityholders Bind Future Holders	32
ARTICLE 9		SECURITYHOLDERS' MEETINGS	33
	Section 9.01.	Purposes for Which Meetings May be Called	33
	Section 9.02.	Manner of Calling Meetings	33
	Section 9.03.	Call of Meeting by the Company or Securityholders	33
	Section 9.04.	Who May Attend and Vote at Meetings	33
	Section 9.05.	Regulations May be Made by Trustee; Conduct of the Meeting; Voting Rights—Adjournment	33
	Section 9.06.	Manner of Voting at Meetings and Record to be Kept	34
	Section 9.07.	Exercise of Rights of Trustee and Securityholders Not to be Hindered or Delayed	34
ARTICLE 10		SUPPLEMENTAL INDENTURES	35
	Section 10.01.	Purposes for Which Supplemental Indentures May be Entered Into Without Consent of Securityholders	35
	Section 10.02.	Modification of Indenture with Consent of Holders of Securities	35
	Section 10.03.	Effect of Supplemental Indentures	36
	Section 10.04.	Securities May Bear Notation of Changes by Supplemental Indentures	37
ARTICLE 11		DISCHARGE; DEFEASANCE	37
	Section 11.01.	Satisfaction and Discharge of Indenture	37
	Section 11.02.	Application by Trustee of Funds Deposited for Payment of Securities	39
	Section 11.03.	Repayment of Moneys Held by Paying Agent	40
	Section 11.04.	Return of Moneys Held by Trustee and Paying Agent Unclaimed for Two Years	40
	Section 11.05.	<u>Indemnity for U.S. Government of Obligations</u>	40
ARTICLE 12		IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS	41
	Section 12.01.	Incorporators, Stockholders, Officers and Directors of Company Exempt From Individual Liability	41
ARTICLE 13		MISCELLANEOUS PROVISIONS	41

Section 13.01.	Successors and Assigns of the Company Bound by Indenture	41
Section 13.02.	Notices; Effectiveness	41
Section 13.03.	Compliance Certificates and Opinions	42
Section 13.04.	Days on Which Payment to be Made, Notice Given or Other Action Taken	43
Section 13.05.	Provisions Required by Trust Indenture Act to Control	43
Section 13.06.	Governing Law and Waiver of Trial By Jury	43
Section 13.07.	Effect of Headings	43
Section 13.08.	Judgment Currency	43
Section 13.09.	Provisions of the Indenture and Securities for the Sole Benefit of the Parties and the Securityholders	44
Section 13.10.	Indenture May be Executed in Counterparts	44
Section 13.11.	Facsimile or PDF	44
Section 13.12.	Force Majeure	44
Section 13.13.	U.S.A. Patriot Act	44

THIS INDENTURE, dated as of _____, between ACHIEVE LIFE SCIENCES, INC., a Delaware corporation (the “Company”), and _____, a _____, as trustee (the “Trustee”).

WITNESSETH:

WHEREAS, the Company has duly authorized the issuance, sale, execution and delivery, from time to time, of its unsecured evidences of indebtedness (hereinafter referred to as the “Securities”), without limit as to principal amount, issuable in one or more series, the amount and terms of each such series to be determined as hereinafter provided; and, to provide the terms and conditions upon which the Securities are to be issued, authenticated and delivered, the Company has duly authorized the execution of this Indenture; and

WHEREAS, all acts and things necessary to make the Securities, when executed by the Company and authenticated and delivered by the Trustee as in this Indenture provided, the valid, binding and legal subordinated obligations of the Company, and to constitute this Indenture a valid indenture and agreement according to its terms, have been done and performed, and the execution of this Indenture and the issuance hereunder of the Securities have in all respects been duly authorized;

NOW, THEREFORE, THIS INDENTURE

WITNESSETH:

That in order to declare the terms and conditions upon which the Securities are to be issued, authenticated and delivered, and in consideration of the premises and of the purchase and acceptance of the Securities by the Holders thereof, the Company covenants and agrees with the Trustee, for the equal and proportionate benefit of the respective Holders from time to time of the Securities or of any series thereof, as follows:

ARTICLE 1

DEFINITIONS

SECTION 1.01. Certain Terms Defined. For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

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

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

(c) all accounting terms not otherwise defined herein shall have the meanings assigned to them and all computations herein provided for shall be made, in accordance with generally accepted accounting principles, and the term “*U.S. generally accepted accounting principles*” shall mean such principles as they exist at the date of applicability thereof; and

(d) 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.

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

“*Agent*” means any Registrar, Paying Agent, transfer agent or Authenticating Agent.

“*Authenticating Agent*” shall have the meaning set forth in Section 7.14. “*Authorized Newspaper*” means a newspaper (which, in the case of The City of New York, will, if practicable, be The Wall Street Journal (Eastern Edition), published in an official language of the country of publication customarily published at least once a day for at least five days in each calendar week and of general circulation. If it shall be impractical in the opinion of the Trustee to make any publication of any notice required hereby in an Authorized Newspaper, any publication or other notice in lieu thereof which is made or given with the approval of the Trustee shall constitute a sufficient publication of such notice.

“*Board of Directors*” shall mean the Board of Directors of the Company, or any duly authorized committee of such Board of Directors.

“*Board Resolution*” shall mean one or more resolutions of the Board of Directors of the Company certified by the Secretary or by an Assistant Secretary of the Company to have been duly adopted by the Board of Directors of the Company and to be in full force and effect on the date of such certification.

“*Business Day*” means, with respect to any Security, a day that is not a Saturday, Sunday or a day on which the office of the Trustee or banking institutions in the City of New York in which amounts are payable, as specified in the form of such Security, are authorized or required by any applicable law or regulation to be closed.

“*Commission*” shall mean the U.S. Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or if at any time after the execution of this Indenture such Commission is not existing and performing the duties theretofore assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

“*Company*” shall mean Achieve Life Sciences, Inc., a Delaware corporation, until a successor corporation shall have become such pursuant to the applicable provisions hereof, and thereafter “*Company*” shall mean such successor Company.

“*Company Order*” means a written statement, request or order of the Company signed in its name by the Chairman of the Board of Directors of the Company, the President or Chief Executive Officer, any Vice President, the Treasurer or the Chief Financial Officer of the Company.

“*covenant defeasance*” shall have the meaning set forth in Section 11.01.

“*Defaulted Interest*” shall have the meaning set forth in Section 2.07.

“*Depository*” shall mean, with respect to the Securities of any series issuable or issued in whole or in part in the form of one or more Global Securities, the Person designated as Depository by the Company pursuant to Section 2.03 of this Indenture until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter the term “*Depository*” shall mean or include each Person who is then a Depository hereunder, and if at any time there is more than one such Person, “*Depository*” as used with respect to the Securities of any such series shall mean the Depository with respect to the Securities of that series.

“*Euro*” or “*euro*” means the currency adopted by those countries participating in the third stage of the European Monetary Union.

“*Event of Default*” with respect to Securities of any series shall mean any event specified as such in Section 6.01 and any other event as may be established with respect to the securities of such series as permitted by Section 2.03. An Event of Default shall “exist” if an Event of Default shall have occurred and be continuing.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended.

“*Foreign Currency*” means a currency issued by the government of a country other than the United States of America, and the European Currency Unit as defined and revised from time to time by the European Monetary System of the European Community and/or Euros.

“*Global Security*” means a Security evidencing all or a portion of a series of Registered Securities, issued to the Depository for such series in accordance with Section 2.12, and bearing the legend prescribed in Section 2.12 and any other legend required by the Depository for such series.

“*Holder*,” “*Holder of Securities*,” “*Securityholder*” or any other similar term means in the case of any Registered Security, the person in whose name such Security is registered in the Register kept by the Company for that purpose in accordance with the terms hereof.

“*Interest Payment Date*” when used with respect to any Security means the Stated Maturity of an installment of interest on such Security.

“*IRS*” means the Internal Revenue Service of the United States Department of the Treasury, or any successor entity.

“*Judgment Currency*” has the meaning set forth in Section 13.09.

“*Officer’s Certificate*” shall mean a certificate signed by the Chairman of the Board of Directors of the Company, any Vice—Chairman of the Board of Directors of the Company, the President or Chief Executive Officer or any Vice—President, the Treasurer, the Chief Financial Officer, the Secretary or any Assistant Secretary of the Company.

“*Opinion of Counsel*” shall mean a written opinion of legal counsel who may be an employee of the Company or other counsel satisfactory to the Trustee.

“*Original Issue Date*” of any Security (or portion thereof) means the earlier of (a) the date of such Security or (b) the date of any Security (or portion thereof) for which such Security was issued (directly or indirectly) on registration of transfer, exchange or substitution.

“*Original Issue Discount Security*” shall mean (a) any Security which provides for an amount less than the principal amount thereof to be due and payable upon declaration of acceleration of the maturity thereof pursuant to Section 6.01 or (b) any other Security which for United States Federal income tax purposes would be considered an original issue discount security.

“*Outstanding*” when used with reference to Securities shall, subject to the provisions of Section 8.04, mean, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

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

(b) Securities, or portions thereof, for whose payment or redemption moneys or U.S. Government Obligations (as provided in Section 11.01) in the necessary amount have been theretofore deposited with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside, segregated and held in trust by the Company (if the Company shall act as its own Paying Agent) in trust for the Holders of such Securities, provided that if such Securities or portions thereof, are to be redeemed prior to the Stated Maturity thereof, notice of such redemption has been duly given as provided in Article Three hereof, or provision therefor satisfactory to the Trustee has been made;

(c) Securities in exchange for or in lieu of which other Securities shall have been authenticated and delivered under this Indenture; and

(d) Securities alleged to have been destroyed, lost or stolen which have been paid as provided in Section 2.07 hereof.

In determining whether the Holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, the principal amount of an Original Issue Discount Security that shall be deemed to be Outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination as if a declaration of acceleration of the maturity thereof pursuant to Section 6.01 had been made.

“*Paying Agent*” means any Person authorized by the Company to pay the principal of and any interest and premium, if any, on any Securities on behalf of the Company.

“*Periodic Offering*” means an offering of Securities of a series from time to time, the specific terms of which Securities, including, without limitation, the rate or rates of interest, if any, thereon, the stated maturity or maturities thereof and the redemption provisions, if any, with respect thereto, are to be determined by the Company or its agents upon the issuance of such Securities.

“*Person*” shall mean an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a joint stock company, a trust, an unincorporated organization, or a government or any agency, authority or political subdivision thereof.

“*Predecessor Security*” 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 2.04 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

“*principal*” whenever used with reference to the Securities or any Security or any portion thereof, shall be deemed to include “and premium, if any,” provided, however, that such inclusion of premium, if any, shall under no circumstances result in the double counting of such premium for the purpose of any calculation required hereunder.

“*Principal Office of the Trustee*” shall mean the office of the Trustee at which at any particular time the trust created by this Indenture shall be administered, except that with respect to presentation of Securities for payment such term shall mean any office or agency of the Trustee at which at any particular time its corporate trust services business shall be conducted. The present address of the Principal Office of the Trustee is _____, Attention: _____.

“*Record Date*” for the interest payable on any Interest Payment Date on any series of Securities shall mean the date specified as such in the Securities of such series.

“*Register*” shall mean the books for the registration and transfer of Securities which books are kept by the Trustee pursuant to Section 2.08.

“*Registered Security*” means any Security registered on the Register of the Company.

“*Required Currency*” shall have the meaning set forth in Section 13.09.

“*Responsible Officer*” when used with respect to the Trustee shall mean any officer of the Trustee 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 of the Trustee to whom such matter is referred because of such Person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“*Special Record Date*” for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 2.07.

“*Stated Maturity*” when used with respect to any Security or any installment of interest thereon means the date specified in such Security as the fixed date on which the principal of such Security or such installment of interest is due and payable.

“*Indenture*” shall mean this instrument as originally executed, or as it may from time to time be supplemented, modified or amended, as provided herein, and shall include the form and terms of particular series of Securities established in accordance with the provisions of Sections 2.03 and 2.04.

“*Security*” or “*Securities*” shall mean any security or securities of the Company without regard to series, authenticated and delivered under this Indenture.

“*Supplemental Indenture*” shall mean an indenture supplemental hereto as such Supplemental Indenture may be originally executed, or as it may from time to time be supplemented, modified or amended, as provided herein and therein.

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

“*Trust Indenture Act*” shall mean the Trust Indenture Act of 1939, as amended as of the date of this Indenture.

“*United States Dollars*” shall mean the lawful currency of the United States of America.

“*U.S. Government Obligations*” shall have the meaning set forth in Section 11.01.

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

ARTICLE 2

ISSUE, DESCRIPTION, EXECUTION, REGISTRATION, TRANSFER AND EXCHANGE OF SECURITIES

SECTION 2.01. Form of Securities and Trustee’s Certificate of Authentication The Securities of each series shall be substantially in such form (not inconsistent with this Indenture) as shall be established by or pursuant to one or more Board Resolutions and as set forth in an Officer’s Certificate or Supplemental Indenture, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements thereon as the Board of Directors may deem appropriate and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Securities of such series may be listed, or to conform to usage all as may be determined by the officers executing such Securities as evidenced by their execution of such Securities.

The definitive Securities and each Global Security may be printed, lithographed or fully or partly engraved or produced in any other manner, all as determined by the officers executing such Securities as evidenced by their execution thereof.

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

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

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

_____, as Trustee

By _____
Authorized Signatory

SECTION 2.03. Amount Unlimited, Issuable in Series.

(a) The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is not limited. The Securities may be issued in one or more series.

The following terms and provisions of each series of Securities shall be established in or pursuant to one or more Board Resolutions and set forth in an Officer's Certificate detailing such establishment or established in one or more Supplemental Indentures prior to the issuance of Securities of any series:

(1) the designation of the series of Securities of the series (which shall distinguish the Securities of such series from all other series of Securities) and which may be part of a series of Securities previously issued;

(2) any limit upon the aggregate principal amount of the particular series of Securities which may be executed, authenticated and delivered under this Indenture; provided, however, that nothing contained in this Section 2.03 or elsewhere in this Indenture or in the Securities or in an Officer's Certificate or in a Supplemental Indenture is intended to or shall limit execution by the Company or authentication and delivery by the Trustee of Securities under the circumstances contemplated by Sections 2.08, 2.09, 2.11, 3.03 and 10.04;

(3) if other than United States Dollars, the coin, currency or currencies or composite currency in which principal of and interest and any premium on such series of Securities shall be payable (including, but not limited to, any Foreign Currency);

(4) the Stated Maturity for payment of principal of such series of Securities;

(5) the rate or rates at which such series of Securities shall bear interest, if any, the date or dates from which such interest shall accrue, on which such interest shall be payable, the terms and conditions of any deferral of interest and the additional interest, if any, thereon, the right, if any, of the Company to extend the time for payment of interest, the terms and duration of such extension rights and (in the case of Registered Securities) the date or dates on which a record shall be taken for the determination of Holders to whom interest is payable and/or the method by which such rate or rates or date or dates shall be determined;

(6) the place or places where the principal of and any interest on Securities of any series shall be payable, where such Securities may be surrendered for registration of transfer, where such Securities may be surrendered for exchange and where notice and demands to or upon the Company, in respect of such Securities, and this Indenture may be served, if other than as provided in Section 4.03;

(7) the right, if any, of the Company to redeem Securities, in whole or in part, at its option and the period or periods within which, the price or prices at which and any terms and conditions upon which Securities of the series may be so redeemed;

(8) the obligation, if any, of the Company to redeem, purchase or repay Securities of the series pursuant to any mandatory redemption or analogous provisions or at the option of a Holder thereof and the price or prices at which and the period or periods within which and any terms and conditions upon which Securities of the series shall be redeemed, purchased or repaid, in whole or in part, pursuant to such obligation;

(9) if other than denominations of \$1,000 and any integral multiple thereof;

(10) the percentage of the principal amount at which the Securities will be issued, and, if other than the principal amount thereof, the portion of the principal amount of such series of Securities which shall be payable upon declaration of acceleration of the maturity thereof pursuant to Section 6.01;

(11) if other than the U.S. Dollar, the coin, currency or currencies in which payment of the principal of or interest on the Securities of such series shall be payable, including composite currencies or currency units and any related provisions for the calculations of payments and denominations;

(12) if the principal or interest on the Securities of the series are to be payable, at the election of the Company or a Holder thereof, in a coin or currency other than that in which the Securities are denominated, the period or periods within which, and the terms and conditions upon which, such election may be made;

(13) if the amount of payments or principal of and interest on the Securities of the series may be determined with reference to an index or formula based on a coin, currency, composite currency or currency unit other than that in which the Securities of the series are denominated, the manner in which such amounts shall be determined;

(14) whether and under what circumstances the Company will pay additional amounts on the Securities of the series held by a person who is not a U.S. person in respect of any tax, assessment or governmental charge withheld or deducted and, if so, whether the Company will have the option to redeem the Securities of the series rather than pay such additional amounts;

(15) if the Securities of the series are to be issuable in definitive form (whether upon original issue or upon exchange of a temporary Security of such series) only upon receipt of certain certificates or other documents or satisfaction of other conditions, the form and terms of such certificates, documents or conditions;

(16) any trustees, depositaries, authenticating or paying agents, transfer agents or registrars of any other agents with respect to the Securities of such series;

(17) any additional events of default or covenants with respect to the Securities of a particular series not set forth herein;

(18) the terms and conditions, if any, upon which any Securities of such series may or shall be converted or exchanged into common stock of the Company; and

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

(b) All Securities of any one series shall be substantially identical except that any series may have serial maturities and different interest rates for different maturities and except in the case of Registered Securities as to denomination and the differences herein specified between Global Securities and Registered Securities issued in definitive form and except as may otherwise be provided in or pursuant to such Board Resolution and set forth in such Officer's Certificate or Supplemental Indenture relating to such series of Securities. All Securities of any one series need not be issued at the same time, and, unless otherwise provided in the Officer's Certificate or Supplemental Indenture relating to such series, a series may be reopened for issuances of additional Securities of such series.

SECTION 2.04. Authentication and Delivery of Securities; Supplemental Indentures for Secured Issues At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver any series of Securities executed by the Company to the Trustee for authentication by it together with the applicable documents referred to below in this Section 2.04, and the Trustee shall thereupon authenticate and deliver said Securities (or if only a single Security, such Security) to or upon the written order of the Company, signed by an officer of the Company, without any further corporate action. The maturity date, original issue date, interest rate and any other terms of the Securities of such series shall be determined by or pursuant to such Company Order and procedures. In authenticating such Securities and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive (in the case of subparagraphs (2), (3) and (4) below only at or before the time of the first request of the Company to the Trustee to authenticate Securities of such series) and (subject to Section 7.01) shall be fully protected in relying upon, the following enumerated documents unless and until such documents have been superseded or revoked:

(1) a Company Order requesting such authentication and setting forth delivery instructions if the Securities are not to be delivered to the Company, provided that, with respect to Securities of a series subject to a Periodic Offering, (a) such Company Order may be delivered by the Company to the Trustee prior to the delivery to the Trustee of such Securities for authentication and delivery, (b) the Trustee shall authenticate and deliver Securities of such series for original issue from time to time, in an aggregate principal amount not exceeding the aggregate principal amount established for such series, pursuant to a Company Order or pursuant to procedures acceptable to the Trustee as may be specified from time to time by a Company Order, and (c) the maturity date or dates, original issue date or dates, interest rate or rates and any other terms of Securities of such series shall be determined by a Company Order or pursuant to such procedures;

(2) any Board Resolution, Officer's Certificate and/or executed Supplemental Indenture referred to in Section 2.01 and 2.03 by or pursuant to which the forms and terms of the Securities were established;

(3) an Officer's Certificate setting forth the form or forms and terms of the Securities stating that the form or forms and terms of the Securities have been established pursuant to Sections 2.01 and 2.03 and comply with this Indenture, and covering such other matters as the Trustee may reasonably request; and

(4) either one or more Opinions of Counsel, or a letter addressed to the Trustee permitting it to rely on one or more Opinions of Counsel, substantially to the effect that:

(a) the form or forms of the Securities have been duly authorized and established in conformity with the provisions of this Indenture;

(b) the terms of the Securities have been duly authorized and established in conformity with the provisions of this Indenture, and certain terms of the Securities have been established pursuant to a Board Resolution, an Officer's Certificate or a Supplemental Indenture in accordance with this Indenture, and when such other terms as are to be established pursuant to procedures set forth in a Company Order shall have been established, all such terms will have been duly authorized by the Company and will have been established in conformity with the provisions of this Indenture;

(c) this Indenture and such Securities, when executed and issued by the Company and authenticated by the Trustee in accordance with the provisions of this Indenture and duly paid for by the purchasers thereof, and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Company, enforceable in accordance with their terms, except as any rights thereunder may be limited by the effect of bankruptcy, insolvency, reorganization, receivership, conservatorship, arrangement, moratorium or other laws affecting or relating to the rights of creditors generally; the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in equity or at law; the effect of applicable court decisions invoking statutes or principles of equity, which have held that certain covenants and provisions of agreements are unenforceable where the breach of such covenants or provisions imposes restrictions or burdens upon a borrower, and it cannot be demonstrated that the enforcement of such restrictions or burdens is necessary for the protection of the creditor, or which have held that the creditor's enforcement of such covenants or provisions under the circumstances would have violated the creditor's covenants of good faith and fair dealing implied under Washington law; and the effect of Washington statutes and rules of law which cannot be waived prospectively by a borrower, and such counsel need express no opinion with regard to the enforceability of Section 7.06 or of a judgment denominated in a currency other than United States Dollars; and

(d) the Company has complied with all applicable Federal laws and requirements in respect of the execution and delivery of such Securities; and

(e) such other opinions as the Company may be required to deliver under the Trust Indenture Act.

(5) if the Securities are to be secured, a supplemental indenture conforming to the requirements of Section 314 of the Trust Indenture Act and such other documents as may be required by Section 314; and

(6) if the Securities are to be convertible, a supplemental indenture conforming to the requirements of Section 314 of the Trust Indenture Act and such other documents as may be required by Section 314.

In rendering such opinions, any counsel may qualify any opinions as to enforceability by stating that such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium, fraudulent transfer and other similar laws affecting the rights and remedies of creditors and is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). Such counsel may rely upon opinions of other counsel (copies of which shall be delivered to the Trustee) reasonably satisfactory to the Trustee, in which case the opinion shall state that such counsel believes he and the Trustee are entitled so to rely. Such counsel may also state that, insofar as such opinion involves factual matters, he has relied, to the extent he deems proper, upon certificates of officers of the Company and its subsidiaries and certificates of public officials.

The Trustee shall have the right to decline to authenticate and deliver any Securities under this section if the Trustee, being advised by counsel, determines that such action may not lawfully be taken by the Company or if the Trustee in good faith by its board of directors or board of trustees, executive committee or a trust committee of directors or trustees shall determine that such action would expose the Trustee to personal liability to existing Holders or would affect the Trustee's own rights, duties or immunities under the Securities, this Indenture or otherwise.

SECTION 2.05. Execution of Securities. The Securities shall be executed manually or in facsimile, by any two of the Chairman of the Board, Chief Executive Officer, the President, any Vice President, the Treasurer, the Secretary, or the Chief Financial Officer of the Company under its corporate seal, which may be affixed thereto or printed, engraved or otherwise reproduced thereon, by facsimile or otherwise. Only such Securities as shall bear thereon a certificate of authentication substantially in the form recited herein, executed by the Trustee manually by an authorized officer, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate of authentication of the Trustee upon any Security executed by the Company shall be conclusive evidence that the Security so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture. Typographical or other errors or defects in the seal or facsimile signature on any Security or in the text thereof shall not affect the validity or enforceability of such Security if it has been duly authenticated and delivered by the Trustee.

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

SECTION 2.06. Certificate of Authentication. Only such Securities as shall bear thereon a certificate of authentication substantially in the form hereinbefore recited, executed by the Trustee by the manual signature of one of its authorized officers, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. The execution of such certificate by the Trustee upon any Security executed by the Company shall be conclusive evidence that the Security so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

SECTION 2.07. Denominations; Payment of Interest on Securities

(a) The Securities of each series may be issued in such denominations as shall be specified as contemplated by Section 2.03. In the absence of such provisions with respect to the Securities of any series, the Securities of such series shall be issued in denominations of \$1,000 and any integral multiple thereof. The Securities of each series shall be numbered, lettered or otherwise distinguished in such manner or in accordance with such plan as the officers of the Company executing the same may determine.

(b) If the Securities of any series shall bear interest, each Security of such series shall bear interest from the applicable date at the rate per annum specified in the Officer's Certificate or Supplemental Indenture with respect to such series of Securities. Unless otherwise specified in the Officer's Certificate or Supplemental Indenture with respect to the Securities of any series, interest on the Securities of such series shall be computed on the basis of a 360-day year of twelve 30-day months. Such interest shall be payable on the Interest Payment Dates specified in the Officer's Certificate or Supplemental Indenture with respect to such series of Securities. The Person in whose name any Security (or one or more Predecessor Securities) is registered at the close of business on the applicable Record Date for the series of which such Security is a part shall be entitled to receive the interest payable thereon on such Interest Payment Date notwithstanding the cancellation of such Security upon any transfer or exchange thereof subsequent to such Record Date and prior to such Interest Payment Date unless such Security shall have been called for redemption on a Redemption Date which is subsequent to such Record Date and prior to such Interest Payment Date or unless the Company shall default in the payment of interest due on such Interest Payment Date on any Security of such series.

Any interest on any Security of any series 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 Record Date solely by virtue of such Holder having been such Holder; and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest on the Securities of any series to the Persons in whose names such Securities (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security and the date of the proposed payment (which date shall be such as will enable the Trustee to comply with the next sentence hereof), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this subsection provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of a Security of such series at such Holder's address as it appears in the 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 the Securities of such series are registered on such Special Record Date and shall no longer be payable pursuant to the following subsection (2).

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

Interest on Securities of any series that bear interest may be paid by mailing a check to the address of the person entitled thereto as such address shall appear in the Register.

Subject to the foregoing provisions of this Section 2.07, each Security delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Security shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security and each such Security shall bear interest from such date, such that neither gain nor loss in interest shall result from such transfer, exchange or substitution.

SECTION 2.08. Registration, Transfer and Exchange of Securities. Except as specifically otherwise provided herein with respect to Global Securities, Securities of any series may be exchanged for a like aggregate principal amount of Securities of the same series of other authorized denominations. Securities to be exchanged shall be surrendered at the offices or agencies to be maintained in accordance with the provisions of Section 4.03 and the Company shall execute the Security or Securities, and the Trustee shall authenticate and deliver in exchange therefor the Security or Securities which the Securityholder making the exchange shall be entitled to receive.

The Company shall cause the Trustee to keep or cause to be kept, at one or more of the offices or agencies to be maintained by the Trustee in accordance with the provisions of Section 4.03 with respect to the Securities of each series, the Register in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of the Registered Securities of such series and the transfer of Registered Securities of such series as in this Article provided. The 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 Register shall be open for inspection by the Trustee and any registrar of the Securities of such series other than the Trustee. Upon due presentment for transfer of any Security of any series at the offices or agencies of the Company to be maintained in accordance with Section 4.03 with respect to the Registered Securities of such series, the Company shall execute a new Security and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Security or Registered Securities of the same series for a like aggregate principal amount of authorized denominations. Notwithstanding any other provisions of this Section 2.08, unless and until it is exchanged in whole or in part for Registered Securities in definitive form, a Global Security representing all or a portion of the Registered Securities of a series may not be transferred except as a whole by the Depository for such series to a nominee of such Depository or by a nominee of such Depository to such Depository or another nominee of such Depository or by such Depository or any such nominee to a successor Depository for such series or a nominee of such successor Depository.

At the option of the Holder thereof, Registered Securities of any series (other than a Global Security, except as set forth below) may be exchanged for a Registered Security or Registered Securities of such series and tenor having authorized denominations and an equal aggregate principal amount, upon surrender of such Registered Securities to be exchanged at the agency of the Company that shall be maintained for such purpose in accordance with Section 4.03 and upon payment, if the Company shall so require, of the charges hereinafter provided.

All Registered Securities of any series presented or surrendered for exchange, transfer, redemption, conversion or payment shall, if so required by the Company or any registrar of the Securities of such series, be accompanied by a written instrument or instruments of transfer, in form satisfactory to the Company and such registrar, duly executed by the registered Holder or by such Person's attorney duly authorized in writing.

No service charge shall be made for any exchange or registration of transfer of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto.

The Company shall not be required to exchange or transfer (a) any Securities of any series during a period beginning at the opening of business 15 days before the day of the first publication or the mailing (if there is no publication) of a notice of redemption of Securities of such series and ending at the close of business on the day of such publication or mailing or (b) any Securities called or selected for redemption in whole or in part, except, in the case of Securities called for redemption in part, the portion thereof not so called for redemption in whole or in part or during a period beginning at the opening of business on any Record Date for such series and ending at the close of business on the relevant Interest Payment Date therefor.

SECTION 2.09. Mutilated, Defaced, Destroyed, Lost and Stolen Securities. In case any temporary or definitive Security shall be mutilated, defaced, destroyed, lost or stolen, the Company in its discretion may execute and, upon the written request of any officer of the Company, the Trustee shall authenticate and delivery, a new Security of the same series, maturity date, interest rate and original issue date, bearing a number or other distinguishing symbol not contemporaneously outstanding, in exchange and substitution for the mutilated or defaced Security, or in lieu of and in substitution for the Security so destroyed, lost or stolen In every case the applicant for a substitute Security shall furnish to the Company and to the Trustee and any agent of the Company or the Trustee such security or indemnity as may be required by them to indemnify and defend and to save each of them harmless and, in every case of destruction, loss or theft, evidence to their satisfaction of the destruction, loss or theft of such Security and of the ownership thereof, and in the case of mutilation or defacement shall surrender the Security to the Trustee or such agent. If the Company becomes aware that such Security has been acquired by a bona fide purchaser, it shall notify the Trustee in writing.

Upon the issuance of any substitute Security, 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) or its agent connected therewith. In case any Security which has matured or is about to mature or has been called for redemption in full shall become mutilated or defaced or be destroyed, lost or stolen, the Company may instead of issuing a substitute Security, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated or defaced Security), if the applicant for such payment shall furnish to the Company and to the Trustee and any agent of the Company or the Trustee such security or indemnity as any of them may require to save each of them harmless, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company and to the Trustee and any agent of the Company or the Trustee evidence to their satisfaction of the destruction, loss or theft of such Security and of the ownership thereof.

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

SECTION 2.10. Cancellation and Destruction of Surrendered Securities. All Securities surrendered for payment, redemption, transfer, conversion or exchange, or for credit against any payment in respect of a sinking or analogous fund, if any, shall, if surrendered to the Company, the Trustee or any agent of the Company or of the Trustee, be delivered to the Trustee, and the same, together with Securities surrendered to the Trustee for cancellation, shall be canceled by it and thereafter disposed of by it as directed by the Company, and no Securities shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. The Trustee shall destroy canceled Securities in accordance with applicable laws and procedures, and deliver a certificate of destruction thereof to the Company. If the Company shall purchase or otherwise acquire any of the Securities, however, such purchase or acquisition shall not operate as a payment, redemption or satisfaction of the indebtedness represented by such Securities unless and until the Company, at its option shall deliver or surrender the same to the Trustee for cancellation.

SECTION 2.11. Temporary Securities. Pending the preparation of definitive Securities of any series, the Company may execute and the Trustee shall authenticate and deliver temporary Securities of such series which are printed, lithographed, typewritten or otherwise produced, in each case satisfactory to the Trustee. Temporary Securities of any series shall be issuable substantially in the form of the definitive Securities of such series but with such appropriate omissions, insertions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities. Every such temporary Security shall be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with the same effect, as the definitive Securities. If temporary Securities are issued, the Company will cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities of

such series shall be exchangeable for definitive Securities upon surrender of the temporary Securities without charge to the Holder at the offices or agencies to be maintained by the Trustee as provided in Section 4.03 with respect to the Securities of such series. Upon surrender for cancellation of any one or more temporary Securities the Company shall execute and the Trustee shall authenticate and deliver in exchange for such temporary Securities an equal aggregate principal amount of definitive Securities of such series. Until so exchanged, the temporary Securities of any series shall in all respects be entitled to the benefits of this Indenture and interest thereon, when and as payable, shall be paid to the registered owners thereof.

SECTION 2.12. Securities in Global Form

(a) If the Company shall establish pursuant to Section 2.01 that the Securities of a particular series are to be issued as a Global Security, then the Company shall execute and the Trustee shall, in accordance with Section 2.04, authenticate and deliver, a Global Security that (i) shall represent, and shall be denominated in an amount equal to the aggregate principal amount of, all of the Outstanding Securities of such series, (ii) shall be registered in the name of the Depository or its nominee, (iii) shall be held by the Trustee as custodian for the Depository or pursuant to the Depository's instruction and (iv) shall bear a legend substantially to the following effect: *"Except as otherwise provided in Section 2.12 of the Indenture, this Security may be transferred, in whole but not in part, only to another nominee of the Depository or to a successor Depository or to a nominee of such successor Depository."*

(b) Notwithstanding the provisions of Section 2.05, the Global Security of a series may be transferred, in whole but not in part and in the manner provided in Section 2.08, only to another nominee of the Depository for such series, or to a successor Depository for such series selected or approved by the Corporation or to a nominee of such successor Depository.

(c) If at any time the Depository for a series of the Securities notifies the Company that it is unwilling or unable to continue as Depository for such series or if at any time the Depository for such series shall no longer be registered or in good standing under the Exchange Act, or other applicable statute or regulation, and a successor Depository for such series is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such condition, as the case may be, or if an Event of Default has occurred and is continuing and the Company has received a request from the Depository, this Section 2.10 shall no longer be applicable to the Securities of such series and the Company will execute, and subject to Section 2.04, the Trustee will authenticate and deliver the Securities of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Security of such series in exchange for such Global Security upon the instruction of the Depository. In addition, the Company may at any time determine that the Securities of any series shall no longer be represented by a Global Security and that the provisions of this Section 2.12 shall no longer apply to the Securities of such series. In such event the Company will execute and, subject to Section 2.04, the Trustee, upon receipt of an Officers' Certificate evidencing such determination by the Company, will authenticate and deliver the Securities of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Security of such series in exchange for such Global Security. Upon the exchange of the Global Security for such Securities in definitive registered form without coupons, in authorized denominations, the Global Security shall be canceled by the Trustee. Such Securities in definitive registered form issued in exchange for the Global Security pursuant to this Section 2.10(c) shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Debt Securities to the Depository for delivery to the Persons in whose names such Securities are so registered.

SECTION 2.13. CUSIP Numbers. The Company in issuing the Securities may use "CUSIP" and "CINS" numbers (if then generally in use), and the Trustee shall use CUSIP numbers or CINS numbers, as the case may be, in notices of redemption or exchange as a convenience to Holders and no representation shall be made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of redemption or exchange. The Company will promptly notify the Trustee of any change in the "CUSIP" and/or such other numbers.

ARTICLE 3

REDEMPTION OF SECURITIES

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

SECTION 3.02. Notice of Redemption: Partial Redemptions. Notice of redemption to the Holders of Registered Securities of any series to be redeemed as a whole or in part at the option of the Company shall be given by mailing notice of such redemption by electronic transmission, first-class mail, postage prepaid, at least 30 days and not more than 60 days prior to the date fixed for redemption to such Holders of Securities of such series at their last addresses as they shall appear upon the Register. Any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the Holder receives the notice. Failure to give notice by mail, or any defect in the notice to the Holder of any Security of a series designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of such Security of such series.

The notice of redemption to each such Holder shall specify the principal amount of each Security of such series held by such Holder to be redeemed, the date fixed for redemption, the redemption price, the place or places of payment, that payment will be made upon presentation and surrender of such Securities that interest accrued to the date fixed for redemption will be paid as specified in such notice and that on and after said date interest thereon or on the portions thereof to be redeemed will cease to accrue. In case any Security of a series is to be redeemed in part only the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that on and after the date fixed for redemption, upon surrender of such Security, a new Security or Securities of such series in principal amount equal to the unredeemed portion thereof will be issued.

The notice of redemption of Securities of any series to be redeemed at the option of the Company shall be given by the Company or, at the Company's request delivered to the Trustee at least five Business Days prior to the intended date of mailing to the Holders, by the Trustee in the name and at the expense of the Company.

On or before the redemption date specified in the notice of redemption given as provided in this Section, the Company will deposit with the Trustee or with one or more Paying Agents (or, if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 4.05), no later than 11:00 a.m. New York City time, an amount of money sufficient to redeem on the redemption date all the Securities of such series so called for redemption at the appropriate redemption price, together with accrued interest to the date fixed for redemption. The Company will deliver to the Trustee at least 70 days prior to the date fixed for redemption, or such shorter period as shall be acceptable to the Trustee, an Officer's Certificate stating the aggregate principal amount of Securities to be redeemed with a copy of the form on notice to the Holders setting forth the information required by this Section 3.02. In case of a redemption at the election of the Company prior to the expiration of any restriction on such redemption, the Company shall deliver to the Trustee, prior to the giving of any notice of redemption to Holders pursuant to this Section, an Officer's Certificate stating that such restriction has been complied with.

If less than all the Securities of a series are to be redeemed, the Trustee shall select, in such manner as it shall deem appropriate and fair, in its sole discretion, Securities of such series to be redeemed in whole or in part. Securities may be redeemed in part in multiples equal to the minimum authorized denomination for Securities of such series or any multiple thereof. The Trustee shall promptly notify the Company in writing of the Securities of such series selected for redemption and, in the case of any Securities of such series selected for partial redemption, the principal amount thereof to be redeemed. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities of any series shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security which has been or is to be redeemed.

SECTION 3.03. Payment of Securities Called for Redemption If notice of redemption has been given as above provided, the Securities or portions of Securities specified in such notice shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with interest accrued to the date fixed for redemption, and on and after said date (unless the Company shall default in the payment of such Securities at the redemption price, together with interest accrued to said date) interest on the Securities or portions of Securities so called for redemption shall cease to accrue and, except as provided in Sections 7.05 and 11.04, such Securities shall cease from and after the date fixed for redemption to be entitled to any benefit or security under this Indenture, and the Holders thereof shall have no right in respect of such Securities except the right to receive the redemption price thereof and unpaid interest to the date fixed for redemption. On presentation and surrender of such Securities at a place of payment specified in said notice maturing after the date fixed for redemption, said Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption; provided, that payment of interest becoming due on or prior to the date fixed for redemption shall be payable to the

Holder of such Registered Securities registered as such on the relevant record date, subject to the terms and provisions of Section 2.03 and 2.07 hereof.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid or duly provided for, bear interest from the date fixed for redemption at the rate of interest or Yield to Maturity (in the case of an Original Issue Discount Security) borne by such Security.

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

SECTION 3.04. Exclusion of Certain Securities From Eligibility for Selection for Redemption Securities shall be excluded from eligibility for selection for redemption if they are identified by registration and certificate number in an Officer's Certificate delivered to the Trustee at least 40 days prior to the last date on which notice of redemption may be given as being owned of record and beneficially by, and not pledged or hypothecated by, either (a) the Company or (b) an entity specifically identified in such written statement as directly or indirectly controlling or controlled by or under direct or indirect common control with the Company.

ARTICLE 4

PARTICULAR COVENANTS OF THE COMPANY

SECTION 4.01. Payment of Principal of and Interest on Securities The Company covenants that it will duly and punctually pay or cause to be paid the principal of and any interest and premium on each of the Securities in accordance with the terms of the Securities and this Indenture. Except with respect to any Global Securities, if the Securities of any series bear interest, each installment of interest on the Securities of such series may, at the option of the Company, be paid by mailing a check or checks for such interest payable to the Person entitled thereto pursuant to Section 2.07 to the address of such Person as it appears on the Register of such series on the applicable Record Date for such interest payment. The interest, if any, on Registered Securities (together with any additional amounts payable pursuant to the terms of such Securities) shall be payable only to or upon the written order of the Holders thereof and, at the option of the Company, may be paid by wire transfer or by mailing checks for such interest payable to or upon the written order of such Holders at their last addresses as they appear on the Register of the Company.

SECTION 4.02. Corporate Existence of the Company; Consolidation, Merger, Sale or Transfer The Company covenants that so long as any of the Securities are Outstanding, it will maintain its existence, will not dissolve, sell or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it; provided that the Company may, without violating the covenants in this Section 4.02 contained, consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve, if the surviving, resulting or transferee entity, as the case may be, (i) shall be organized and existing under the laws of one of the States of the United States of America, (ii) assumes, if such entity is not the Company, all of the obligations of the Company hereunder and (iii) is not, after such transaction, otherwise in default under any provisions hereof.

SECTION 4.03. Maintenance of Offices or Agencies for Transfer, Registration, Exchange and Payment of Securities So long as any of the Securities shall remain Outstanding, the Company covenants that it will cause the Trustee to maintain an office or agency in _____, where the Securities may be presented for registration, exchange and transfer as in this Indenture provided, and where notices and demands to or upon the Trustee in respect of the Securities or of this Indenture may be served, and where the Securities may be presented for payment. In case the Trustee shall fail to maintain any such office or agency, presentations and demands may be made and notices may be served at the principal office of the Company.

The Company will give to the Trustee written notice of the location of each such office or agency and of any change of location thereof. In case the Company shall fail to maintain any agency required by this Section to be located in _____, or shall fail to give such notice of the location or for any change in the location of any of the above agencies, presentations and demands may be made and notices may be served at the Principal Office of the Trustee.

The Company may from time to time designate one or more additional offices or agencies where the Securities of a series may be presented for payment, where the Securities of that series may be presented for exchange as provided in this Indenture and pursuant to Section 2.04 and where the Registered Securities of that series may be presented for registration of transfer as in this Indenture provided, and the Company may from time to time rescind any such designation, as the Company may deem desirable or expedient; provided, that no such designation or rescission shall in any manner relieve the Company of its obligations to maintain the agencies provided for in this Section. The Company shall give to the Trustee prompt written notice of any such designation or rescission thereof.

SECTION 4.04. Appointment to Fill a Vacancy in the Office of Trustee The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, covenants that it will appoint, in the manner provided in Section 7.10, a Trustee, so that there shall at all times be a Trustee with respect to the Outstanding Securities.

SECTION 4.05. Duties of Paying Agent.

(a) If the Company shall appoint a Paying Agent other than the Trustee with respect to Securities of any series, it will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.05 and Section 11.04,

(1) that it will hold all sums held by it as such agent for the payment of the principal of or interest, if any, on the Securities of such series (whether such sums have been paid to it by the Company or by any other obligor on the Securities of such series) in trust for the benefit of the Holders of the Securities entitled to such principal or interest and will notify the Trustee of the receipt of sums to be so held,

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

(3) that it will at any time during the continuance of any Event of Default, upon the written request of the Trustee, deliver to the Trustee all sums so held in trust by it.

(b) Whenever the Company shall have one or more Paying Agents with respect to the Securities of any series, it will, prior to each due date of the principal of or any interest on the Securities of such series, deposit with a Paying Agent of such series a sum sufficient to pay the principal or interest so becoming due, such sum to be held in trust for the benefit of the Holders of Securities entitled to such principal 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.

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

(d) Anything in this Section 4.05 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture with respect to one or more or all series of Securities hereunder, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust for such

series by it, or any Paying Agent hereunder, as required by this Section 4.05, and such sums are to be held by the Trustee upon the trust herein contained.

SECTION 4.06. Notice of Default. The Company covenants that, as soon as is practicable but in no event later than twenty Business Days after the occurrence thereof, the Company will furnish the Trustee notice of any event which is an Event of Default or which with the giving of notice or the passage of time or both would constitute an Event of Default which has occurred and is continuing on the date of such notice, which notice shall set forth the nature of such event and the action which the Company proposes to take with respect thereto.

SECTION 4.07. Maintenance of Properties. The Company will cause all properties used in or useful in the conduct of its business to be maintained and kept in good condition, repair, and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Company may be necessary, so that the business carried on in connection therewith may be properly and advantageously conducted at all time except to the extent that the Company may be prevented from so doing by circumstances beyond its control; provided, that nothing in this Section shall prevent the Company from discontinuing the operation or maintenance of any of such properties, or disposing of any of them, if such discontinuance or disposal is, in the judgment of the Company desirable in the conduct of the business of the Company and not disadvantageous in any material respect to the Securityholders.

SECTION 4.08. Payment of Taxes and Other Claims. The Company will pay or discharge or cause to be paid or discharged, before the same shall become delinquent: (a) all taxes, assessments and governmental charges levied or imposed upon the Company or upon the income, profits or property of the Company; and (b) all lawful claims for labor, materials, and supplies, which, if unpaid, might by law become a lien upon the property of the Company; provided, that the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings; and provided further that the Company shall not be required to cause to be paid or discharged any such tax, assessment, charge or claim if the Company shall determine that such payment is not advantageous to the conduct of the business of the Company taken as a whole and that the failure so to pay or discharge is not disadvantageous in any material respect to the Securityholders.

ARTICLE 5

SECURITYHOLDERS' LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE

SECTION 5.01. Company to Furnish Trustee Information as to the Names and Addresses of Securityholders. The Company will furnish or cause to be furnished to the Trustee, not less than 45 days nor more than 60 days after each date (month and day) specified as an Interest Payment Date for the Securities of the first series issued under this Indenture (whether or not any Securities of that series are then Outstanding), but in no event less frequently than semiannually, and at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request, a list in such form as the Trustee may reasonably require containing all the information in the possession or control of the Company, or any of its Paying Agents other than the Trustee, as to the names and addresses of the Holders of Securities, obtained since the date as of which the next previous list, if any, was furnished, excluding from any such list the names and addresses received by the Trustee in its capacity as registrar (if so acting). Any such list may be dated as of a date not more than 15 days prior to the time such information is furnished and need not include information received after such date. However, if the Trustee is appointed as Registrar, the Company has no obligation to furnish the list of holders.

SECTION 5.02. Preservation of Information; Communication to Securityholders.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of the Holders of Securities of each series (1) contained in the most recent list furnished to it as provided in Section 5.01, (2) received by the Trustee in the capacity of Paying Agent or registrar (if so acting) and (3) filed with the Trustee within the two preceding years as provided for in Section 5.04(c). The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

(b) If three or more Holders of Securities (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 for a period of at least six months preceding the date of such application, and such application states that the applicants desire to communicate with other Holders of Securities of any series or with Holders of all Securities with respect to their

rights under this Indenture or under such Securities, and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Trustee shall, within five Business Days after the receipt of such application, at its election, either:

(1) afford such applicants access to the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this Section 5.02; or

(2) 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 the provisions of subsection (a) of this Section 5.02, and as to the approximate cost of mailing to such Securityholders the form of proxy or other communications, 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 of the Holders of Securities of such series, or all Securities, as the case may be, whose name and address appear in the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this Section 5.02, a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless within five days after such tender, the Trustee shall mail to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interests of the Holders of Securities of such series or all Securities, 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 such Securityholders 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) Each and every Holder of the Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any Paying Agent nor any registrar 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 the provisions of subsection (b) of this Section 5.02, 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 said subsection (b).

SECTION 5.03. Reports by Company.

(a) The Company covenants and agrees to file with the Trustee within 15 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if the Company is not required to file information, documents or reports pursuant to either of such sections, then to 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 Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations.

(b) The Company covenants and agrees to file with the Trustee and the Commission, in accordance with the rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants provided for in this Indenture as may be required from time to time by such rules and regulations.

(c) The Company covenants and agrees to transmit to the Holders of Securities within 30 days after the filing thereof with the Trustee, in the manner and to the extent provided in subsection (c) of Section 5.04 with respect to reports pursuant to subsection (a) of said Section 5.04, such summaries of any information, documents and reports required to be filed by the Company pursuant to subsections (a) and (b) of this Section 5.03 as may be required by rules and regulations prescribed from time to time by the Commission. Delivery of reports, information and documents to the Trustee under this Section 5.03 is for informational purposes only and the Trustee's receipt of the foregoing shall not constitute constructive notice of any information contained therein or determinable from

information contained therein, including the Company's compliance with any of their covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

(d) The Company and any other obligor on the Securities each covenant and agree to furnish to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate, from the principal executive officer, principal financial officer or principal accounting officer stating whether or not to the best knowledge of the signers thereof, the Company or Subsidiary of the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company or a Subsidiary of the Company in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

SECTION 5.04. Reports by Trustee.

(a) On or before the first July 15th following the date of execution of this Indenture, and on or before July 15 in every year thereafter, if and so long as any Securities are Outstanding hereunder, the Trustee shall transmit to the Securityholders as hereinafter in this Section 5.04 provided, a brief report dated as of the preceding May 15 with respect to any of the following events which may have occurred within the previous 12 months (but if no such event has occurred within such period no report need be transmitted):

(1) any change to its eligibility under Section 7.09, and its qualifications under Section 7.08;

(2) the creation of or any material change to a relationship specified in paragraph (1) through (10) of Section 7.08(d);

(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 the 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 state such advances if such advances so remaining unpaid aggregate not more than one-half of one percent of the principal amount of the Securities of such series Outstanding on the date of such report;

(4) 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 indebtedness based upon a creditor relationship arising in any manner described in paragraph (2), (3), (4) or (6) of subsection (b) of Section 7.13;

(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 under this Indenture 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 it in accordance with the provisions of Section 6.10.

(b) The Trustee shall transmit to the Securityholders, as hereinafter provided, 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 the provisions of subsection (a) of this Section 5.04 (or if no such report has yet been so transmitted, since the date of execution of this Indenture), 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 ten percent or less of the principal amount of Securities of such series Outstanding at such time, such report to be transmitted within 90 days after such time.

(c) Reports pursuant to this Section 5.04 shall be transmitted by mail (i) to all Holders of Securities of any series, as the names and addresses of such Holders shall appear upon the Register of the Securities of such series, (ii) to such Holders of Securities as have, within the two years preceding such transmission, filed their names and addresses with the Trustee for that purpose and (iii) except in the case of reports pursuant to subsection (b) of this

Section 5.04 to each Holder whose name and address are preserved at the time by the Trustee as provided in Section 5.02(a) hereof.

(d) 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 of any series are listed and also with the Commission. The Company will notify the Trustee when and as the Securities of any series become listed on any stock exchange.

ARTICLE 6

REMEDIES OF THE TRUSTEE AND SECURITYHOLDERS ON EVENT OF DEFAULT

SECTION 6.01. Events of Default; Acceleration, Waiver of Default and Restoration of Position and Rights. The term “*Event of Default*” whenever used herein with respect to any particular series of Securities shall mean any one of the following events:

(a) default in the payment of any installment of interest on any Security of such series as and when the same shall become due and payable, and continuance of such default for a period of 30 days provided however, that an extension of one or more Interest Payment Dates by the Company in accordance with the provisions of any Supplemental Indenture, shall not constitute an Event of Default; or

(b) default in the payment of all or any part of the principal of or any premium on any Security of such series as and when the same shall become due and payable whether at maturity, by proceedings for redemption, by declaration or otherwise, provided however, that an extension of the Stated Maturity for payment of principal of Securities of such series in accordance with the provisions of any Supplemental Indenture, shall not constitute an Event of Default; or

(c) failure on the part of the Company to observe or perform in any material respect any other of the covenants or agreements on its part in the Securities or in this Indenture (including any Supplemental Indenture or pursuant to any Officer’s Certificate, as contemplated by Section 2.03) specifically contained for the benefit of the Holders of the Securities of such series, for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee, or to the Company and the Trustee by the Holders of not less than 25% in principal amount of the Securities of such series and all other series so benefited (all series voting as one class) at the time Outstanding under this Indenture a written notice specifying such failure and stating that such is a “Notice of Default” hereunder; or

(d) the entry by a court having jurisdiction in the premises of a decree or order for relief in respect of the Company in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or for any substantial part of its property, or ordering the winding up or liquidation of its affairs, if such decree or order shall remain unstayed and in effect for a period of 60 consecutive days; or

(e) the commencement by the Company of a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or the Company’s consent to the entry of an order for relief in any involuntary case under any such law, or its consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of the Company or for any substantial part of its property, or the making by the Company of any general assignment for the benefit of creditors, or its failure generally to pay its debts as they become due or the taking by the Company of any corporate action in furtherance of any of the foregoing; or

(f) any other Event of Default provided in the Officer’s Certificate or Supplemental Indenture under which such series of is issued or in the form of Security for such series.

If an Event of Default described in clause (a) or (b) shall have occurred and be continuing with respect to any one or more series of Outstanding Securities, then and in each and every such case, unless the principal amount of all the Securities of each series as to which there is an Event of Default shall have already become due and payable, either the Trustee or the Holders of not less than 25% in principal amount of the Securities of such series then Outstanding hereunder (each such series voting as a separate class) by notice in writing to the Company (and to the Trustee if given by Securityholders) may declare the principal amount (or, if the Securities of any such series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of such

series) of all the Securities of such series, together with any accrued interest, to be due and payable immediately, and upon any such declaration the same shall be immediately due and payable, anything in this Indenture or in the Securities of such series contained to the contrary notwithstanding.

Except as otherwise provided in the terms of any series of Securities pursuant to Section 2.03, if an Event of Default described in clause (c) or (f) above with respect to all series of Securities then Outstanding, occurs and is continuing, then, and in each and every such case, unless the principal of all of 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 of the Securities then Outstanding hereunder (treated as one class) by notice in writing to the Company (and to the Trustee if given by Securityholders), may declare the entire principal (or, if the Securities of any series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of such series) of all of the Securities then Outstanding, and the interest accrued thereon, if any, to be due and payable immediately, and upon such declaration, the same shall become immediately due and payable. If an Event of Default described in clause (e) or (f) above occurs and is continuing, then the principal amount of all of the Securities then Outstanding, and the interest accrued thereon, if any, shall become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

If an Event of Default described in clause (d) or (g) occurs and is continuing, which Event of Default is with respect to less than all series of Securities then Outstanding, then, and in each and every such case, except for any series of Securities the principal of which 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 each such affected series then Outstanding hereunder (each such series voting as a separate class) by notice in writing to the Company (and to the Trustee if given by Securityholders), may declare the entire principal (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 such series) of all Securities of such series, and the interest accrued thereon, if any, to be due and payable immediately, and upon any such declaration, the same shall become immediately due and payable.

The foregoing provisions, however, are subject to the condition that if, at any time after the principal amount (or, if the Securities are Original Issue Discount Securities, such portion of the principal as may be specified in the terms thereof of the Securities of any one or more series (or of all the Securities, as the case may be) shall have been so declared due and payable, and before any judgment or decree for the payment of moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all matured installments of interest upon all the Securities of such series (or upon all the Securities, as the case may be) and the principal of any and all Securities of such series (or of any and all the Securities, as the case may be) which shall have become due otherwise than by declaration (with interest on overdue installments of interest to the extent permitted by law and on such principal at the rate or rates of interest borne by, or prescribed therefor in the Securities of such series to the date of such payment or deposit) and interest upon such principal and, to the extent that payment of such interest is enforceable under applicable law, on overdue installments of interest, at the same rate as the rate of interest or Yield to Maturity (in the case of Original Issue Discount Securities) specified in the Securities of such series (or at the respective rates of interest or Yields to Maturity of all the Securities, as the case may be) to the date of such payment or deposit; and the amounts payable to the Trustee under Section 7.06 and any and all defaults under the Indenture with respect to Securities of such series (or all Securities, as the case may be), other than the non—payment of principal of and any accrued interest on Securities of such series (or any Securities, as the case may be) which shall have become due by declaration shall have been cured, remedied or waived as provided in Section 6.09—then and in every such case the Holders of a majority in principal amount of the Securities of such series (or of all the Securities, as the case may be) then Outstanding (such series or all series voting as one class if more than one series are so entitled) by written notice to the Company and to the Trustee, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair any right consequent thereon.

For all purposes under this Indenture, if a portion of the principal of any Original Issue Discount Securities shall have been accelerated and declared due and payable pursuant to the provisions hereof, then, from and after such declaration, unless such declaration has been rescinded and annulled, the principal amount of such Original Issue Discount Securities shall be deemed, for all purposes hereunder, to be such portion of the principal thereof as shall be due and payable as a result of such acceleration, and payment of such portion of the principal thereof as shall be due and payable as a result of such acceleration, together with interest, if any, thereon and all other amounts owing thereunder, shall constitute payment in full of such Original Issue Discount Securities.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of such rescission or annulment or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Trustee and the Holders of the Securities of such series (or of all the Securities, as the case may be) shall be restored respectively to their former

positions and rights hereunder, and all rights, remedies and powers of the Company and the Trustee and the Holders of the Securities of such series (or of all the Securities, as the case may be) shall continue as though no such proceedings had been taken.

SECTION 6.02. Covenant of Company to Pay to Trustee Whole Amount Due on Securities on Default in Payment of Interest or Principal The Company covenants that:

(a) in case default shall be made in the payment of any installment of interest on any of the Securities of any series as and when the same shall become due and payable and which payment has not been extended in accordance with the provisions of a Supplemental Indenture, and such default shall have continued for a period of 30 days;

(b) in case default shall be made in the payment of all or any part of the principal of any of the Securities of any series when the same shall have become due and payable and which payment has not been extended in accordance with the provisions of a Supplemental Indenture, whether at the Stated Maturity of such series or by any call for redemption or by declaration of acceleration or otherwise; or

(c) upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of the Holders of the Securities of such series, the whole amount that then shall have become due and payable on all such Securities of such series for principal (and any premium) and interest together with interest upon the overdue principal and installments of interest (to the extent permitted by law) at the rate or rates of interest borne by or Yield to Maturity (in the case of Original Issue Discount Securities), or prescribed therefor in, the Securities of such series; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expense of collection, including a reasonable compensation to the Trustee, its agents and counsel, and any expenses or liabilities incurred, and all advances made, by the Trustee hereunder other than through its negligence or bad faith.

In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as Trustee of an express trust, shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company or any other obligor upon such Securities, and collect in the manner provided by law out of the property of the Company or any other obligor upon such Securities wherever situated the moneys adjudged or decreed to be payable.

If an Event of Default with respect to Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of 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 6.03. Trustee May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other similar judicial proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities of any series shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered, to the fullest extent permitted by law, by intervention in such proceeding or otherwise:

(a) 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 (or, if the Securities are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of such Securities) and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the

Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due 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 7.06.

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

SECTION 6.04. Trustee May Enforce Claims Without Possession of Securities. All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee to the fullest extent permitted by law without the possession of any of the Securities of any 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 agents and counsel, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

SECTION 6.05. Application of Moneys Collected by Trustee. Any moneys collected by the Trustee pursuant to Section 6.02 shall be applied in the order following, at the date or dates fixed by the Trustee for the distribution of such moneys, upon presentation of the several Securities in respect of which moneys have been collected, and stamping thereon the payment, if only partially paid, and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due to the Trustee under Section 7.06;

SECOND: In case the principal of the Outstanding Securities in respect of which moneys have been collected shall not have become due and be unpaid, to the payment of any interest on such Securities, in the order of the maturity of the installments of such interest, with interest upon the overdue installments of interest (so far as permitted by law and to the extent that such interest has been collected by the Trustee at the rate or rates of interest borne by or Yield to Maturity (in the case of Original Issue Discount Securities) of such Securities or prescribed therefor therein) such payments to be made ratably to the Persons entitled thereto, without discrimination or preference;

THIRD: In case the principal of the Outstanding Securities in respect of which such moneys have been collected shall have become due, by declaration or otherwise, to the payment of the whole amount then owing and unpaid upon such Securities for principal and interest, if any, with interest on the overdue principal and any installments of interest (so far as permitted by law and to the extent that such interest has been collected by the Trustee) at the rate or rates of interest borne by or Yield to Maturity (in the case of Original Issue Discount Securities), or prescribed therefor in, such Securities; and in case such moneys shall be insufficient to pay in full the whole amount so due and unpaid upon such Securities, then to the payment of such principal and interest or Yield to Maturity, without preference or priority of principal over interest or Yield to Maturity, or of interest or Yield to Maturity over principal, or of any installment of interest over any other installment of interest, or of any Security over any other Security, ratably to the aggregate of such principal and accrued and unpaid interest or Yield to Maturity; and

FOURTH: To the payment of the remainder, with appropriate interest to the Company or its successors or assigns, or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

SECTION 6.06. Limitation on Suits by Holders of Securities. No Holder of any Security of any series shall have any right by virtue or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless such Holder previously shall have given to the Trustee written notice of a continuing Event of Default, as hereinbefore provided, and unless also the Holders of not less than 25% in principal amount of the Securities of such series then Outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby (including the reasonable fees of counsel for the Trustee), and the Trustee, for 60 days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or

proceeding and no direction inconsistent with such written request shall have been given to the Trustee by the holders of a majority in principal amount of the outstanding debt securities pursuant to this Section 6.06; it being understood and intended, and being expressly covenanted by the taker and Holder of every Security with every other taker and Holder and the Trustee, that no one or more Holders of Securities of any series appertaining to such Securities shall have any right in any manner whatever by virtue or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of the Holders of any other of such Securities, or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders of Securities of the applicable series. For the protection and enforcement of the provisions of this Section 6.06, each and every Holder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provisions in this Indenture, the right of any Holder of any Security to receive payment of the principal of and interest on such Security on or after the respective due dates expressed in such Security (or, in the case of redemption, on or after the date fixed for redemption), or to institute suit for the enforcement of any such payment on or after such respective dates shall not be impaired or affected without the consent of such Holder.

SECTION 6.07. Rights and Remedies Cumulative. All powers and remedies given by this Article Six to the Trustee or to the Holders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the Holders, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any Holder of any of the Securities to exercise any right or power accruing upon any default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and, subject to the provisions of Section 6.06, every power and remedy given by this Article Six or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders. 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 6.08. Delay or Omission Not Waiver. No delay or omission of the Trustee or of any Holder of any Securities 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. Subject to the provisions of Section 6.06, every right and remedy given by this Article Six or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

SECTION 6.09. Control by Holders; Waiver of Past Defaults. The Holders of a majority in principal amount of the Securities of all series (voting as one class) at the time Outstanding (determined as provided in Section 8.04) 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; provided, however, that, subject to Section 7.01 the Trustee shall have the right to decline to follow any such direction if the Trustee in reliance upon an Opinion of Counsel determines that the action so directed may not lawfully be taken, or if the Trustee in good faith shall, by a Responsible Officer or Officers of the Trustee, determine that the proceedings so directed would be illegal or involve it in personal liability or be unduly prejudicial to the rights of Holders not parties to such direction, and provided further that nothing in this Indenture shall impair the right of the Trustee to take any action deemed proper by the Trustee and which is not inconsistent with such direction by the Holders.

The Company may set a special record date for purposes of determining the identity of the Holders of Securities entitled to vote or consent to any action by vote or consent authorized or permitted by this Section 6.09. Such record date shall be the later of 15 days prior to the first solicitation of such consent or the date of the most recent list of Holders furnished to the Trustee pursuant to Section 5.01 of this Indenture prior to such solicitation.

The Holders of not less than a majority in principal amount of the Securities of any series at the time Outstanding (determined as provided in Section 8.04) may on behalf of the Holders of all the Securities of such series waive any past Event of Default with respect to such series and its consequences (subject to Section 6.02), except a continuing Event of Default specified in Section 6.01(a), (b) or (c), or in respect of a covenant or provision

of this Indenture which under Article Ten cannot be modified or amended without the consent of the Holder of each Security so affected. Upon any such waiver, the Company, the Trustee and the Holders of the Securities of such series shall be restored to their former positions and rights hereunder, respectively, and such Event of Default shall be deemed to have been cured and not continuing for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

SECTION 6.10. Trustee to Give Notice of Defaults Known to it, but May Withhold in Certain Circumstances The Trustee shall, within 90 days after the occurrence of a default with respect to the Securities of any series, give notice of all defaults with respect to that series known to the Trustee to all Holders of Securities of such series in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act, unless in each case such defaults shall have been cured before the mailing or publication of such notice (the term "default" for the purpose of this Section being hereby defined to mean any event or condition which is, or with notice or lapse of time or both would become, an Event of Default); provided, that, except in the case of default in the payment of the principal of or interest on any of the 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 or trustees and/or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Securityholders of such series.

SECTION 6.11. Requirement of an Undertaking to Pay Costs in Certain Suits Under the Indenture or Against the Trustee All parties to this Indenture agree, and each Holder of any Security by such Holder's 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 6.11 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder of Securities of any series, or group of such Holders, holding in the aggregate more than ten percent in principal amount of the Securities of such series Outstanding, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or any interest or premium on any Security, on or after the due date expressed in such Security or for such interest (or in the case of any redemption, on or after the dated fixed for redemption).

SECTION 6.12. Waiver of Stay or Extension Laws The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that they 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 7

CONCERNING THE TRUSTEE

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

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

(a) prior to the occurrence of an Event of Default and after the curing, remedying or waiving of all Events of Default which may have occurred:

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

(2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; 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 (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein); and

(3) this Subsection shall not be construed to limit the effect of the first paragraph and the second to last paragraph of this Section;

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

(c) 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 Securities pursuant to Section 6.09 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.

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

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

(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, consent, order, approval, bond, debenture, note or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) Any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate (unless other evidence in respect thereof shall be herein specifically prescribed); and any resolution of the Board of Directors may be evidenced to the Trustee by a Board Resolution;

(c) The Trustee may consult with counsel 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 accordance with such written advice or Opinion of Counsel;

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

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

(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, consent, order, approval, bond, debenture, note or other paper or document, unless requested in writing so to do by the Holders of Securities pursuant to Section 6.09; provided, however, that if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require reasonable indemnity against such costs, expenses or liabilities as a condition to such proceeding; and provided further, that nothing in this subsection (f) shall require the Trustee to give the Securityholders any notice other than that required by Section 6.10. The reasonable expense of every such examination shall be paid by the Company or, if paid by the Trustee, shall be reimbursed by the Company upon demand;

(g) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents 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

(h) The Trustee shall be under no responsibility for the approval by it in good faith of any expert for any of the purposes expressed in this Indenture;

(i) The Trustee shall not be deemed to have notice or be charged with knowledge of any default (within the meaning of Section 602) or Event of Default with respect to the Securities of any series for which it is acting as Trustee unless written notice of such default or Event of Default, as the case may be, is received by the Trustee at the Corporate Trust Office of the Trustee from the Company, any other obligor upon such Securities or by any Holder of such Securities, and such notice references the Securities and this Indenture;

(j) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder;

(k) The Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any persons authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded;

(l) The permissive right of the Trustee hereunder to take or omit to take any action shall not be construed as a duty; and

(m) Anything in this Indenture notwithstanding, in no event shall the Trustee be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to loss of profit), even if the Company has been advised as to the likelihood of such loss or damage and regardless of the form of action.

SECTION 7.03. Trustee Not Responsible for Recitals or Application of Proceeds The recitals contained herein and in the Securities (other than the certificate of authentication on the Securities) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. The Trustee shall not be accountable for the use or application by the Company of any of the Securities or of the proceeds thereof.

SECTION 7.04. Trustee May Own Securities The Trustee, any Paying Agent, registrar or any agent of the Company or of the Trustee, in its individual or any other capacity, may become the owner or pledgee of Securities with the same rights it would have if it were not Trustee, Paying Agent, registrar or such other agent.

SECTION 7.05. Moneys Received by Trustee to be Held in Trust Moneys held by the Trustee in trust need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

SECTION 7.06. Trustee Entitled to Compensation, Reimbursement and Indemnity The Company agrees to pay to the Trustee from time to time reasonable compensation (which shall not be limited by any provision of law in regard to the compensation of a trustee of any express trust), and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in connection with the acceptance or administration of its trust under this Indenture (including the reasonable

compensation and the expenses and disbursements of its counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence or bad faith. The Company also agrees to indemnify the Trustee and its officers, directors, agents and employees for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on the part of the Trustee and arising out of or in connection with the acceptance or administration of this trust, including the reasonable costs and expenses of defending itself against any claim of liability in the premises. The obligations of the Company under this Section to compensate the Trustee, to pay or reimburse the Trustee for expenses, disbursements and advances and to indemnify and hold harmless the Trustee and its officers, directors, agents and employees shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Indenture and the resignation or removal of the Trustee. Such additional indebtedness shall be secured by a lien prior to that of 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 or interest or redemption premium on particular Securities.

In addition and without prejudice to the rights provided to the Trustee under any of the provisions of this Indenture, when the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 601(e) or Section 601(f), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable Federal and State bankruptcy, insolvency or other similar law.

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

SECTION 7.08. Disqualification; Conflicting Interest If the Trustee has or shall acquire a conflicting interest within the meaning of Section 310(b) of the Trust Indenture Act, the Trustee shall eliminate such interest, apply to the Commission for permission to continue as trustee (if any of the Securities are registered pursuant to the Securities Act) or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture. To the extent permitted by such Act, the Trustee, by virtue of its capacity as Trustee of the Securities of any series shall not be deemed to have a conflicting interest arising from its capacity as trustee in respect of the Securities of any other series issued under this Indenture. 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 7.09. Requirements for Eligibility of Trustee There shall always be at least one Trustee hereunder. The Trustee hereunder shall at all times be a Company organized and doing business as a commercial bank under the laws of the United States of America or any state thereof or of the District of Columbia or a Company or other Person permitted to act as a trustee by the Commission and, in each case, authorized under such laws to exercise corporate trust powers, having (or, in the case of a subsidiary of a bank holding company, its bank holding company parent shall have) a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by Federal, State or District of Columbia authority. If such Company or bank holding company parent 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 Company or bank holding company parent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. No obligor on the Subordinated Securities or Person directly or indirectly controlling, controlled by or under common control with such obligor shall serve as Trustee. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 7.09, the Trustee shall resign immediately in the manner and with the effect specified in this Article Seven.

SECTION 7.10. Resignation and Removal of Trustee; 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 in accordance with the applicable requirements of Section 6.11.

The Trustee may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 7.11 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may, at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

The Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series, delivered to the Trustee and to the Company. If the instrument of acceptance by a successor Trustee required by Section 6.11 shall not have been delivered to the Trustee within 30 days after the Trustee's receipt of such notice of removal, the departing Trustee may, at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(b) In case at any time any of the following shall occur:

(1) the Trustee shall fail to comply with the provisions of subsection (a) of Section 7.08 after written request therefor by the Company or by any Securityholder who has been a bona fide Holder of a Security or Securities of the applicable series for at least six months; or

(2) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.09 and shall fail to resign after written request therefor by the Company or by any such Securityholder; or

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

(4) the Company shall determine that the Trustee has failed to perform its obligations under this Indenture in any material respect, then, in any such case, the Company may remove the Trustee and appoint a successor trustee by written instrument executed by an authorized officer of the Company, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.11, any Securityholder who has been a bona fide Holder of a Security or Securities of the affected series for at least six months may, on such Person's behalf and on behalf of 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 such series. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The Holders of a majority in principal amount of the Securities Outstanding (determined as provided in Section 8.04) may at any time remove the Trustee and appoint a successor trustee by written instrument or instruments signed by such Holders or their attorneys—in—fact duly authorized, or by the affidavits of the permanent chairman and secretary of a meeting of the Securityholders evidencing the vote upon a resolution or resolutions submitted thereto with respect to such removal and appointment (as provided in Article Nine), and by delivery thereof to the Trustee so removed, to the successor trustee and to the Company.

(d) Any resignation or removal of the Trustee and any appointment of a successor trustee pursuant to any of the provisions of this Section 7.10 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.11.

SECTION 7.11. Acceptance of Appointment by Successor Trustee. Any successor trustee appointed as provided in Section 7.10 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations with respect to such series of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers with respect to the trustee so ceasing to act. Upon written request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 7.06.

No successor trustee shall accept appointment as provided in this Section 7.11 unless at the time of such acceptance such successor trustee shall be qualified under the provisions of Section 7.08 and eligible under the provisions of Section 7.09.

SECTION 7.12. Successor to Trustee by Merger, Consolidation or Succession to Business Any Company into which the Trustee may be merged or converted or with which it may be consolidated, or any Company resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Company succeeding to all or substantially all of the corporate trust business of the Trustee (including the administration of the trust created by this Indenture), shall be the successor of the Trustee hereunder, provided such Company shall be qualified under the provisions of Section 7.08 and eligible under the provisions of Section 7.09, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

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

SECTION 7.13. Preferential Collection of Claims Against Company. If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

SECTION 7.14. Appointment of Authenticating Agent. As long as any Subordinated Securities of a series remain Outstanding, the Trustee may, by an instrument in writing, appoint with the approval of the Company an authenticating agent (the "Authenticating Agent") which shall be authorized to act on behalf of the Trustee to authenticate Subordinated Securities, including Subordinated Securities issued upon exchange, registration of transfer, partial redemption or pursuant to Section 2.09. Subordinated Securities of each such series authenticated by such Authenticating Agent shall be entitled to the benefits of this Subordinated Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee. Whenever reference is made in this Subordinated Indenture to the authentication and delivery of Subordinated Securities of any series by the Trustee or to 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 for such series and a Certificate of Authentication executed on behalf of the Trustee by such Authenticating Agent. Such Authenticating Agent shall at all times be a corporation organized and doing business under the laws of the United States of America or of any State, authorized under such laws to exercise corporate trust powers, having (or in the case of a subsidiary of a bank holding company, its bank holding company parent shall have) a combined capital and surplus of at least \$45,000,000 (determined as provided in Section 7.09 with respect to the Trustee) and subject to supervision or examination by Federal or State authority.

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

Upon receiving such a notice of resignation or upon such a termination, or in case in any time any Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 7.14 with respect to one or more series of Securities, the Trustee shall upon receipt of a Company Order appoint a successor Authenticating Agent and the Company shall provide notice of such appointment to all Holders of Securities of such series in the manner and to the extent provided in Section 13.02. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all rights, powers, duties and responsibilities of its predecessor hereunder, with like effect as if originally named as Authenticating Agent. The Company agrees to pay to the Authenticating Agent for such series from time to time reasonable compensation. The Authenticating

Agent for the Securities of any series shall have no responsibility or liability for any action taken by it as such at the direction of the Trustee.

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

This is one of the Securities described in the within—mentioned Indenture.

_____, as Trustee

By _____
As Authenticating Agent

By _____
Authorized Signatory

Sections 7.02, 7.03, 7.04, 7.06 and 8.03 shall be applicable to any Authenticating Agent.

ARTICLE 8

CONCERNING THE SECURITYHOLDERS

SECTION 8.01. Evidence of Action by Securityholders. Whenever in this Indenture it is provided that the Holders of a specified percentage in principal amount of the Securities of any or all series may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the Holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by such Securityholders in Person or by agent or proxy appointed in writing, or (b) by the record of such Holders of Securities voting in favor thereof at any meeting of such Securityholders duly called and held in accordance with the provisions of Article Nine, or (c) by a combination of such instrument or instruments and any such record of such a meeting of such Securityholders.

SECTION 8.02. Proof of Execution of Instruments and of Holding of Securities. Subject to the provisions of Sections 7.01, 7.02 and 9.05, proof of the execution of any instrument by a Securityholder or such Holder's agent or proxy and proof of the holding by any Person of any of the Securities shall be sufficient if made in the following manner:

(a) The fact and date of the execution by any such Person of any instrument may be proved in any reasonable manner acceptable to the Trustee;

(b) The ownership of Securities of any series shall be proved by the Register of such Securities of such series, or by certificates of the Security registrar or registrars thereof.

The Trustee shall not be bound to recognize any Person as a Securityholder unless and until such Person's title to the Securities held by it is proved in the manner in this Article Eight provided.

The record of any Securityholders' meeting shall be proved in the manner provided in Section 9.06.

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

SECTION 8.03. Who May be Deemed Owners of Securities Prior to due presentment for transfer of any Security, the Company, the Trustee and any agent of the Company or the Trustee may deem and treat the Person in whose name such Security shall be registered upon the Register of Securities of the series of which such Security is a part as the absolute owner of such Security (whether or not such Security shall be overdue and notwithstanding any notation of ownership or other writing thereon) for the purpose of receiving payment of or on account of the principal of and interest, subject to the provisions of this Indenture, on such Security and for all other purposes; and neither the Company nor the Trustee nor any agent of the Company or the Trustee shall be affected by any notice to the contrary. All such payments so made to any such Holder for the time being, or upon such Holder's order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability of moneys payable upon any such Security.

If the Securities of any series are issued in the form of one or more Global Securities, the Depository therefor may grant proxies to Persons having a beneficial ownership in such Global Security or Securities for purposes of voting or otherwise responding to any request for consent, waiver or other action which the Holder of such Registered Security is entitled to grant or take under this Indenture and the Trustee shall accept such proxies for the purposes granted; provided that neither the Trustee nor the Company shall have any obligation with respect to the grant of or solicitation by the Depository of such proxies.

SECTION 8.04. Securities Owned by the Company or Controlled or Controlling Persons Disregarded for Certain Purposes In determining whether the Holders of the requisite principal amount of Securities have concurred in any demand, direction, request, notice, vote, consent, waiver or other action under this Indenture, Securities which are owned by the Company or any other obligor on the Securities or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Securities shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, provided that for the purposes of determining whether the Trustee shall be protected in relying on any such demand, direction, request, notice, vote, consent, waiver or other action, only Securities which a Responsible Officer of the Trustee assigned to its Principal Office knows are so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section 8.04, if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Securities and that the pledgee is not a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor.

Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officer's Certificate listing and identifying all Securities, if any, known by the Company to be owned or held by or for the account of the Company or any other obligor on the Securities or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Securities; and, subject to the provisions of Section 7.01, the Trustee shall be entitled to accept such Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all Securities not listed therein are Outstanding for the purpose of any such determination.

SECTION 8.05. Instruments Executed by Securityholders Bind Future Holders At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the Holders of the percentage in principal amount of the Securities specified in this Indenture in connection with such action, any Holder of a Security which is shown by the evidence to be included in the Securities the Holders of which have consented to such action may, by filing written notice with the Trustee at its principal office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Security. Except as aforesaid any such action taken by the Holder of any Security and any direction, demand, request, notice, waiver, consent, vote or other action of the Holder of any Security which by any provisions of this Indenture is required or permitted to be given shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Security, and of any Security issued in lieu thereof, irrespective of whether any notation in regard thereto is made upon such Security. Any action taken by the Holders of the percentage in principal amount of the Securities of any or all series specified in this Indenture in connection with such action shall be conclusively binding upon the Company, the Trustee and the Holders of all of the Securities of such series subject, however, to the provisions of Section 7.01.

ARTICLE 9

SECURITYHOLDERS' MEETINGS

SECTION 9.01. Purposes for Which Meetings May be Called. A meeting of Holders of Securities of any or all series may be called at any time and from time to time pursuant to the provisions of this Article for any of the following purposes:

- (a) to give any notice to the Company or to the Trustee, or to give any directions to the Trustee, or to consent to the waiving of any default hereunder and its consequences, or to take any other action authorized to be taken by Holders of Securities of any or all series, as the case may be, pursuant to any of the provisions of Article Six;
- (b) to remove the Trustee and appoint a successor trustee pursuant to the provisions of Article Seven;
- (c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 10.02; or
- (d) to take any other action authorized to be taken by or on behalf of the Holders of any specified principal amount of the Securities of any or all series, as the case may be, under any other provision of this Indenture or under applicable law.

SECTION 9.02. Manner of Calling Meetings. The Trustee may at any time call a meeting of Securityholders to take any action specified in Section 9.01, to be held at such time and at such place in The City of New York, New York, or such other city as the Trustee shall determine. Notice of every meeting of Securityholders, setting forth the time and place of such meeting and in general terms the action proposed to be taken at such meeting, shall be mailed not less than 20 nor more than 60 days prior to the date fixed for the meeting.

SECTION 9.03. Call of Meeting by the Company or Securityholders. In case at any time the Company pursuant to a resolution of its Board of Directors, or the Holders of not less than ten percent in principal amount of the Securities of any or all series, as the case may be, then Outstanding, shall have requested the Trustee to call a meeting of Holders of Securities of any or all series, as the case may be, to take any action authorized in Section 9.01 by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed notice of such meeting within 20 days after receipt of such request, then the Company or such Holders of Securities in the amount above specified may determine the time and place in any of the City of Seattle, Washington, County of King, Washington or The City of New York, New York for such meeting and may call such meeting to take any action authorized in Section 9.01, by mailing (and publishing, if required) notice thereof as provided in Section 9.02.

SECTION 9.04. Who May Attend and Vote at Meetings. To be entitled to vote at any meeting of Securityholders a Person shall (a) be a Holder of one or more Securities with respect to which the meeting is being held; or (b) be a Person appointed by an instrument in writing as proxy by such Holder of one or more Securities. The only Persons who shall be entitled to be present or to speak at any meeting of Securityholders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

SECTION 9.05. Regulations May be Made by Trustee; Conduct of the Meeting; Voting Rights—Adjournment. Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Securityholders, in regard to proof of the holding of Securities and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Section 8.02. and the appointment of any proxy shall be proved in the manner specified in said Section 8.02; provided, however, that such regulations may provide that written instruments appointing proxies regular on their face, may be presumed valid and genuine without the proof hereinabove or in said Section 8.02 specified.

The Trustee shall by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Securityholders as provided in Section 9.03, in which case the Company or the Securityholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by majority vote of the meeting.

Subject to the provisions of Section 8.04, at any meeting each Securityholder or proxy shall be entitled to one vote for each \$1,000 principal amount (in the case of Original Issue Discount Securities, such principal amount shall be equal to such portion of the principal amount as may be specified in the terms of such series) of Securities held or represented by such Holder; provided, however, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Securities held by such Person or instruments in writing as aforesaid duly designating such Person as the Person to vote on behalf of other Securityholders. Any meeting of Securityholders duly called pursuant to the provisions of Section 9.02 or 9.03 may be adjourned from time to time, and the meeting may be held so adjourned without further notice.

At any meeting of Securityholders, the presence of Persons holding or representing Securities in principal amount sufficient to take action on the business for the transaction of which such meeting was called shall constitute a quorum, but, if less than a quorum is present, the Persons holding or representing a majority in principal amount of the Securities represented at the meeting may adjourn such meeting with the same effect for all intents and purposes, as though a quorum had been present.

SECTION 9.06. Manner of Voting at Meetings and Record to be Kept The vote upon any resolution submitted to any meeting of Securityholders shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities or of their representatives by proxy and the principal amount or principal amounts of the Securities held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Securityholders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 9.02. The record shall show the principal amount or principal amounts of the Securities voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one copy thereof shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee.

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

SECTION 9.07. Exercise of Rights of Trustee and Securityholders Not to be Hindered or Delayed Nothing in this Article Nine contained shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Securityholders or any rights expressly or impliedly conferred hereunder to make such call, any hindrances or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Securityholders under any of the provisions of this Indenture or of the Securities.

ARTICLE 10

SUPPLEMENTAL INDENTURES

SECTION 10.01. Purposes for Which Supplemental Indentures May be Entered into Without Consent of Securityholders Without the consent of the Holders of any Securities, the Company and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall comply with the provisions of the Trust Indenture Act as then in effect) for one or more of the following purposes:

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

(b) if deemed appropriate by the Company or required by law, to evidence the succession of another Company to the Company or successive successions and the assumption by the successor Company of the covenants, agreements and obligations of the Company pursuant to Article Four hereof;

(c) to add to the covenants of the Company such further covenants, restrictions or conditions as its Board of Directors and the Trustee shall consider to be for the protection of the Holders of all or any series of Securities (and if such covenants, restrictions or conditions are to be for the benefit of less than all series of Securities, stating that such covenants, restrictions or conditions are expressly being included solely for the benefit of such series), and to make the occurrence, or the occurrence and continuance, of a default in any such additional covenants, restrictions or conditions an Event of Default permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth; provided, however, that in respect to any such additional covenant, restriction or condition such Supplemental Indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default;

(d) to add or change any of the provisions of this Indenture to such extent as shall be necessary to facilitate the issuance of Securities in (i) global form or (ii) bearer form, registerable or not registerable as to principal or principal and interest, and with or without coupons;

(e) to change or eliminate any of the provisions of this Indenture; provided, however, that any such change or elimination shall become effective only when there is no Security of any series Outstanding created prior to the execution of such Supplemental Indenture which is entitled to the benefit of such provision;

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

(g) to appoint, at the request of the Trustee, a successor Trustee for a particular series of Securities to act as such pursuant to the provisions of this Indenture and to add to or change the provisions of this Indenture to such extent as shall be necessary to facilitate the performance of the duties of such trustee; and

(h) to cure any ambiguity or to correct or supplement any provisions contained herein or in any Supplemental Indenture which may be defective or inconsistent with any other provision contained herein or in any Supplemental Indenture, or to make such other provisions in regard to matters or questions arising under this Indenture or any Supplemental Indenture which shall not adversely affect the interests of the Holders of the Securities.

SECTION 10.02. Modification of Indenture with Consent of Holders of Securities With the consent (evidenced as provided in Section 8.01) of the Holders of not less than a majority in principal amount of the Securities of all series at the time Outstanding (determined as provided in Section 8.04) affected by such Supplemental Indenture (voting as one class), the Company and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall comply with the provisions of the Trust Indenture Act as then in effect) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any Supplemental Indenture or of modifying in any manner

the rights of the Holders of the Securities of each such series; provided, however, that no such Supplemental Indenture shall, without the consent of the Holders of each Outstanding Security affect thereby:

(a) change the Stated Maturity of the principal of, or any installment of principal of or interest on, any Security, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, or reduce the amount of the principal of an Original Issue Discount Security or any other Security which would be due and payable upon a declaration of acceleration of the Stated Maturity thereof pursuant to Section 6.01, 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 Stated Maturity thereof (or, in the case of redemption, on or after the date fixed for redemption), or modify the provisions of this Indenture with respect to this subordination of the Securities in a manner adverse to the Holders, or

(b) Reduce the percentage in principal amount of the Outstanding Securities the consent of the Holders of which is required for any such Supplemental Indenture, or the consent of the Holders of which 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

(c) Change the time of payment or reduce the amount of any minimum sinking account or fund payment or

(d) Modify any of the provisions of this Section 10.02, 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 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 Holders of Securities of such series, with respect to such covenant or provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

Upon the request of the Company, accompanied by a copy of a resolution of the Board of Directors (which resolution may provide general terms or parameters for such action and may provide that the specific terms of such action may be determined in accordance with or pursuant to a Company Order) certified by the secretary or an assistant secretary of the Company authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of the Holders of the Securities as aforesaid and other documents, if any, required by Section 8.01, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

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

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions to this Section, the Trustee shall give notice thereof to the Holders of then Outstanding Registered Securities of each series affected thereby, by mailing a notice thereof by first-class mail to such Holders at their addresses as they shall appear on the Security Register, and in each case such notice shall set forth in general terms the substance of such supplemental indenture. Any failure of the Company to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

SECTION 10.03. Effect of Supplemental Indentures. Upon the execution of any Supplemental Indenture pursuant to the provisions of this Article Ten, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the Holders of Securities shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of

any such Supplemental Indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

The Trustee shall be entitled to receive, and subject to the provisions of Section 7.01 shall be entitled to rely upon, an Opinion of Counsel as conclusive evidence that any such Supplemental Indenture complies with the provisions of this Article Ten and that the Securities affected by the Supplemental Indenture, when such Securities are authenticated and delivered by the Trustee and executed and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will be valid and binding obligations of the Company, except as any rights thereunder may be limited by bankruptcy, insolvency and other similar laws affecting the enforcement of creditors' rights generally and by general equity principles.

SECTION 10.04. Securities May Bear Notation of Changes by Supplemental Indentures Securities authenticated and delivered after the execution of any Supplemental Indenture pursuant to the provisions of this Article Ten, or after any action taken at a Securityholders' meeting pursuant to Article Nine, may bear a notation in form approved by the Trustee as to any matter provided for in such Supplemental Indenture or as to any action taken at any such meeting. If the Company or the Trustee shall so determine, new Securities so modified as to conform, in the opinion of the Trustee and the Company, to any modification of this Indenture contained in any such Supplemental Indenture may be prepared by the Company, authenticated by the Trustee and delivered in exchange for the Securities then Outstanding.

ARTICLE 11

DISCHARGE; DEFEASANCE

SECTION 11.01. Satisfaction and Discharge of Indenture.

(A) If at any time (i) the Company shall have paid or caused to be paid the principal of and interest on all the Securities of any series Outstanding hereunder (other than Securities of such series which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.09) as and when the same shall have become due and payable, or (ii) the Company shall have delivered to the Trustee for cancellation all Securities of any series theretofore authenticated (other than 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 2.09) or (iii) in the case of any series of Securities where the exact amount (including the currency of payment) of principal of and interest due on which can be determined at the time of making the deposit referred to in clause (b) below, (a) all the 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 (b) the Company shall have irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust the entire amount in (i) cash (other than moneys repaid by the Trustee or any Paying Agent to the Company in accordance with Section 11.04), (ii) in the case of any series of Securities the payments on which may only be made in Dollars, direct obligations of the United States of America, backed by its full faith and credit ("U.S. Government Obligations"), maturing as to principal and interest at such times and in such amounts as will insure the availability of cash sufficient to pay at such Maturity or upon such redemption, as the case may be, or (iii) a combination thereof, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay (a) the principal and interest on all Securities of such series on each date that such principal or interest is due and payable in accordance with the terms of the Indenture and the Securities of such series; (x) the principal and interest on all Securities of such series on each date that such principal or interest is due and payable and in accordance with the terms of the Indenture and the Securities of such series; and if, in any such 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 (i) rights of registration of transfer and exchange of Securities of such series and the Company's right of optional redemption, if any, (ii) substitution of mutilated, defaced, destroyed, lost or stolen Securities, (iii) rights of Holders of Securities to receive payments of principal thereof and interest thereon, upon the original stated due dates therefore (but not upon acceleration), (iv) any optional redemption rights of such series of Securities to the extent to be exercised to make such call for redemption within one year, (v) the rights, obligations, duties and immunities of the Trustee hereunder, including without limitation those under Section 7.6,

(vi) the rights of the Holders of securities of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them, and (vii) the obligations of the Company under Section 4.03 and the Trustee, on demand of the Company accompanied by an Officer's Certificate and an Opinion of Counsel and at the cost and expense of the Company, shall execute proper instruments acknowledging such satisfaction of and discharging this Indenture; provided, that the rights of Holders of the Securities to receive amounts in respect of principal of and interest on the Securities held by them shall not be delayed longer than required by then applicable mandatory rules or policies of any securities exchange upon which the Securities are listed. The Company agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Indenture or the Securities of such series.

(B) The following provisions shall apply to the Securities of each series unless specifically otherwise provided in an Officer's Certificate or indenture supplemental hereto provided pursuant to Section 2.03. In addition to discharge of the Indenture pursuant to the next preceding paragraph, in the case of any series of Securities the exact amounts (including the currency of payment) of principal of and interest due on which can be determined at the time of making the deposit referred to in clause (a) below, the Company shall be deemed to have paid and discharged the entire indebtedness on all the Securities of such a series on the date of the deposit referred to in clause (a) below, and the provisions of this Indenture with respect to the Securities of such series shall no longer be in effect (except as to (i) rights of registration of transfer and exchange of Securities of such series and the Company's right of optional redemption, if any, (ii) substitution of mutilated, defaced, destroyed, lost or stolen Securities, (iii) rights of Holders of Securities to receive payments of principal thereof and interest thereon, upon the original stated due dates therefor (but not upon acceleration), (iv) any optional redemption rights of such series of Securities to the extent to be exercised to make such call for redemption within one year, (v) the rights, obligations, duties and immunities of the Trustee hereunder, (vi) the rights of the Holders of Securities of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them and (vii) the obligations of the Company under Section 4.03 and the Trustee, at the expense of the Company, shall at the Company's request, execute proper instruments acknowledging the same, if

(a) with reference to this provision the Company has irrevocably deposited or caused to be irrevocably deposited with the Trustee as trust funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of the Securities of such series (i) cash in an amount, or (ii) in the case of any series of Securities the payments on which may only be made in United States Dollars, U.S. Government Obligations, maturing as to principal and interest at such times and in such amounts as will insure the availability of cash or (iii) a combination thereof, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay the principal and interest on all Securities of such series on each date that such principal or interest is due and payable in accordance with the terms of the Indenture and the Securities of such series;

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

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

(d) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for relating to the defeasance contemplated by this provision have been complied with.

(C) The Company shall be released from its obligations under Sections 4.02 and unless otherwise provided for in the Board Resolution, Officer's Certificate or Indenture supplemental hereto establishing such series of Securities, from all covenants and other obligations referred to in Section 2.03(18) or 2.03(20) with respect to such series of Securities outstanding on and after the date the conditions set forth below are satisfied (hereinafter, "covenant defeasance"). For this purpose, such covenant defeasance means that, with respect to the Outstanding Securities of any series, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in such Section, whether directly or indirectly by reason of any reference elsewhere herein to such Section or by reason of any reference in such Section to any other provision herein or in any other document and such omission to comply shall not constitute an Event of Default under Section 6.01, but the remainder of this Indenture and such Securities shall be unaffected thereby. The following shall be the conditions to application of this subsection C of this Section 11.01:

(a) The Company has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the holders of the Securities of such series and coupons appertaining thereto, (i) cash in an amount, or (ii) in the case of any series of Securities the payments on which may only be made in United States Dollars, U.S. Government Obligations maturing as to principal and interest at such times and in such amounts as will insure the availability of cash or (iii) a combination thereof, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay the principal and interest on all Securities of such series in accordance with the terms of the Indenture and the Securities of such series;

(b) No Event of Default or event which with notice or lapse of time or both would become an Event of Default with respect to the Securities shall have occurred and be continuing on the date of such deposit;

(c) Such covenant defeasance shall not cause the Trustee to have a conflicting interest as defined in Section 7.08 and for purposes of the Trust Indenture Act with respect to any securities of the Company;

(d) Such covenant defeasance shall not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(e) Such covenant defeasance shall not cause any Securities then listed on any registered national securities exchange under the Exchange Act to be delisted;

(f) The Company shall have delivered to the Trustee an Officer's Certificate and Opinion of Counsel to the effect that the Holders of the Securities of such series will not recognize income, gain or loss for United States Federal income tax purposes as a result of such covenant defeasance and will be subject to United States 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

(g) The Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for relating to the covenant defeasance contemplated by this provision have been complied with.

SECTION 11.02. Application by Trustee of Funds Deposited for Payment of Securities Subject to Section 11.04, all moneys deposited with the Trustee (for other trustee) pursuant to Section 11.01 shall be held in trust and applied by it to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent), to the Holders of the particular Securities of such series for the payment or redemption of which such moneys have been deposited with the Trustee, of all sums due and to become due thereon for principal and interest; but such money need not be segregated from other funds except to the extent required by law.

SECTION 11.03. Repayment of Moneys Held by Paying Agent. In connection with the satisfaction and discharge of this Indenture with respect to Securities of any series, all moneys then held by any Paying Agent under the provisions of this Indenture with respect to such series of Securities shall, upon demand of the Company, be repaid to it or paid to the Trustee and thereupon such Paying Agent shall be released from all further liability with respect to such moneys.

SECTION 11.04. Return of Moneys Held by Trustee and Paying Agent Unclaimed for Two Years. Any moneys deposited with or paid to the Trustee or any Paying Agent for the payment of the principal of and any premium and interest on any Security and not so applied but remaining unclaimed under applicable law shall be transferred by the Trustee to the appropriate Persons in accordance with applicable laws, and the Holder of such Security of such series shall thereafter look only to such Persons for any payment which such Holder may be entitled to collect and all liability of the Trustee and such Paying Agent with respect to such moneys shall thereupon cease.

SECTION 11.05. Indemnity for U.S. Government of Obligations. The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations deposited pursuant to Section 11.01 or the principal or interest received in respect of such obligations.

ARTICLE 12

IMMUNITY OF INCORPORATORS,
STOCKHOLDERS, OFFICERS AND DIRECTORS

SECTION 12.01. Incorporators, Stockholders, Officers and Directors of Company Exempt From Individual Liability. No recourse under or upon any obligation, covenant or agreement of this Indenture, or of any Security, or for any claim based thereon or otherwise in respect thereof, shall be had against any incorporator, stockholder, officer or director, as such past, present or future, of the Company, either directly or through the Company, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Indenture and the obligations issued hereunder are solely corporate obligations, and that no personal liability whatever shall attach to, or is or shall be incurred by, the incorporators, stockholders, officers or directors, as such, of the Company because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Securities or implied therefrom; and that any and all such personal liability of every name and nature, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer or director, as such, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Securities or implied therefrom are hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of such Securities.

ARTICLE 13

MISCELLANEOUS PROVISIONS

SECTION 13.01. Successors and Assigns of the Company Bound by Indenture. All the covenants, stipulations, promises and agreements in this Indenture contained by or in behalf of the Company shall bind its successors and assigns, whether so expressed or not.

SECTION 13.02. Notices: Effectiveness. Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders of Securities to or on the Company, or by the Company or by the Holders of Securities to the Trustee or upon the Depository by the Company or the Trustee may be electronically communicated or hand delivered or sent by overnight courier, addressed to the relevant party as provided in this Section 13.02.

All communications intended for the Company shall be sent to:

Achieve Life Sciences, Inc.
1001 W. Broadway, Suite 400
Vancouver, British Columbia, V6H 4B1
Attention: Chief Financial Officer

All communications intended for the Trustee shall be sent to:

Attention: _____

or at any other address of which any of the foregoing shall have notified the others in any manner prescribed in this Section 13.02.

For all purposes of this Indenture, a notice or communication will be deemed effective:

(a) if delivered by hand or sent by overnight courier, on the day it is delivered unless (i) that day is not a Business Day in the city specified (a *Local Business Day*) in the address for notice provided by the recipient or (ii) if delivered after the close of business on a Local Business Day, then on the next succeeding Local Business Day or

(b) if sent by facsimile transmission, on the date transmitted, provided that oral or written confirmation of receipt is obtained by the sender unless the date of transmission and confirmation is not a Local Business Day, in which case, on the next succeeding Local Business Day.

Any notice, direction, requires, demand, consent or waiver by the Company, any Securityholder to or upon the Trustee shall be deemed to have been sufficiently given, made or filed, for all purposes, if given, made or filed in writing at the Principal Office of the Trustee in accordance with the provisions of this Section 13.02.

Any notice, request, consent or waiver by the Company or the Trustee upon the Depository shall have been sufficiently given, made or filed, for all purposes, if give or made in accordance with the provisions of this Section 13.02 at the address shown for such Depository in the Register or at such other address as the Depository shall have provided for purposes of notice.

SECTION 13.03. Compliance Certificates and Opinions. Upon on any request or application by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officer's 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 have been complied with, except that in the case of any such application or demand as to which the furnishing of such document is specifically required by any provision of this Indenture relating to such particular application or demand, no additional certificate or opinion need be furnished.

Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to Section 5.03(d) shall include (a) a statement that the Person making such certificate or opinion has read such covenant or condition; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable such Person to express an informed opinion as to whether or not such covenant or condition has been complied with; and (d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

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

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

SECTION 13.04. Days on Which Payment to be Made, Notice Given or Other Action Taken If any date on which a payment is to be made, notice given or other action taken hereunder is a Saturday, Sunday or legal holiday in the state in which the payment, notice or other action is to be made, given or taken, then such payment, notice or other action shall be made, given or taken on the next succeeding Business Day in such state, and in the case of any payment, no interest shall accrue for the delay.

SECTION 13.05. Provisions Required by Trust Indenture Act to Control. If and to the extent that any provision of this Indenture limits, qualifies or conflicts with another provision included in this Indenture which is required to be included in this Indenture by any of Sections 310 to 317, inclusive, of the Trust Indenture Act such required provision shall control.

SECTION 13.06. Governing Law and Waiver of Trial By Jury. THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (INCLUDING WITHOUT LIMITATION SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW OR ANY SUCCESSOR TO SUCH STATUTE). THE TRUSTEE AND THE COMPANY AGREE TO SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR STATE COURT LOCATED IN THE BOROUGH OF MANHATTAN, IN THE CITY OF NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE OR THE SECURITIES. THIS INDENTURE IS SUBJECT TO THE PROVISIONS OF THE TRUST INDENTURE ACT THAT ARE REQUIRED TO BE PART OF THIS INDENTURE AND SHALL, TO THE EXTENT APPLICABLE, BE GOVERNED BY SUCH PROVISIONS.

THE TRUSTEE AND THE COMPANY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS INDENTURE OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE TRUSTEE OR THE COMPANY RELATING THERETO. THE COMPANY ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE TRUSTEE AND THE HOLDERS ENTERING INTO THIS INDENTURE.

SECTION 13.07. Effect of Headings. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

SECTION 13.08. Judgment Currency. The Company agrees, to the fullest extent that it may effectively do so under applicable law, that (a) if for the purpose of obtaining judgment in any court it is necessary to convert the sum due in respect of the principal of or interest 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 The City of New York the Required Currency with the Judgment Currency on the day on which final unappealable judgment is entered, unless such day is not a New York Banking Day, then, to the extent permitted by applicable law, the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the New York Banking Day preceding the day on which final unappealable judgment is entered 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. The Company agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Trustee against loss if Dollars so purchased are less than the sum originally due to the Trustee in Dollars. For purposes of the foregoing, "New York Banking Day" means any day except a Saturday, Sunday or a legal holiday in The City of New York or a day on which banking institutions in The City of New York are authorized or required by law or executive order to close.

SECTION 13.09. Provisions of the Indenture and Securities for the Sole Benefit of the Parties and the Securityholders Nothing in this Indenture or in the Securities, expressed or implied, shall give or be construed to give any Person, firm or Company, other than the parties hereto and the Holders of the Securities, any legal or equitable right, remedy or claim under or in respect of this Indenture, or under any covenant, condition and provision herein contained; all its covenants, conditions and provisions being for the sole benefit of the parties hereto and of the Holders of the Securities.

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

SECTION 13.11. Facsimile or PDF. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

SECTION 13.12. Force Majeure. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions or loss of utilities; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

SECTION 13.13. U.S.A. Patriot Act. The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

IN WITNESS WHEREOF, ACHIEVE LIFE SCIENCES, INC. has caused this Indenture to be signed by its Chairman of the Board or its President or Chief Financial Officer or one of its Vice Presidents and Trustee has caused this Indenture to be signed and acknowledged by an appropriate officer all as of the day and year first written above.

ACHIEVE LIFE SCIENCES, INC.

By _____

Title: _____

_____, as Trustee

By _____

Title: _____

FORM OF SUBORDINATED DEBT SECURITY

[Face of Subordinated Security]

ACHIEVE LIFE SCIENCES, INC.

[If applicable, insert—FOR PURPOSES OF THE ORIGINAL ISSUE DISCOUNT PROVISIONS OF THE INTERNAL REVENUE CODE OF 1986, THE ISSUE PRICE OF THIS SUBORDINATED SECURITY IS % OF ITS PRINCIPAL AMOUNT AT STATED MATURITY SET FORTH BELOW (ITS “PRINCIPAL AMOUNT”), THE AMOUNT OF ORIGINAL ISSUE DISCOUNT IS % OF ITS PRINCIPAL AMOUNT, THE YIELD TO MATURITY IS % AND THE ISSUE DATE IS]

[IF THE SUBORDINATED SECURITY IS A GLOBAL SUBORDINATED SECURITY, INSERT—THIS NOTE IS A GLOBAL SUBORDINATED SECURITY. IT IS EXCHANGEABLE FOR NOTES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY (AS HEREINAFTER DEFINED) OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES HEREINAFTER DESCRIBED AND 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 A NOMINEE OF THE DEPOSITARY TO A SUCCESSOR OF THE DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.]

[Unless this Subordinated Security is presented by an authorized representative of The Depository Trust Company (55 Water Street, New York, New York) to the issuer or its agent for registration of transfer, exchange or payment and any certificate issued is registered in the name of Cede & co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.]

No.

§
CUSIP No.

Achieve Life Sciences, Inc., a Delaware Corporation (herein called the “Company”, which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received, hereby promises to pay to, or registered assigns, the principal sum of Dollars on [if Subordinated Security is to bear interest prior to maturity, insert—, and to pay interest thereon from or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually on and in each year, commencing , at the rate of % per annum, until the principal hereof is paid or made available for payment [if applicable, insert—, provided that any principal and premium, and any such installment of interest, which is overdue shall bear interest at the rate of % per annum (to the extent that the payment of such interest shall be legally enforceable), from the dates such amounts are due until they are paid or made available for payment, and such interest shall be payable on demand]. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose name this Subordinated Security (or one or more Predecessor Subordinated Securities) is registered at the close of business on the Record Date for such interest, which shall be the or (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Record Date and may either be paid to the Person this Subordinated Security (or one or more Predecessor Subordinated Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Subordinated Securities of this series not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any Subordinated Securities exchange on which the Subordinated Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture. [If the Subordinated Security is not to bear interest prior to maturity, insert—The principal of this Subordinated Security shall not bear interest except in the case of a default in payment of principal upon acceleration, upon redemption or at Stated Maturity and in such case the

overdue principal and any overdue premium shall bear interest at the rate of % per annum (to the extent that the payment of such interest shall be legally enforceable), from the dates such amounts are due until they are paid or made available for payment. Interest on any overdue principal or premium shall be payable on demand. [Any such interest on overdue principal or premium which is not paid on demand shall bear interest at the rate of % per annum (to the extent that the payment of such interest on interest shall be legally enforceable), from the date of such demand until the amount so demanded is paid or made available for payment. Interest on any overdue interest shall be payable on demand.]].

Payment of the principal of (and premium, if any, on) and [any such] interest on this Subordinated Security will be made at the office or agency of the Company maintained for that purpose in in such coin or currency of [the United States of America] as at the time of payment is legal tender for payment of public and private debts; provided, however, that at the option of the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Register].

Reference is hereby made to the further provisions of this Subordinated Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been manually executed by or on behalf of the Trustee under the Indenture referred to on the reverse hereof, this Subordinated Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

Dated:

Achieve Life Sciences, Inc.

By _____

[Title]

Attest and Countersign

Secretary

[Reverse of Subordinated Security.]

ACHIEVE LIFE SCIENCES, INC.

This Subordinated Security is one of a duly authorized issue of Subordinated Securities of the Company (herein called the "Subordinated Securities"), issued and to be issued in one or more series under an Indenture dated as of _____, (herein called the "Indenture," which term shall have the meaning assigned to it in such instrument), between the Company and _____, as trustee (herein called the "Trustee", which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations or rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Subordinated Securities and of the terms upon which the Subordinated Securities are, and are to be, authenticated and delivered. This Subordinated Security is one of the series designated on the face hereof [, limited in aggregate principal amount to \$ _____].

[If the Subordinated Security is to be subordinated, insert—The indebtedness evidenced by this Subordinated Security is, to the extent and in the manner set forth in the Indenture, expressly subordinated and subject in right of payment to the prior payment in full of all Senior Indebtedness (as defined in the Indenture) of the Company. This Subordinated Security is issued subject to such provisions of the Indenture, and each Holder of this Subordinated Security, by accepting the same, agrees to and shall be bound by such provisions and authorizes and directs the Trustee on the Holder's behalf to take such action as may be necessary or appropriate to acknowledge or effectuate such subordination as provided in the Indenture and appoints the Trustee such Holder's attorney-in-fact for any and all such purposes.]

[If the Subordinated Security is to be subject to redemption only at the option of the Company, insert—The Subordinated Securities of this series are subject to redemption upon not less than 30 days' notice provided in the manner set forth in the Indenture, [(1) on in any year commencing with the year and ending with the year at the Redemption Price equal to 100% of the principal amount, and (2)] at any time [on or after _____], as a whole or in part, at the election of the principal the following Redemption Prices (expressed as percentages of the principal amount): If redeemed [on or before _____, _____%, and if redeemed] during the 12-month period beginning of the years indicated,

Year	Redemption Price	Year	Redemption Price
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and thereafter at a Redemption Price equal to _____% of the principal amount together in the case of any such redemption [(whether through operation of the sinking fund or otherwise)] with accrued interest to the Redemption Date, but interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Subordinated Securities of record at the close of business on the relevant record dates referred to on the face hereof, all as provided in the Indenture.]

[If the Subordinated Security is to be redeemable in part, insert—In the event of redemption of this Subordinated Security in part only, a new Subordinated Security or Subordinated Securities of this series for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.]

[If the Subordinated Security is to be subject to repayment at the option of the Holder, insert—To be repaid at the option of the Holder, the Company must receive this Subordinated Security, with the form of "Option to Elect Repayment" hereon duly completed, at an office or agency of the Company maintained for that purpose in (or at such other place of which the Company shall from time to time notify the Holder of this Subordinated Security) not less than nor more than _____ days prior to the Repayment Date. The exercise of the repayment option by the Holder shall be irrevocable.

[If the Subordinated Security is not to be subject to redemption at the option of the Company, insert—The Subordinated Securities are not redeemable at the option of the Company prior to Maturity.]

[If the Subordinated Security is not to be an Original Issue Discount Security, insert—If an Event of Default with respect to Subordinated Securities of this series shall occur and be continuing, the principal of the Subordinated Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.]

[If the Subordinated Security is to be an Original Issue Discount Security, insert—If an Event of Default with respect to Subordinated Securities of this series shall occur and be continuing, an amount of principal of the Subordinated Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture. Such amount shall be equal to [insert formula for determining the amount]. Upon payment (i) of the amount of principal so declared due and payable and (ii) of interest on any overdue principal and overdue interest (in each case to the extent that the payment of such interest shall be legally enforceable), all of the Company's obligations in respect of the payment of the principal of and interest, if any, on the Subordinated Securities of this series shall terminate.]

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Subordinated Securities of each series under the Indenture to be affected at any time by the Company with the consent of the Holders of not less than 66-2/3% in principal amount of the Subordinated Securities at the time Outstanding of each series to be affected. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Subordinated Securities of each series at the time Outstanding, on behalf of the Holders of all Subordinated Securities of such series, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Subordinated Security shall be conclusive and binding upon such Holder and upon all future Holders of this Subordinated Security and of any Subordinated Security issued upon the registration of transfer hereof or in exchange hereof or I lieu hereof, whether or not notation of such consent of waiver is made upon this Subordinated Security.

As provided in and subject to the provisions of the indenture, the Holder of this Subordinated Security shall not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Subordinated Subordinated Securities of this series, the Holders of not less than 25% in principal amount of the Subordinated Securities of this series at the time Outstanding shall have made written request to the trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee reasonable indemnity satisfactory to it, and the Trustee shall not have received from the Holders of a majority in principal amount of Subordinated Securities of this series at the time Outstanding a direction inconsistent with such request, and shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity. The foregoing shall not apply to any suit instituted by the Holder of this Subordinated Security for the enforcement of any payment of principal hereof or any premium or interest hereon on or after the respective due dates expressed herein.

No reference herein to the Indenture and no provision of this Subordinated Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of (and premium, if any, on) and interest on this Subordinated Security at the times, place and rate, and in the coin or currency, herein prescribed.

[If the Subordinated Security is to be registered form, insert—As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Subordinated Security is registrable in the Register, upon surrender of this Subordinated Security for registration of transfer at the office or agency of the Company in any place where the principal of (and premium, if any, on) and interest on this Subordinated Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and, thereupon one or more new Subordinated Securities of this series, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.]

[The Subordinated Securities of this series are issuable only in registered form in denominations of \$ [and any integral multiple] [or increments of \$ in excess] thereof. As provided in the Indenture and subject to certain

limitations therein set forth, Subordinated Securities of this series are exchangeable for a like aggregate principal amount of Subordinated Securities of this series of a different authorized denomination, as requested by the Holder surrendering the same.]

[No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.]

[Prior to due presentment of this Subordinated Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Subordinated Security is registered as the owner hereof for all purposes, whether or not this Subordinated Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.]

[If the Subordinated Security is a Global Subordinated Security, insert—"Global Subordinated Security" and "Global Subordinated Securities" means a Subordinated Security or Subordinated Securities evidencing all or a part of a series of Subordinated Securities, issued to the Depository (as hereinafter defined) for such Series or its nominee, and registered in the name of such Depository or its nominee. "Depository" means, with respect to the Subordinated Securities of any series issuable or issued in whole or in part in the form of one or more Global Subordinated Securities, the person designated as the Depository by the Company.

No holder of any beneficial interest in this Subordinated Security held on its behalf by a Depository or a nominee of such Depository shall have any rights under the Indenture with respect to such Global Subordinated Security, and such Depository or nominee may be treated by the Company, the Trustee, and any agent of the Company or the Trustee as the owner of such Global Subordinated Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall impair, as between a Depository and such holders of beneficial interests, the operation of customary practices governing the exercise of the rights of the Depository as Holder of any Subordinated Security.

This Subordinated Security is exchangeable, in whole but not in part, for Subordinated Securities registered in the names of Persons other than the Depository or its nominee or in the name of a successor to the Depository or a nominee of such successor depository only if (i) the Depository notifies the Company that it is unwilling or unable to continue as Depository for this Note or if at any time such Depository ceases to be a clearing agency registered under the Subordinated Securities Exchange Act of 1934, as amended, and, in either case, a successor depository is not appointed by the Company within 90 days, (ii) the Company in its discretion at any time determines not to have all of the Subordinated Securities of this series represented by one or more Global Subordinated Security or Subordinated Securities and notifies the Trustee thereof, or (iii) an Event of Default has occurred and is continuing with respect to the Subordinated Securities of this series. If this Subordinated Security is exchangeable pursuant to the preceding sentence, it shall be exchangeable for Subordinated Securities issuable in authorized denominations and registered in such names as the Depository holding this Subordinated Security shall direct. Subject to the foregoing, this Subordinated Security is not exchangeable, except for a Subordinated Security or Subordinated Securities of the same aggregate denominations to be registered in the name of such Depository or its nominee or in the name of a successor to the Depository or a nominee of such successor depository.]

[The Indenture entitles Holders to receive annual reports with respect to the Trustee's eligibility and qualifications to serve as Trustee by filing their names and addresses with the Trustee for that purpose within two years preceding and mailing of any such annual report.]

No recourse shall be had for the payment of the principal of (and premium, if any, on) or interest on this Subordinated Security, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture of any indenture supplemental thereto, against any incorporator, stockholder, officer or director, as such, past, present or future, of the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly waived and released.

All terms used in this Subordinated Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

This Subordinated Security, including without limitation the obligation of the Company contained herein to pay the principal of (and premium, if any, on) and interest on this Subordinated Security in accordance with the terms hereof and of the Indenture, shall be construed in accordance with and governed by the laws of the State of New York.

[Trustee's Certificate of Authentication.]

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

_____, as
[Authenticating Agent for] the Trustee

By _____
Authorized Officer

**FORM OF
SUBORDINATED INDENTURE
Between**

ACHIEVE LIFE SCIENCES, INC.

and

,

AS TRUSTEE

Dated as of

TABLE OF CONTENTS

		<u>Page</u>
ARTICLE 1	DEFINITIONS	1
	Section 1.01. Certain Terms Defined	1
ARTICLE 2	ISSUE, DESCRIPTION, EXECUTION, REGISTRATION, TRANSFER AND EXCHANGE OF SUBORDINATED SECURITIES	6
	Section 2.01. Form of Subordinated Securities and Trustee's Certificate of Authentication	6
	Section 2.02. Form of Trustee's Certificate of Authentication	6
	Section 2.03. Amount Unlimited, Issuable in Series	7
	Section 2.04. Authentication and Delivery of Subordinated Indentures	9
	Section 2.05. Execution of Subordinated Securities	10
	Section 2.06. Certificate of Authentication	11
	Section 2.07. Denominations; Payment of Interest on Subordinated Securities	11
	Section 2.08. Registration, Transfer and Exchange of Subordinated Securities	12
	Section 2.09. Mutilated, Defaced, Destroyed, Lost and Stolen Subordinated Securities	13
	Section 2.10. Cancellation and Destruction of Surrendered Subordinated Securities	14
	Section 2.11. Temporary Subordinated Securities	14
	Section 2.12. Subordinated Securities in Global Form	14
	Section 2.13. CUSIP Numbers	15
ARTICLE 3	REDEMPTION OF SUBORDINATED SECURITIES	15
	Section 3.01. Applicability of Article	15
	Section 3.02. Notice of Redemption; Partial Redemptions	15
	Section 3.03. Payment of Subordinated Securities Called for Redemption	16
	Section 3.04. Exclusion of Certain Subordinated Securities From Eligibility for Selection for Redemption	17
ARTICLE 4	PARTICULAR COVENANTS OF THE COMPANY	17
	Section 4.01. Payment of Principal of and Interest on Subordinated Securities	17
	Section 4.02. Corporate Existence of the Company; Consolidation, Merger, Sale or Transfer	17

	Section 4.03.	Maintenance of Offices or Agencies for Transfer, Registration, Exchange and Payment of Subordinated Securities	17
	Section 4.04.	Appointment to Fill a Vacancy in the Office of Trustee	18
	Section 4.05.	Duties of Paying Agent	18
	Section 4.06.	Notice of Default	19
	Section 4.07.	Maintenance of Properties	19
	Section 4.08.	Payment of Taxes and Other Claims	19
ARTICLE 5		SUBORDINATED SECURITYHOLDERS' LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE	19
	Section 5.01.	Company to Furnish Trustee Information as to the Names and Addresses of Subordinated Securityholders	19
	Section 5.02.	Preservation of Information; Communication to Subordinated Securityholders	19
	Section 5.03.	Reports by Company	20
	Section 5.04.	Reports by Trustee	21
ARTICLE 6		REMEDIES OF THE TRUSTEE AND SUBORDINATED SECURITYHOLDERS ON EVENT OF DEFAULT	22
	Section 6.01.	Events of Default; Acceleration, Waiver of Default and Restoration of Position and Rights	22
	Section 6.02.	Covenant of Company to Pay to Trustee Whole Amount Due on Subordinated Securities on Default in Payment of Interest or Principal	24
	Section 6.03.	Trustee May File Proofs of Claim	25
	Section 6.04.	Trustee May Enforce Claims Without Possession of Subordinated Securities	25
	Section 6.05.	Application of Moneys Collected by Trustee	26
	Section 6.06.	Limitation on Suits by Holders of Subordinated Securities	26
	Section 6.07.	Rights and Remedies Cumulative	27
	Section 6.08.	Delay or Omission Not Waiver	27
	Section 6.09.	Control by Holders; Waiver of Past Defaults	27
	Section 6.10.	Trustee to Give Notice of Defaults Known to it, but May Withhold in Certain Circumstances	28
	Section 6.11.	Requirement of an Undertaking to Pay Costs in Certain Suits Under the Subordinated Indenture or Against the Trustee	28
	Section 6.12.	Waiver of Stay, or Extension Laws	28

ARTICLE 7	CONCERNING THE TRUSTEE	28
	Section 7.01. Certain Duties and Responsibilities of Trustee	28
	Section 7.02. Certain Rights of Trustee	29
	Section 7.03. Trustee Not Responsible for Recitals or Application of Proceeds	30
	Section 7.04. Trustee May Own Subordinated Securities	30
	Section 7.05. Moneys Received by Trustee to be Held in Trust	30
	Section 7.06. Trustee Entitled to Compensation, Reimbursement and Indemnity	30
	Section 7.07. Right of Trustee to Rely on Officer's Certificate Where No Other Evidence Specifically Prescribed	31
	Section 7.08. Disqualification; Conflicting Interest	31
	Section 7.09. Requirements for Eligibility of Trustee	31
	Section 7.10. Resignation and Removal of Trustee; Appointment of Successor	32
	Section 7.11. Acceptance of Appointment by Successor Trustee	33
	Section 7.12. Successor to Trustee by Merger, Consolidation or Succession to Business	33
	Section 7.13. Preferential Collection of Claims Against Company	33
	Section 7.14. Appointment of Authenticating Agent	33
ARTICLE 8	CONCERNING THE SUBORDINATED SECURITYHOLDERS	35
	Section 8.01. Evidence of Action by Subordinated Securityholders	35
	Section 8.02. Proof of Execution of Instruments and of Holding of Subordinated Securities	35
	Section 8.03. Who May be Deemed Owners of Subordinated Securities	35
	Section 8.04. Subordinated Securities Owned by the Company or Controlled or Controlling Persons Disregarded for Certain Purposes	36
	Section 8.05. Instruments Executed by Subordinated Securityholders Bind Future Holders	36
ARTICLE 9	SUBORDINATED SECURITYHOLDERS' MEETINGS	36
	Section 9.01. Purposes for Which Meetings May be Called	36
	Section 9.02. Manner of Calling Meetings	37
	Section 9.03. Call of Meeting by the Company or Subordinated Securityholders	37
	Section 9.04. Who May Attend and Vote at Meetings	37

	Section 9.05.	Regulations May be Made by Trustee; Conduct of the Meeting; Voting Rights—Adjournment	37
	Section 9.06.	Manner of Voting at Meetings and Record to be Kept	38
	Section 9.07.	Exercise of Rights of Trustee and Subordinated Securityholders Not to be Hindered or Delayed	38
ARTICLE 10	SUPPLEMENTAL SUBORDINATED INDENTURES		38
	Section 10.01.	Purposes for Which Supplemental Subordinated Indentures May be Entered into Without Consent of Subordinated Securityholders	38
	Section 10.02.	Modification of Subordinated Indenture With Consent of Holders of Subordinated Securities	39
	Section 10.03.	Effect of Supplemental Subordinated Indentures	40
	Section 10.04.	Subordinated Securities May Bear Notation of Changes by Supplemental Subordinated Indentures	40
ARTICLE 11	DISCHARGE; DEFEASANCE		41
	Section 11.01.	Satisfaction and Discharge of Subordinated Indenture	41
	Section 11.02.	Application by Trustee of Funds Deposited for Payment of Subordinated Securities	43
	Section 11.03.	Repayment of Moneys Held by Paying Agent	43
	Section 11.04.	Return of Moneys Held by Trustee and Paying Agent Unclaimed for Two Years	43
	Section 11.05.	Indemnity for U.S. Government of Obligations	44
ARTICLE 12	IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS		44
	Section 12.01.	Incorporators, Stockholders, Officers and Directors of Company Exempt From Individual Liability	44
ARTICLE 13	MISCELLANEOUS PROVISIONS		44
	Section 13.01.	Successors and Assigns of the Company bound by Subordinated Indenture	44
	Section 13.02.	Notices; Effectiveness	44
	Section 13.03.	Compliance Certificates and Opinions	45
	Section 13.04.	Days on Which Payment to be Made, Notice Given or Other Action Taken	46
	Section 13.05.	Provisions Required by Trust Indenture Act to Control	46
	Section 13.06.	Governing Law and Waiver of Trial By Jury	46
	Section 13.07.	Effect of Headings	46

	Section 13.08.	Judgment Currency	46
	Section 13.09.	Provisions of the Subordinated Indenture and Subordinated Securities for the Sole Benefit of the Parties and the Subordinated Securityholders	47
	Section 13.10.	Subordinated Indenture May be Executed in Counterparts	47
	Section 13.11.	Facsimile or PDF	47
	Section 13.12.	U.S.A. Patriot Act	47
ARTICLE 14	SUBORDINATION OF SECURITIES		48
	Section 14.01.	Subordinated Securities Subordinated to Senior Indebtedness	48
	Section 14.02.	Subrogation	49
	Section 14.03.	Obligation of the Company Unconditional	49
	Section 14.04.	Payments on Subordinated Securities Permitted	49
	Section 14.05.	Effectuation of Subordinated by Trustee	49
	Section 14.06.	Knowledge of Trustee	49
	Section 14.07.	Trustee May Hold Senior Indebtedness	50
	Section 14.08.	Rights of Holders of Senior Indebtedness Not Impaired	50

THIS SUBORDINATED INDENTURE, dated as of _____, between ACHIEVE LIFE SCIENCES, INC., a Delaware corporation (the “Company”), and _____, a _____, as trustee (the “Trustee”).

WITNESSETH:

WHEREAS, the Company has duly authorized the issuance, sale, execution and delivery, from time to time, of its unsecured evidences of subordinated indebtedness (hereinafter referred to as the “*Subordinated Securities*”), without limit as to principal amount, issuable in one or more series, the amount and terms of each such series to be determined as hereinafter provided; and, to provide the terms and conditions upon which the Subordinated Securities are to be issued, authenticated and delivered, the Company has duly authorized the execution of this Subordinated Indenture; and

WHEREAS, all acts and things necessary to make the Subordinated Securities, when executed by the Company and authenticated and delivered by the Trustee as in this Subordinated Indenture provided, the valid, binding and legal subordinated obligations of the Company, and to constitute this Subordinated Indenture a valid indenture and agreement according to its terms, have been done and performed, and the execution of this Subordinated Indenture and the issuance hereunder of the Subordinated Securities have in all respects been duly authorized;

NOW, THEREFORE, THIS SUBORDINATED INDENTURE

WITNESSETH:

That in order to declare the terms and conditions upon which the Subordinated Securities are to be issued, authenticated and delivered, and in consideration of the premises and of the purchase and acceptance of the Subordinated Securities by the Holders thereof, the Company covenants and agrees with the Trustee, for the equal and proportionate benefit of the respective Holders from time to time of the Subordinated Securities or of any series thereof, as follows:

ARTICLE 1

DEFINITIONS

SECTION 1.01. Certain Terms Defined. For all purposes of this Subordinated Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the terms defined in this Article One have the meanings assigned to them in this Article One, and include the plural as well as the singular;
- (b) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;
- (c) all accounting terms not otherwise defined herein shall have the meanings assigned to them and all computations herein provided for shall be made, in accordance with generally accepted accounting principles, and the term “*U.S. generally accepted accounting principles*” shall mean such principles as they exist at the date of applicability thereof; and
- (d) the words “*herein*”, “*hereof*” and “*hereunder*” and other words of similar import refer to this Subordinated Indenture as a whole and not to any particular Article, Section or other subdivision.

“*Affiliate*” of any Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”) when used with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the

management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“*Agent*” means any Registrar, Paying Agent, transfer agent or Authenticating Agent.

“*Authenticating Agent*” shall have the meaning set forth in Section 7.14.

“*Authorized Newspaper*” means a newspaper (which, in the case of The City of New York, will, if practicable, be The Wall Street Journal (Eastern Edition), published in an official language of the country of publication customarily published at least once a day for at least five days in each calendar week and of general circulation. If it shall be impractical in the opinion of the Trustee to make any publication of any notice required hereby in an Authorized Newspaper, any publication or other notice in lieu thereof which is made or given with the approval of the Trustee shall constitute a sufficient publication of such notice.

“*Board of Directors*” shall mean the Board of Directors of the Company, or any duly authorized committee of such Board of Directors.

“*Board Resolution*” shall mean one or more resolutions of the Board of Directors of the Company certified by the Secretary or by an Assistant Secretary of the Company to have been duly adopted by the Board of Directors of the Company and to be in full force and effect on the date of such certification.

“*Business Day*” means, with respect to any Subordinated Security, a day that is not a Saturday, Sunday or a day on which the office of the Trustee or banking institutions in the City of New York in which amounts are payable, as specified in the form of such Subordinated Security, are authorized or required by any applicable law or regulation to be closed.

“*Commission*” shall mean the U.S. Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or if at any time after the execution of this Subordinated Indenture such Commission is not existing and performing the duties theretofore assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

“*Company*” shall mean Achieve Life Sciences, Inc., a Delaware corporation, until a successor corporation shall have become such pursuant to the applicable provisions hereof, and thereafter “*Company*” shall mean such successor Company.

“*Company Order*” means a written statement, request or order of the Company signed in its name by the Chairman of the Board of Directors of the Company, the President or Chief Executive Officer, any Vice President, the Treasurer or the Chief Financial Officer of the Company.

“*covenant defeasance*” shall have the meaning set forth in Section 11.01.

“*Defaulted Interest*” shall have the meaning set forth in Section 2.07.

“*Depository*” shall mean, with respect to the Subordinated Securities of any series issuable or issued in whole or in part in the form of one or more Global Subordinated Securities, the Person designated as Depository by the Company pursuant to Section 2.03 of this Subordinated Indenture until a

successor Depository shall have become such pursuant to the applicable provisions of this Subordinated Indenture, and thereafter the term “*Depository*” shall mean or include each Person who is then a Depository hereunder, and if at any time there is more than one such Person, “*Depository*” as used with respect to the Subordinated Securities of any such series shall mean the Depository with respect to the Subordinated Securities of that series.

“*Euro*” or “*euro*” means the currency adopted by those countries participating in the third stage of the European Monetary Union.

“*Event of Default*” with respect to Subordinated Securities of any series shall mean any event specified as such in Section 6.01 and any other event as may be established with respect to the securities of such series as permitted by Section 2.03. An Event of Default shall “exist” if an Event of Default shall have occurred and be continuing.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended.

“*Foreign Currency*” means a currency issued by the government of a country other than the United States of America, and the European Currency Unit as defined and revised from time to time by the European Monetary System of the European Community and/or Euros.

“*Global Subordinated Security*” means a Subordinated Security evidencing all or a portion of a series of Registered Subordinated Securities, issued to the Depository for such series in accordance with Section 2.12, and bearing the legend prescribed in Section 2.12 and any other legend required by the Depository for such series.

“*Holder*,” “*Holder of Subordinated Securities*,” “*Subordinated Securityholder*” or any other similar term means in the case of any Registered Subordinated Security, the person in whose name such Subordinated Security is registered in the Register kept by the Company for that purpose in accordance with the terms hereof.

“*Interest Payment Date*” when used with respect to any Subordinated Security means the Stated Maturity of an installment of interest on such Subordinated Security.

“*IRS*” means the Internal Revenue Service of the United States Department of the Treasury, or any successor entity.

“*Judgment Currency*” has the meaning set forth in Section 13.09.

“*Officer’s Certificate*” shall mean a certificate signed by the Chairman of the Board of Directors of the Company, any Vice—Chairman of the Board of Directors of the Company, the President or Chief Executive Officer or any Vice—President, the Treasurer, the Chief Financial Officer, the Secretary or any Assistant Secretary of the Company.

“*Opinion of Counsel*” shall mean a written opinion of legal counsel who may be an employee of the Company or other counsel satisfactory to the Trustee.

“*Original Issue Date*” of any Subordinated Security (or portion thereof) means the earlier of (a) the date of such Subordinated Security or (b) the date of any Subordinated Security (or portion thereof) for which such Subordinated Security was issued (directly or indirectly) on registration of transfer, exchange or substitution.

“*Original Issue Discount Subordinated Security*” shall mean (a) any Subordinated Security which provides for an amount less than the principal amount thereof to be due and payable upon declaration of acceleration of the maturity thereof pursuant to Section 6.01 or (b) any other Subordinated Security which for United States Federal income tax purposes would be considered an original issue discount security.

“*Outstanding*” when used with reference to Subordinated Securities shall, subject to the provisions of Section 8.04, mean, as of the date of determination, all Subordinated Securities theretofore authenticated and delivered under this Subordinated Indenture, except:

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

(b) Subordinated Securities, or portions thereof, for whose payment or redemption moneys or U.S. Government Obligations (as provided in Section 11.01) in the necessary amount have been theretofore deposited with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside, segregated and held in trust by the Company (if the Company shall act as its own Paying Agent) in trust for the Holders of such Subordinated Securities, provided that if such Subordinated Securities or portions thereof, are to be redeemed prior to the Stated Maturity thereof, notice of such redemption has been duly given as provided in Article Three hereof, or provision therefor satisfactory to the Trustee has been made;

(c) Subordinated Securities in exchange for or in lieu of which other Subordinated Securities shall have been authenticated and delivered under this Subordinated Indenture; and

(d) Subordinated Securities alleged to have been destroyed, lost or stolen which have been paid as provided in Section 2.07 hereof.

In determining whether the Holders of the requisite principal amount of Outstanding Subordinated Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, the principal amount of an Original Issue Discount Subordinated Security that shall be deemed to be Outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination as if a declaration of acceleration of the maturity thereof pursuant to Section 6.01 had been made.

“*Paying Agent*” means any Person authorized by the Company to pay the principal of and any interest and premium, if any, on any Subordinated Securities on behalf of the Company.

“*Periodic Offering*” means an offering of Subordinated Securities of a series from time to time, the specific terms of which Subordinated Securities, including, without limitation, the rate or rates of interest, if any, thereon, the stated maturity or maturities thereof and the redemption provisions, if any, with respect thereto, are to be determined by the Company or its agents upon the issuance of such Subordinated Securities.

“*Person*” shall mean an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a joint stock company, a trust, an unincorporated organization, or a government or any agency, authority or political subdivision thereof.

“*Predecessor Subordinated Security*” of any particular Subordinated Security means every previous Subordinated Security evidencing all or a portion of the same debt as that evidenced by such particular Subordinated Security; and, for the purposes of this definition, any Subordinated Security authenticated and delivered under Section 2.04 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Subordinated Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Subordinated Security.

“*principal*” whenever used with reference to the Subordinated Securities or any Subordinated Security or any portion thereof, shall be deemed to include “and premium, if any,” provided, however, that such inclusion of premium, if any, shall under no circumstances result in the double counting of such premium for the purpose of any calculation required hereunder.

“*Principal Office of the Trustee*” shall mean the office of the Trustee at which at any particular time the trust created by this Indenture shall be administered, except that with respect to presentation of Subordinated Securities for payment such term shall mean any office or agency of the Trustee at which at any particular time its corporate trust services business shall be conducted. The present address of the Principal Office of the Trustee is _____, Attention: _____.

“*Record Date*” for the interest payable on any Interest Payment Date on any series of Subordinated Securities shall mean the date specified as such in the Subordinated Securities of such series.

“*Register*” shall mean the books for the registration and transfer of Subordinated Securities which books are kept by the Trustee pursuant to Section 2.08.

“*Registered Subordinated Security*” means any Subordinated Security registered on the Register of the Company.

“*Required Currency*” shall have the meaning set forth in Section 13.09.

“*Responsible Officer*” when used with respect to the Trustee shall mean an officer of the Trustee 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 of the Trustee to whom

such matter is referred because of such Person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

"*Senior Indebtedness*" means (i) the principal of and premium, if any, and unpaid interest on indebtedness for money borrowed, (ii) purchase money and similar obligations, (iii) obligations under capital leases, (iv) guarantees, assumptions or purchase commitments relating to, or other transactions as a result of which the Company is responsible for the payment of, such indebtedness of others, (v) renewals, extensions and refunding of any such indebtedness, (vi) interest or obligations in respect of any such indebtedness accruing after the commencement of any insolvency or bankruptcy proceedings; and (vii) obligations associated with derivative products such as interest rate and currency exchange contracts, foreign exchange contracts, commodity contracts, and similar arrangements, unless, in each case, the instrument by which the Company incurred, assumed or guaranteed the indebtedness or obligations described in clauses (i) through (vii) hereof expressly provides that such indebtedness or obligation is subordinate or junior in right or payment to any other indebtedness or obligation is subordinate or junior in right of payment to any other indebtedness or obligations of the Company.

"*Special Record Date*" for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 2.07.

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

"*Subordinated Indenture*" shall mean this instrument as originally executed, or as it may from time to time be supplemented, modified or amended, as provided herein, and shall include the form and terms of particular series of Subordinated Securities established in accordance with the provisions of Sections 2.03 and 2.04.

"*Subordinated Security*" or "Subordinated Securities" shall mean any security or securities of the Company without regard to series, authenticated and delivered under this Subordinated Indenture.

"*Supplemental Subordinated Indenture*" shall mean an indenture supplemental hereto as such Supplemental Subordinated Indenture may be originally executed, or as it may from time to time be supplemented, modified or amended, as provided herein and therein.

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

"*Trust Indenture Act*" shall mean the Trust Indenture Act of 1939, as amended as of the date of this Subordinated Indenture.

"*United States Dollars*" shall mean the lawful currency of the United States of America.

"*U.S. Government Obligations*" shall have the meaning set forth in Section 11.01.

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

ARTICLE 2

ISSUE, DESCRIPTION, EXECUTION, REGISTRATION,
TRANSFER AND EXCHANGE OF SUBORDINATED SECURITIES

SECTION 2.01. Form of Subordinated Securities and Trustee's Certificate of Authentication. The Subordinated Securities of each series shall be substantially in such form (not inconsistent with this Subordinated Indenture) as shall be established by or pursuant to one or more Board Resolutions and as set forth in an Officer's Certificate or Supplemental Subordinated Indenture, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Subordinated Indenture, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements thereon as the Board of Directors may deem appropriate and as are not inconsistent with the provisions of this Subordinated Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Subordinated Securities of such series may be listed, or to conform to usage all as may be determined by the officers executing such Subordinated Securities as evidenced by their execution of such Subordinated Securities.

The definitive Subordinated Securities and each Global Subordinated Security may be printed, lithographed or fully or partly engraved or produced in any other manner, all as determined by the officers executing such Subordinated Securities as evidenced by their execution thereof.

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

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Subordinated Securities, of the series designated herein, referred to in the within—mentioned Subordinated Indenture.

_____, as Trustee

By _____
Authorized Signatory

SECTION 2.03. Amount Unlimited, Issuable in Series.

(a) The aggregate principal amount of Subordinated Securities which may be authenticated and delivered under this Subordinated Indenture is not limited. The Subordinated Securities may be issued in one or more series.

The following terms and provisions of each series of Subordinated Securities shall be established in or pursuant to one or more Board Resolutions and set forth in an Officer's Certificate detailing such establishment or established in one or more Supplemental Subordinated Indentures prior to the issuance of Subordinated Securities of any series:

(1) the designation of the series of Subordinated Securities of the series (which shall distinguish the Subordinated Securities of such series from all other series of Subordinated Securities) and which may be part of a series of Subordinated Securities previously issued;

(2) any limit upon the aggregate principal amount of the particular series of Subordinated Securities which may be executed, authenticated and delivered under this Subordinated Indenture; provided, however, that nothing contained in this Section 2.03 or elsewhere in this Subordinated Indenture or in the Subordinated Securities or in an Officer's Certificate or in a Supplemental Subordinated Indenture is intended to or shall limit execution by the Company or authentication and delivery by the Trustee of Subordinated Securities under the circumstances contemplated by Sections 2.08, 2.09, 2.11, 3.03 and 10.04;

(3) if other than United States Dollars, the coin, currency or currencies or composite currency in which principal of and interest and any premium on such series of Subordinated Securities shall be payable (including, but not limited to, any Foreign Currency);

(4) the Stated Maturity for payment of principal of such series of Subordinated Securities;

(5) the rate or rates at which such series of Subordinated Securities shall bear interest, if any, the date or dates from which such interest shall accrue, on which such interest shall be payable, the terms and conditions of any deferral of interest and the additional interest, if any, thereon, the right, if any, of

the Company to extend the time for payment of interest, the terms and duration of such extension rights and (in the case of Registered Subordinated Securities) the date or dates on which a record shall be taken for the determination of Holders to whom interest is payable and/or the method by which such rate or rates or date or dates shall be determined;

(6) the place or places where the principal of and any interest on Subordinated Securities of any series shall be payable, where such Subordinated Securities may be surrendered for registration of transfer, where such Subordinated Securities may be surrendered for exchange and where notice and demands to or upon the Company, in respect of such Subordinated Securities, and this Subordinated Indenture may be served, if other than as provided in Section 4.03;

(7) the right, if any, of the Company to redeem Subordinated Securities, in whole or in part, at its option and the period or periods within which, the price or prices at which and any terms and conditions upon which Subordinated Securities of the series may be so redeemed;

(8) the obligation, if any, of the Company to redeem, purchase or repay Subordinated Securities of the series pursuant to any mandatory redemption or analogous provisions or at the option of a Holder thereof and the price or prices at which and the period or periods within which and any terms and conditions upon which Subordinated Securities of the series shall be redeemed, purchased or repaid, in whole or in part, pursuant to such obligation;

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

(10) the percentage of the principal amount at which the Subordinated Securities will be issued, and, if other than the principal amount thereof, the portion of the principal amount of such series of Subordinated Securities which shall be payable upon declaration of acceleration of the maturity thereof pursuant to Section 6.01;

(11) if other than the U.S. Dollar, the coin, currency or currencies in which payment of the principal of or interest on the Subordinated Securities of such series shall be payable, including composite currencies or currency units and any related provisions for the calculations of payments and denominations;

(12) if the principal or interest on the Subordinated Securities of the series are to be payable, at the election of the Company or a Holder thereof, in a coin or currency other than that in which the Subordinated Securities are denominated, the period or periods within which, and the terms and conditions upon which, such election may be made;

(13) if the amount of payments or principal of and interest on the Subordinated Securities of the series may be determined with reference to an index or formula based on a coin, currency, composite currency or currency unit other than that in which the Subordinated Securities of the series are denominated, the manner in which such amounts shall be determined;

(14) whether and under what circumstances the Company will pay additional amounts on the Subordinated Securities of the series held by a person who is not a U.S. person in respect of any tax, assessment or governmental charge withheld or deducted and, if so, whether the Company will have the option to redeem the Subordinated Securities of the series rather than pay such additional amounts;

(15) if the Subordinated Securities of the series are to be issuable in definitive form (whether upon original issue or upon exchange of a temporary Subordinated Security of such series) only upon receipt of certain certificates or other documents or satisfaction of other conditions, the form and terms of such certificates, documents or conditions;

(16) any trustees, depositaries, authenticating or paying agents, transfer agents or registrars of any other agents with respect to the Subordinated Securities of such series;

(17) any additional events of default or covenants with respect to the Subordinated Securities of a particular series not set forth herein;

(18) the terms of subordination applicable to such series of Subordinated Securities;

(19) the terms and conditions, if any, upon which any Subordinated Securities of such series may or shall be converted or exchanged into common stock of the Company; and

(20) any other terms of such series of Subordinated Securities (which terms shall not be inconsistent with the provisions of this Subordinated Indenture).

(b) All Subordinated Securities of any one series shall be substantially identical except that any series may have serial maturities and different interest rates for different maturities and except in the case of Registered Subordinated Securities as to denomination and the differences herein specified between Global Subordinated Securities and Registered Subordinated Securities issued in definitive form and except as may otherwise be provided in or pursuant to such Board Resolution and set forth in such Officer's Certificate or Supplemental Subordinated Indenture relating to such series of Subordinated Securities. All Subordinated Securities of any one series need not be issued at the same time, and, unless otherwise provided in the Officer's Certificate or Supplemental Subordinated Indenture relating to such series, a series may be reopened for issuances of additional Subordinated Securities of such series.

SECTION 2.04. Authentication and Delivery of Subordinated Indentures. At any time and from time to time after the execution and delivery of this Subordinated Indenture, the Company may deliver any series of Subordinated Securities executed by the Company to the Trustee for authentication by it together with the applicable documents referred to below in this Section 2.04, and the Trustee shall thereupon authenticate and deliver said Subordinated Securities (or if only a single Subordinated Security, such Subordinated Security) to or upon the written order of the Company, signed by an officer of the Company, without any further corporate action. The maturity date, original issue date, interest rate and any other terms of the Subordinated Securities of such series shall be determined by or pursuant to such Company Order and procedures. In authenticating such Subordinated Securities and accepting the additional responsibilities under this Subordinated Indenture in relation to such Subordinated Securities, the Trustee shall be entitled to receive (in the case of subparagraphs (2), (3) and (4) below only at or before the time of the first request of the Company to the Trustee to authenticate Subordinated Securities of such series) and (subject to Section 7.01) shall be fully protected in relying upon, the following enumerated documents unless and until such documents have been superseded or revoked:

(1) a Company Order requesting such authentication and setting forth delivery instructions if the Subordinated Securities are not to be delivered to the Company, provided that, with respect to Subordinated Securities of a series subject to a Periodic Offering, (a) such Company Order may be delivered by the Company to the Trustee prior to the delivery to the Trustee of such Subordinated Securities for authentication and delivery, (b) the Trustee shall authenticate and deliver Subordinated Securities of such series for original issue from time to time, in an aggregate principal amount not exceeding the aggregate principal amount established for such series, pursuant to a Company Order or pursuant to procedures acceptable to the Trustee as may be specified from time to time by a Company Order, and (c) the maturity date or dates, original issue date or dates, interest rate or rates and any other terms of Subordinated Securities of such series shall be determined by a Company Order or pursuant to such procedures;

(2) any Board Resolution, Officer's Certificate and/or executed Supplemental Subordinated Indenture referred to in Section 2.01 and 2.03 by or pursuant to which the forms and terms of the Subordinated Securities were established;

(3) an Officer's Certificate setting forth the form or forms and terms of the Subordinated Securities stating that the form or forms and terms of the Subordinated Securities have been established pursuant to Sections 2.01 and 2.03 and comply with this Subordinated Indenture, and covering such other matters as the Trustee may reasonably request; and

(4) either one or more Opinions of Counsel, or a letter addressed to the Trustee permitting it to rely on one or more Opinions of Counsel, substantially to the effect that:

(a) the form or forms of the Subordinated Securities have been duly authorized and established in conformity with the provisions of this Subordinated Indenture;

(b) the terms of the Subordinated Securities have been duly authorized and established in conformity with the provisions of this Subordinated Indenture, and, certain terms of the Subordinated Securities have been established pursuant to a Board Resolution, an Officer's Certificate or a Supplemental Subordinated Indenture in accordance with this Subordinated Indenture, and when such other terms as are to be established pursuant to procedures set forth in a Company Order shall have been established, all such terms will have been duly authorized by the Company and will have been established in conformity with the provisions of this Subordinated Indenture;

(c) this Indenture and such Subordinated Securities, when executed and issued by the Company and authenticated by the Trustee in accordance with the provisions of this Subordinated Indenture and duly paid for by the purchasers thereof, and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Company, enforceable in accordance with their terms, except as any rights thereunder may be limited by the effect of bankruptcy, insolvency, reorganization, receivership, conservatorship, arrangement, moratorium or other laws affecting or relating to the rights of creditors generally; the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in equity or at law; the effect of applicable court decisions invoking statutes or principles of equity, which have held that certain covenants and provisions of agreements are unenforceable where the breach of such covenants or provisions imposes restrictions or burdens upon a borrower, and it cannot be demonstrated that the enforcement of such restrictions or burdens is necessary for the protection of the creditor, or which have held that the creditor's enforcement of such covenants or provisions under the circumstances would have violated the creditor's covenants of good faith and fair dealing implied under Washington law; and the effect of Washington statutes and rules of law which cannot be waived prospectively by a borrower, and such counsel need express no opinion with regard to the enforceability of Section 7.06 or of a judgment denominated in a currency other than United States Dollars; and

and (d) the Company has complied with all applicable Federal laws and requirements in respect of the execution and delivery of such Subordinated Securities;

(e) such other opinions as the Company may be required to deliver under the Trust Indenture Act.

(5) if the Securities are to be secured, a supplemental indenture conforming to the requirements of Section 314 of the Trust Indenture Act and such other documents as may be required by Section 314; and

(6) if the Securities are to be convertible, a supplemental indenture conforming to the requirements of Section 314 of the Trust Indenture Act and such other documents as may be required by Section 314.

In rendering such opinions, any counsel may qualify any opinions as to enforceability by stating that such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium, fraudulent transfer and other similar laws affecting the rights and remedies of creditors and is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). Such counsel may rely upon opinions of other counsel (copies of which shall be delivered to the Trustee) reasonably satisfactory to the Trustee, in which case the opinion shall state that such counsel believes he and the Trustee are entitled so to rely. Such counsel may also state that, insofar as such opinion involves factual matters, he has relied, to the extent he deems proper, upon certificates of officers of the Company and its subsidiaries and certificates of public officials.

The Trustee shall have the right to decline to authenticate and deliver any Subordinated Securities under this section if the Trustee, being advised by counsel, determines that such action may not lawfully be taken by the Company or if the Trustee in good faith by its board of directors or board of trustees, executive committee or a trust committee of directors or trustees shall determine that such action would expose the Trustee to personal liability to existing Holders or would affect the Trustee's own rights, duties or immunities under the Subordinated Securities, this Subordinated Indenture or otherwise.

SECTION 2.05. Execution of Subordinated Securities. The Subordinated Securities shall be executed manually or in facsimile, by any two of the Chairman of the Board, Chief Executive Officer, the President, and Vice President, the Treasurer, the Secretary, or the Chief Financial Officer of the Company under its corporate seal which may be affixed thereto or printed, engraved or otherwise reproduced thereon, by facsimile or otherwise. Only such Subordinated Securities as shall bear thereon a certificate of authentication substantially in the form recited herein, executed by the Trustee manually by an authorized officer, shall be entitled to the benefits of this Subordinated Indenture or be valid or obligatory for any purpose. Such certificate of authentication of the Trustee upon any Subordinated Security executed by the Company shall be conclusive evidence that the Subordinated Security so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Subordinated Indenture. Typographical or other errors or defects in the seal or facsimile signature on any Subordinated Security or in the text thereof shall not affect the validity or enforceability of such Subordinated Security if it has been duly authenticated and delivered by the Trustee.

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

SECTION 2.06. Certificate of Authentication. Only such Subordinated Securities as shall bear thereon a certificate of authentication substantially in the form hereinbefore recited, executed by the

Trustee by the manual signature of one of its authorized officers, shall be entitled to the benefits of this Subordinated Indenture or be valid or obligatory for any purpose. The execution of such certificate by the Trustee upon any Subordinated Security executed by the Company shall be conclusive evidence that the Subordinated Security so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Subordinated Indenture.

SECTION 2.07. Denominations; Payment of Interest on Subordinated Securities.

(a) The Subordinated Securities of each series may be issued in such denominations as shall be specified as contemplated by Section 2.03. In the absence of such provisions with respect to the Subordinated Securities of any series, the Subordinated Securities of such series shall be issued in denominations of \$1,000 and any integral multiple thereof. The Subordinated Securities of each series shall be numbered, lettered or otherwise distinguished in such manner or in accordance with such plan as the officers of the Company executing the same may determine.

(b) If the Subordinated Securities of any series shall bear interest, each Subordinated Security of such series shall bear interest from the applicable date at the rate per annum specified in the Officer's Certificate or Supplemental Subordinated Indenture with respect to such series of Subordinated Securities. Unless otherwise specified in the Officer's Certificate or Supplemental Subordinated Indenture with respect to the Subordinated Securities of any series, interest on the Subordinated Securities of such series shall be computed on the basis of a 360-day year of twelve 30-day months. Such interest shall be payable on the Interest Payment Dates specified in the Officer's Certificate or Supplemental Subordinated Indenture with respect to such series of Subordinated Securities. The Person in whose name any Subordinated Security (or one or more Predecessor Subordinated Securities) is registered at the close of business on the applicable Record Date for the series of which such Subordinated Security is a part shall be entitled to receive the interest payable thereon on such Interest Payment Date notwithstanding the cancellation of such Subordinated Security upon any transfer or exchange thereof subsequent to such Record Date and prior to such Interest Payment Date unless such Subordinated Security shall have been called for redemption on a Redemption Date which is subsequent to such Record Date and prior to such Interest Payment Date or unless the Company shall default in the payment of interest due on such Interest Payment Date on any Subordinated Security of such series.

Any interest on any Subordinated Security of any series 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 Record Date solely by virtue of such Holder having been such Holder; and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest on the Subordinated Securities of any series to the Persons in whose names such Subordinated Securities (or their respective Predecessor Subordinated Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Subordinated Security and the date of the proposed payment (which date shall be such as will enable the Trustee to comply with the next sentence hereof), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest, such money when deposited to be held in trust for the benefit of the

Persons entitled to such Defaulted Interest as in this subsection provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record

Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of a Subordinated Security of such series at such Holder's address as it appears in the 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 the Subordinated Securities of such series are registered on such Special Record Date and shall no longer be payable pursuant to the following subsection (2).

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

Interest on Subordinated Securities of any series that bear interest may be paid by mailing a check to the address of the person entitled thereto as such address shall appear in the Register.

Subject to the foregoing provisions of this Section 2.07, each Subordinated Security delivered under this Subordinated Indenture upon transfer of or in exchange for or in lieu of any other Subordinated Security shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Subordinated Security and each such Subordinated Security shall bear interest from such date, such that neither gain nor loss in interest shall result from such transfer, exchange or substitution.

SECTION 2.08. Registration, Transfer and Exchange of Subordinated Securities. Except as specifically otherwise provided herein with respect to Global Subordinated Securities, Subordinated Securities of any series may be exchanged for a like aggregate principal amount of Subordinated Securities of the same series of other authorized denominations. Subordinated Securities to be exchanged shall be surrendered at the offices or agencies to be maintained in accordance with the provisions of Section 4.03 and the Company shall execute the Subordinated Security or Subordinated Securities, and the Trustee shall authenticate and deliver in exchange therefor the Subordinated Security or Subordinated Securities which the Subordinated Securityholder making the exchange shall be entitled to receive.

The Company shall cause the Trustee to keep or cause to be kept, at one or more of the offices or agencies to be maintained by the Trustee in accordance with the provisions of Section 4.03 with respect to the Subordinated Securities of each series, the Register in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of the Registered Subordinated Securities of such series and the transfer of Registered Subordinated Securities of such series as in this Article provided. The 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 Register shall be open for inspection by the Trustee and any registrar of the Subordinated Securities of such series other than the Trustee. Upon due presentment for transfer of any Subordinated Security of any series at the offices or agencies of the Company to be maintained in accordance with Section 4.03 with respect to the Registered Subordinated Securities of such series, the Company shall execute a new Subordinated Security and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Subordinated Security or Registered Subordinated Securities of the same series for a like aggregate principal amount of authorized denominations. Notwithstanding any other provisions of this Section 2.08, unless and until it is exchanged in whole or in part for Registered Subordinated Securities in definitive form, a Global Subordinated Security representing all or a portion of the Registered Subordinated Securities of a series may not be transferred except as a whole by the Depository for such series to a nominee of such Depository or by a nominee of such Depository to such Depository or another nominee of such Depository or by such Depository or any such nominee to a successor Depository for such series or a nominee of such successor Depository.

At the option of the Holder thereof, Registered Subordinated Securities of any series (other than a Global Subordinated Security, except as set forth below) may be exchanged for a Registered Subordinated Security or Registered Subordinated Securities of such series and tenor having authorized denominations and an equal aggregate principal amount, upon surrender of such Registered Subordinated Securities to be exchanged at the agency of the Company that shall be maintained for such purpose in accordance with Section 4.03 and upon payment, if the Company shall so require, of the charges hereinafter provided. All Subordinated Securities surrendered upon any exchange or transfer provided for in this Subordinated Indenture shall be promptly cancelled and disposed of by the Trustee, and the Trustee shall deliver a certificate of disposition thereof to the Company.

All Registered Subordinated Securities of any series presented or surrendered for exchange, transfer, redemption, conversion or payment shall, if so required by the Company or any registrar of the Subordinated Securities of such series, be accompanied by a written instrument or instruments of transfer, in form satisfactory to the Company and such registrar, duly executed by the registered Holder or by such Person's attorney duly authorized in writing.

No service charge shall be made for any exchange or registration of transfer of Subordinated Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto.

The Company shall not be required to exchange or transfer (a) any Subordinated Securities of any series during a period beginning at the opening of business 15 days before the day of the first publication or the mailing (if there is no publication) of a notice of redemption of Subordinated Securities of such series and ending at the close of business on the day of such publication or mailing or (b) any Subordinated Securities called or selected for redemption in whole or in part, except, in the case of Subordinated Securities called for redemption in part, the portion thereof not so called for redemption in whole or in part or during a period beginning at the opening of business on any Record Date for such series and ending at the close of business on the relevant Interest Payment Date therefor.

SECTION 2.09. Mutilated, Defaced, Destroyed, Lost and Stolen Subordinated Securities. In case any temporary or definitive Subordinated Security shall be mutilated, defaced, destroyed, lost or stolen, the Company in its discretion may execute and, upon the written request of any officer of the Company, the Trustee shall authenticate and delivery, a new Subordinated Security of the same series, maturity date, interest rate and original issue date, bearing a number or other distinguishing symbol not contemporaneously outstanding, in exchange and substitution for the mutilated or defaced Subordinated Security, or in lieu of and in substitution for the Subordinated Security so destroyed, lost or stolen. In every case the applicant for a substitute Subordinated Security shall furnish to the Company and to the Trustee and any agent of the Company or the Trustee such security or indemnity as may be required by them to indemnify and defend and to save each of them harmless and, in every case of destruction, loss or theft, evidence to their satisfaction of the destruction, loss or theft of such Subordinated Security and of the ownership thereof, and in the case of mutilation or defacement shall surrender the Subordinated Security to the Trustee or such agent. If the Company becomes aware that such Security has been acquired by a bona fide purchaser, it shall notify the Trustee in writing.

Upon the issuance of any substitute Subordinated Security, 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) or its agent connected therewith. In case any Subordinated Security which has matured or is about to mature or has been called for redemption in full shall become mutilated or defaced or be destroyed, lost or stolen, the Company may instead of issuing a substitute Subordinated Security, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated or defaced Subordinated Security, if the applicant for such payment shall furnish to the Company and to the Trustee and any agent of the Company or the Trustee such security or indemnity as any of them may require to save each of them harmless, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company and to the Trustee and any agent of the Company or the Trustee evidence to their satisfaction of the destruction, loss or theft of such Subordinated Security and of the ownership thereof.

Every substitute Subordinated Security of any series issued pursuant to the provisions of this Section by virtue of the fact that any such Subordinated Security is destroyed, lost or stolen shall constitute an additional contractual

obligation of the Company, whether or not the destroyed, lost or stolen Subordinated Security shall be at any time enforceable by anyone and shall be entitled to all the benefits of (but shall be subject to all the limitations of rights set forth in) this Subordinated Indenture equally and proportionately with any and all other Subordinated Securities of such series duly authenticated and delivered hereunder. All Subordinated Securities shall be held and owned upon the express condition that, to the extent permitted by law, the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, defaced or destroyed, lost or stolen Subordinated Securities and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

SECTION 2.10. Cancellation and Destruction of Surrendered Subordinated Securities. All Subordinated Securities surrendered for payment, redemption, transfer, conversion or exchange, or for credit against any payment in respect of a sinking or analogous fund, if any, shall, if surrendered to the Company, the Trustee or any agent of the Company or of the Trustee, be delivered to the Trustee, and the same, together with Subordinated Securities surrendered to the Trustee for cancellation, shall be canceled by it and thereafter disposed of by it as directed by the Company, and no Subordinated Securities shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Subordinated Indenture. The Trustee shall destroy canceled Subordinated Securities in accordance with applicable laws and procedures, and deliver a certificate of destruction thereof to the Company. If the Company shall purchase or otherwise acquire any of the Subordinated Securities, however, such purchase or acquisition shall not operate as a payment, redemption or satisfaction of the indebtedness represented by such Subordinated Securities unless and until the Company, at its option shall deliver or surrender the same to the Trustee for cancellation.

SECTION 2.11. Temporary Subordinated Securities. Pending the preparation of definitive Subordinated Securities of any series, the Company may execute and the Trustee shall authenticate and deliver temporary Subordinated Securities of such series which are printed, lithographed, typewritten or otherwise produced, in each case satisfactory to the Trustee. Temporary Subordinated Securities of any series shall be issuable substantially in the form of the definitive Subordinated Securities of such series but with such appropriate omissions, insertions, substitutions and other variations as the officers executing such Subordinated Securities may determine, as evidenced by their execution of such Subordinated Securities. Every such temporary Subordinated Security shall be authenticated by the Trustee upon the same conditions and in substantially the same manner, and with the same effect, as the definitive Subordinated Securities. If temporary Subordinated Securities are issued, the Company will cause definitive Subordinated Securities to be prepared without unreasonable delay. After the preparation of definitive Subordinated Securities, the temporary Subordinated Securities of such series shall be exchangeable for definitive Subordinated Securities upon surrender of the temporary Subordinated Securities without charge to the Holder at the offices or agencies to be maintained by the Trustee as provided in Section 4.03 with respect to the Subordinated Securities of such series.

Upon surrender for cancellation of any one or more temporary Subordinated Securities the Company shall execute and the Trustee shall authenticate and deliver in exchange for such temporary Subordinated Securities an equal aggregate principal amount of definitive Subordinated Securities of such series. Until so exchanged, the temporary Subordinated Securities of any series shall in all respects be entitled to the benefits of this Subordinated Indenture and interest thereon, when and as payable, shall be paid to the registered owners thereof.

SECTION 2.12. Subordinated Securities in Global Form.

(a) If the Company shall establish pursuant to Section 2.01 that the Securities of a particular series are to be issued as a Global Security, then the Company shall execute and the Trustee shall, in accordance with Section 2.04, authenticate and deliver, a Global Security that (i) shall represent, and shall be denominated in an amount equal to the aggregate principal amount of, all of the Outstanding Subordinated Securities of such series, (ii) shall be registered in the name of the Depository or its nominee, (iii) shall be held by the Trustee as custodian for the Depository or pursuant to the Depository's instruction and (iv) shall bear a legend substantially to the following effect: "*Except as otherwise provided in Section 2.12 of the Indenture, this Security may be transferred, in whole but not in part, only to another nominee of the Depository or to a successor Depository or to a nominee of such successor Depository.*"

(b) Notwithstanding the provisions of Section 2.05, the Global Subordinated Security of a series may be transferred, in whole but not in part and in the manner provided in Section 2.08, only to another nominee of the Depository for such series, or to a successor Depository for such series selected or approved by the Corporation or to a nominee of such successor Depository.

(c) If at any time the Depository for a series of the Subordinated Securities notifies the Company that it is unwilling or unable to continue as Depository for such series or if at any time the Depository for such series shall no longer be registered or in good standing under the Exchange Act, or other applicable statute or regulation, and a successor Depository for such series is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such condition, as the case may be, or if an Event of Default has occurred and is continuing and the Company has received a request from the Depository, this Section 2.10 shall no longer be applicable to the Securities of such series and the Company will execute and subject to Section 2.04, the Trustee will authenticate and deliver the Subordinated Securities of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Subordinated Security of such series in exchange for such Global Subordinated Security or Subordinated Securities upon the instruction of the Depository. In addition, the Company may at any time determine that the Subordinated Securities of any series shall no longer be represented by a Global Subordinated Security and that the provisions of this Section 2.12 shall no longer apply to the Securities of such series. In such event, the Company will execute and, subject to Section 2.04, the Trustee, upon receipt of an Officers' Certificate evidencing such determination by the Company, will authenticate and deliver the Subordinated Securities of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Subordinated Security of such series in exchange for such Global Subordinated Security. Upon the exchange of the Global Subordinated Security for such Subordinated Securities in definitive registered form without coupons, in authorized denominations, the Global Subordinated Security shall be canceled by the Trustee.

Such Subordinated Securities in definitive registered form issued in exchange for the Global Subordinated Security pursuant to this Section 2.10(c) shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Debt Securities to the Depository for delivery to the Persons in whose names such Securities are so registered.

SECTION 2.13. CUSIP Numbers. The Company in issuing the Subordinated Securities may use "CUSIP" and "CINS" numbers (if then generally in use), and the Trustee shall use CUSIP numbers or CINS numbers, as the case may be, in notices of redemption or exchange as a convenience to Holders and no representation shall be made as to the correctness of such numbers either as printed on the Subordinated Securities or as contained in any notice of redemption or exchange. The Company will promptly notify the Trustee of any change in the "CUSIP" and/or such other numbers.

ARTICLE 3

REDEMPTION OF SUBORDINATED SECURITIES

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

SECTION 3.02. Notice of Redemption; Partial Redemptions. Notice of redemption to the Holders of Registered Subordinated Securities of any series to be redeemed as a whole or in part at the option of the Company shall be given by mailing notice of such redemption by electronic transmission, first-class mail, postage prepaid, at least 30 days and not more than 60 days prior to the date fixed for redemption to such Holders of Subordinated Securities of such series at their last addresses as they shall appear upon the Register.

Any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the Holder receives the notice. Failure to give notice by mail, or any defect in the notice to the Holder

of any Subordinated Security of a series designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of such Subordinated Security of such series.

The notice of redemption to each such Holder shall specify the principal amount of each Subordinated Security of such series held by such Holder to be redeemed, the date fixed for redemption, the redemption price, the place or places of payment, that payment will be made upon presentation and surrender of such Subordinated Securities, that interest accrued to the date fixed for redemption will be paid as specified in such notice and that on and after said date interest thereon or on the portions thereof to be redeemed will cease to accrue. In case any Subordinated Security of a series is to be redeemed in part only the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that on and after the date fixed for redemption, upon surrender of such Subordinated Security, a new Subordinated Security or Subordinated Securities of such series in principal amount equal to the unredeemed portion thereof will be issued.

The notice of redemption of Subordinated Securities of any series to be redeemed at the option of the Company shall be given by the Company or, at the Company's request delivered to the Trustee at least five Business Days prior to the intended date of mailing to the Holders, by the Trustee in the name and at the expense of the Company.

On or before the redemption date specified in the notice of redemption given as provided in this Section, the Company will deposit with the Trustee or with one or more Paying Agents (or, if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 4.05), no later than 11:00 a.m. New York City time, an amount of money sufficient to redeem on the redemption date all the Subordinated Securities of such series so called for redemption at the appropriate redemption price, together with accrued interest to the date fixed for redemption. The Company will deliver to the Trustee at least 70 days prior to the date fixed for redemption, or such shorter period as shall be acceptable to the Trustee, an Officer's Certificate stating the aggregate principal amount of Subordinated Securities to be redeemed with a copy of the form on notice to the Holders setting forth the information required by this Section 3.02. In case of a redemption at the election of the Company prior to the expiration of any restriction on such redemption, the Company shall deliver to the Trustee, prior to the giving of any notice of redemption to Holders pursuant to this Section, an Officer's Certificate stating that such restriction has been complied with.

If less than all the Subordinated Securities of a series are to be redeemed, the Trustee shall select, in such manner as it shall deem appropriate and fair, in its sole discretion, Subordinated Securities of such series to be redeemed in whole or in part. Subordinated Securities may be redeemed in part in multiples equal to the minimum authorized denomination for Subordinated Securities of such series or any multiple thereof. The Trustee shall promptly notify the Company in writing of the Subordinated Securities of such series selected for redemption and, in the case of any Subordinated Securities of such series selected for partial redemption, the principal amount thereof to be redeemed. For all purposes of this Subordinated Indenture, unless the context otherwise requires, all provisions relating to the redemption of Subordinated Securities of any series shall relate, in the case of any Subordinated Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Subordinated Security which has been or is to be redeemed.

SECTION 3.03. Payment of Subordinated Securities Called for Redemption. If notice of redemption has been given as above provided, the Subordinated Securities or portions of Subordinated Securities specified in such notice shall become due and payable on the date and at the place stated in such notice at the applicable redemption price, together with interest accrued to the date fixed for redemption, and on and after said date (unless the Company shall default in the payment of such Subordinated Securities at the redemption price, together with interest accrued to said date) interest on the Subordinated Securities or portions of Subordinated Securities so called for redemption shall cease to accrue, and, except as provided in Sections 7.05 and 11.04, such Subordinated Securities shall cease from and after the date fixed for redemption to be entitled to any benefit or security under this Subordinated Indenture, and the Holders thereof shall have no right in respect of such Subordinated Securities except the right to receive the redemption price thereof and unpaid interest to the date fixed for redemption. On presentation and surrender of such Subordinated Securities at a place of payment specified in said notice, said Subordinated Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption; provided, that payment of interest becoming due on or

prior to the date fixed for redemption shall be payable to the Holder of such Registered Subordinated Securities registered as such on the relevant record date, subject to the terms and provisions of Section 2.03 and 2.07 hereof.

If any Subordinated Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid or duly provided for, bear interest from the date fixed for redemption at the rate of interest or Yield to Maturity (in the case of an Original Issue Discount Subordinated Security) borne by such Subordinated Security.

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

SECTION 3.04. Exclusion of Certain Subordinated Securities From Eligibility for Selection for Redemption. Subordinated Securities shall be excluded from eligibility for selection for redemption if they are identified by registration and certificate number in an Officer's Certificate delivered to the Trustee at least 40 days prior to the last date on which notice of redemption may be given as being owned of record and beneficially by, and not pledged or hypothecated by, either (a) the Company or (b) an entity specifically identified in such written statement as directly or indirectly controlling or controlled by or under direct or indirect common control with the Company.

ARTICLE 4

PARTICULAR COVENANTS OF THE COMPANY

SECTION 4.01. Payment of Principal of and Interest on Subordinated Securities. The Company covenants that it will duly and punctually pay or cause to be paid the principal of and any interest and premium on each of the Subordinated Securities in accordance with the terms of the Subordinated Securities and this Subordinated Indenture. Except with respect to any Global Subordinated Securities, if the Subordinated Securities of any series bear interest, each installment of interest on the Subordinated Securities of such series may, at the option of the Company, be paid by mailing a check or checks for such interest payable to the Person entitled thereto pursuant to Section 2.07 to the address of such Person as it appears on the Register of such series on the applicable Record Date for such interest payment. The interest, if any, on Registered Securities (together with any additional amounts payable pursuant to the terms of such Securities) shall be payable only to or upon the written order of the Holders thereof and, at the option of the Company, may be paid by wire transfer or by mailing checks for such interest payable to or upon the written order of such Holders at their last addresses as they appear on the Register of the Company.

SECTION 4.02. Corporate Existence of the Company; Consolidation, Merger, Sale or Transfer. The Company covenants that so long as any of the Subordinated Securities are Outstanding, it will maintain its existence, will not dissolve, sell or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it; provided that the Company may, without violating the covenants in this Section 4.02 contained, consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve, if the surviving, resulting or transferee entity, as the case may be, (i) shall be organized and existing under the laws of one of the States of the United States of America, (ii) assumes, if such entity is not the Company, all of the obligations of the Company hereunder and (iii) is not, after such transaction, otherwise in default under any provisions hereof.

SECTION 4.03. Maintenance of Offices or Agencies for Transfer, Registration, Exchange and Payment of Subordinated Securities. So long as any of the Subordinated Securities shall remain Outstanding, the Company covenants that it will cause the Trustee to maintain an office or agency in _____, where the Subordinated Securities may be presented for registration, exchange and transfer as in this Subordinated Indenture provided, and where notices and demands to or upon the Trustee in respect of the Subordinated Securities or of this Subordinated Indenture may be served, and where the Subordinated Securities may be presented for payment. In case the Trustee shall fail to maintain any such office or agency, presentations and demands may be made and notices may be served at the principal office of the Company.

The Company will give to the Trustee written notice of the location of each such office or agency and of any change of location thereof. In case the Company shall fail to maintain any agency required by this Section to be located in _____, or shall fail to give such notice of the location or for any change in the location of any of the above agencies, presentations and demands may be made and notices may be served at the Principal Office of the Trustee.

The Company may from time to time designate one or more additional offices or agencies where the Subordinated Securities of a series may be presented for payment, where the Subordinated Securities of that series may be presented for exchange as provided in this Subordinated Indenture and pursuant to Section 2.04 and where the Registered Subordinated Securities of that series may be presented for registration of transfer as in this Subordinated Indenture provided, and the Company may from time to time rescind any such designation, as the Company may deem desirable or expedient; provided, that no such designation or rescission shall in any manner relieve the Company of its obligations to maintain the agencies provided for in this Section. The Company shall give to the Trustee prompt written notice of any such designation or rescission thereof.

SECTION 4.04. Appointment to Fill a Vacancy in the Office of Trustee. The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, covenants that it will appoint, in the manner provided in Section 7.10, a Trustee, so that there shall at all times be a Trustee with respect to the Outstanding Subordinated Securities.

SECTION 4.05. Duties of Paying Agent.

(a) If the Company shall appoint a Paying Agent other than the Trustee with respect to Subordinated Securities of any series, it will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.05 and Section 11.04,

(1) that it will hold all sums held by it as such agent for the payment of the principal of or interest, if any, on the Subordinated Securities of such series (whether such sums have been paid to it by the Company or by any other obligor on the Subordinated Securities of such series) in trust for the benefit of the Holders of the Subordinated Securities entitled to such principal or interest and will notify the Trustee of the receipt of sums to be so held,

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

(3) that it will at any time during the continuance of any Event of Default, upon the written request of the Trustee, deliver to the Trustee all sums so held in trust by it.

(b) Whenever the Company shall have one or more Paying Agents with respect to the Subordinated Securities of any series, it will, prior to each due date of the principal of or any interest on the Subordinated Securities of such series, deposit with a Paying Agent of such series a sum sufficient to pay the principal or interest so becoming due, such sum to be held in trust for the benefit of the Holders of Subordinated Securities entitled to such principal 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.

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

(d) Anything in this Section 4.05 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Subordinated Indenture with respect to one or more or all series of Subordinated Securities hereunder, or for any other reason, pay or cause to be paid to the Trustee all sums

held in trust for such series by it, or any Paying Agent hereunder, as required by this Section 4.05, and such sums are to be held by the Trustee upon the trust herein contained.

SECTION 4.06. Notice of Default. The Company covenants that, as soon as is practicable but in no event later than twenty Business Days after the occurrence thereof, the Company will furnish the Trustee notice of any event which is an Event of Default or which with the giving of notice or the passage of time or both would constitute an Event of Default which has occurred and is continuing on the date of such notice, which notice shall set forth the nature of such event and the action which the Company proposes to take with respect thereto.

SECTION 4.07. Maintenance of Properties. The Company will cause all properties used in or useful in the conduct of its business to be maintained and kept in good condition, repair, and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Company may be necessary, so that the business carried on in connection therewith may be properly and advantageously conducted at all time except to the extent that the Company may be prevented from so doing by circumstances beyond its control; provided, that nothing in this Section shall prevent the Company from discontinuing the operation or maintenance of any of such properties, or disposing of any of them, if such discontinuance or disposal is, in the judgment of the Company desirable in the conduct of the business of the Company and not disadvantageous in any material respect to the Subordinated Securityholders.

SECTION 4.08. Payment of Taxes and Other Claims. The Company will pay or discharge or cause to be paid or discharged, before the same shall become delinquent: (a) all taxes, assessments and governmental charges levied or imposed upon the Company or upon the income, profits or property of the Company; and (b) all lawful claims for labor, materials, and supplies, which, if unpaid, might by law become a lien upon the property of the Company; provided, that the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings; and provided further that the Company shall not be required to cause to be paid or discharged any such tax, assessment, charge or claim if the Company shall determine that such payment is not advantageous to the conduct of the business of the Company taken as a whole and that the failure so to pay or discharge is not disadvantageous in any material respect to the Subordinated Securityholders.

ARTICLE 5

SUBORDINATED SECURITYHOLDERS' LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE

SECTION 5.01. Company to Furnish Trustee Information as to the Names and Addresses of Subordinated Securityholders. The Company will furnish or cause to be furnished to the Trustee, not less than 45 days nor more than 60 days after each date (month and day) specified as an Interest Payment Date for the Subordinated Securities of the first series issued under this Subordinated Indenture (whether or not any Subordinated Securities of that series are then Outstanding), but in no event less frequently than semiannually, and at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request, a list in such form as the Trustee may reasonably require containing all the information in the possession or control of the Company, or any of its Paying Agents other than the Trustee, as to the names and addresses of the Holders of Subordinated Securities, obtained since the date as of which the next previous list, if any, was furnished, excluding from any such list the names and addresses received by the Trustee in its capacity as registrar (if so acting). Any such list may be dated as of a date not more than 15 days prior to the time such information is furnished and need not include information received after such date. However, if the Trustee is appointed as Registrar, the Company has no obligation to furnish the list of holders.

SECTION 5.02. Preservation of Information; Communication to Subordinated Securityholders.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of the Holders of Subordinated Securities of each series (1) contained in the most recent list furnished to it as provided in Section 5.01, (2) received by the Trustee in the capacity of Paying Agent or registrar (if so acting) and (3) filed with

the Trustee within the two preceding years as provided for in Section 5.04(c). The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

(b) If three or more Holders of Subordinated Securities (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 Subordinated Security for a period of at least six months preceding the date of such application, and such application states that the applicants desire to communicate with other Holders of Subordinated Securities of any series or with Holders of all Subordinated Securities with respect to their rights under this Subordinated Indenture or under such Subordinated Securities, and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Trustee shall, within five Business Days after the receipt of such application, at its election, either:

(1) afford such applicants access to the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this Section 5.02; or

(2) inform such applicants as to the approximate number of Holders of Subordinated Securities of such series or all Subordinated Securities, as the case may be, whose names and addresses appear in the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this Section 5.02, and as to the approximate cost of mailing to such Subordinated Securityholders the form of proxy or other communications, 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 of the Holders of Subordinated Securities of such series, or all Subordinated Securities, as the case may be, whose name and address appear in the information preserved at the time by the Trustee in accordance with the provisions of subsection (a) of this Section 5.02, a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless within five days after such tender, the Trustee shall mail to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interests of the Holders of Subordinated Securities of such series or all Subordinated Securities, 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 such Subordinated Securityholders 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) Each and every Holder of the Subordinated Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any Paying Agent nor any registrar shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Subordinated Securities in accordance with the provisions of subsection (b) of this Section 5.02, 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 said subsection (b).

SECTION 5.03. Reports by Company.

(a) The Company covenants and agrees to file with the Trustee within 15 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if the Company is not required to file information, documents or reports pursuant to either of such sections, then to 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 Exchange Act in respect of a security

listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations.

(b) The Company covenants and agrees to file with the Trustee and the Commission, in accordance with the rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants provided for in this Subordinated Indenture as may be required from time to time by such rules and regulations.

(c) The Company covenants and agrees to transmit to the Holders of Subordinated Securities within 30 days after the filing thereof with the Trustee, in the manner and to the extent provided in subsection (c) of Section 5.04 with respect to reports pursuant to subsection (a) of said Section 5.04, such summaries of any information, documents and reports required to be filed by the Company pursuant to subsections (a) and (b) of this Section 5.03 as may be required by rules and regulations prescribed from time to time by the Commission. Delivery of reports, information and documents to the Trustee under this Section 5.03 is for informational purposes only and the Trustee's receipt of the foregoing shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of their covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

(d) The Company and any other obligor on the Subordinated Securities each covenant and agree to furnish to deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate, from the principal executive officer, principal financial officer or principal accounting officer stating whether or not to the best knowledge of the signers thereof, the Company or Subsidiary of the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Subordinated Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company or a Subsidiary of the Company in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

SECTION 5.04. Reports by Trustee.

(a) On or before the first July 15th following the date of execution of this Subordinated Indenture, and on or before July 15 in every year thereafter, if and so long as any Subordinated Securities are Outstanding hereunder, the Trustee shall transmit to the Subordinated Securityholders as hereinafter in this Section 5.04 provided, a brief report dated as of the preceding May 15 with respect to any of the following events which may have occurred within the previous 12 months (but if no such event has occurred within such period no report need be transmitted):

(1) any change to its eligibility under Section 7.09, and its qualifications under Section 7.08;

(2) the creation of or any material change to a relationship specified in paragraph (1) through (10) of Section 7.08(d);

(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 the Subordinated 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 state such advances if such advances so remaining unpaid aggregate not more than one-half of one percent of the principal amount of the Subordinated Securities of such series Outstanding on the date of such report;

(4) the amount, interest rate and maturity date of all other indebtedness owing by the Company (or by any other obligor on the Subordinated 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 indebtedness based upon a creditor relationship arising in any manner described in paragraph (2), (3), (4) or (6) of subsection (b) of Section 7.13;

(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 Subordinated Securities which the Trustee has not previously reported; and

(7) any action taken by the Trustee in the performance of its duties under this Subordinated Indenture which it has not previously reported and which in its opinion materially affects the Subordinated Securities, except action in respect of a default, notice of which has been or is to be withheld by it in accordance with the provisions of Section 6.10.

(b) The Trustee shall transmit to the Subordinated Securityholders, as hereinafter provided, 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 the provisions of subsection (a) of this Section 5.04 (or if no such report has yet been so transmitted, since the date of execution of this Subordinated Indenture), for the reimbursement of which it claims or may claim a lien or charge prior to that of the Subordinated 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 ten percent or less of the principal amount of Subordinated Securities of such series Outstanding at such time, such report to be transmitted within 90 days after such time.

(c) Reports pursuant to this Section 5.04 shall be transmitted by mail (i) to all Holders of Subordinated Securities of any series, as the names and addresses of such Holders shall appear upon the Register of the Subordinated Securities of such series, (ii) to such Holders of Subordinated Securities as have, within the two years preceding such transmission, filed their names and addresses with the Trustee for that purpose and (iii) except in the case of reports pursuant to subsection (b) of this Section 5.04 to each Holder whose name and address are preserved at the time by the Trustee as provided in Section 5.02(a) hereof.

(d) A copy of each such report shall, at the time of such transmission to Subordinated Securityholders, be filed by the Trustee with each stock exchange upon which the Subordinated Securities of any series are listed and also with the Commission. The Company will notify the Trustee when and as the Subordinated Securities of any series become listed on any stock exchange.

ARTICLE 6

REMEDIES OF THE TRUSTEE AND SUBORDINATED SECURITYHOLDERS ON EVENT OF DEFAULT

SECTION 6.01. Events of Default; Acceleration, Waiver of Default and Restoration of Position and Rights. The term "Event of Default" whenever used herein with respect to any particular series of Subordinated Securities shall mean any one of the following events:

(a) default in the payment of any installment of interest on any Subordinated Security of such series as and when the same shall become due and payable, and continuance of such default for a period of 30 days provided however, that an extension of one or more Interest Payment Dates by the Company in accordance with the provisions of any Supplemental Subordinated Indenture, shall not constitute an Event of Default; or

(b) default in the payment of all or any part of the principal of or any premium on any Subordinated Security of such series as and when the same shall become due and payable whether at maturity, by proceedings for redemption, by declaration or otherwise, provided however, that an extension of the Stated Maturity for payment of principal of Subordinated Securities of such series in accordance with the provisions of any Supplemental Subordinated Indenture, shall not constitute an Event of Default; or

(c) failure on the part of the Company to observe or perform in any material respect any other of the covenants or agreements on its part in the Subordinated Securities or in this Subordinated Indenture (including any Supplemental Subordinated Indenture or pursuant to any Officer's Certificate, as contemplated by Section 2.03) specifically contained for the benefit of the Holders of the Subordinated Securities of such series, for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee, or to the Company

and the Trustee by the Holders of not less than 25% in principal amount of the Subordinated Securities of such series and all other series so benefited (all series voting as one class) at the time Outstanding under this Subordinated Indenture a written notice specifying such failure and stating that such is a "Notice of Default" hereunder; or

(d) the entry by a court having jurisdiction in the premises of a decree or order for relief in respect of the Company in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or for any substantial part of its property, or ordering the winding up or liquidation of its affairs, if such decree or order shall remain unstayed and in effect for a period of 60 consecutive days; or

(e) the commencement by the Company of a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or the Company's consent to the entry of an order for relief in any involuntary case under any such law, or its consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of the Company or for any substantial part of its property, or the making by the Company of any general assignment for the benefit of creditors, or its failure generally to pay its debts as they become due or the taking by the Company of any corporate action in furtherance of any of the foregoing; or

(f) any other Event of Default provided in the Officer's Certificate or Supplemental Subordinated Indenture under which such series of Subordinated is issued or in the form of Subordinated Security for such series.

If an Event of Default described in clause (a) or (b) shall have occurred and be continuing with respect to any one or more series of Outstanding Subordinated Securities, then and in each and every such case, unless the principal amount of all the Subordinated Securities of each series as to which there is an Event of Default shall have already become due and payable, either the Trustee or the Holders of not less than 25% in principal amount of the Subordinated Securities of such series then Outstanding hereunder (each such series voting as a separate class) by notice in writing to the Company (and to the Trustee if given by Subordinated Securityholders) may declare the principal amount (or, if the Subordinated Securities of any such series are Original Issue Discount Subordinated Securities, such portion of the principal amount as may be specified in the terms of such series) of all the Subordinated Securities of such series, together with any accrued interest, to be due and payable immediately, and upon any such declaration the same shall be immediately due and payable, anything in this Subordinated Indenture or in the Subordinated Securities of such series contained to the contrary notwithstanding.

Except as otherwise provided in the terms of any series of Subordinated Securities pursuant to Section 2.03, if an Event of Default described in clause (c) or (f) above with respect to all series of Subordinated Securities then Outstanding, occurs and is continuing, then, and in each and every such case, unless the principal of all of the Subordinated 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 of the Subordinated Securities then Outstanding hereunder (treated as one class) by notice in writing to the Company (and to the Trustee if given by Securityholders), may declare the entire principal (or, if the Subordinated Securities of any series are Original Issue Discount Securities, such portion of the principal amount as may be specified in the terms of such series) of all of the Subordinated Securities then Outstanding, and the interest accrued thereon, if any, to be due and payable immediately, and upon such declaration, the same shall become immediately due and payable. If an Event of Default described in clause (e) or (f) above occurs and is continuing, then the principal amount of all of the Subordinated Securities then Outstanding, and the interest accrued thereon, if any, shall become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

If an Event of Default described in clause (d) or (g) occurs and is continuing, which Event of Default is with respect to less than all series of Subordinated Securities then Outstanding, then, and in each and every such case, except for any series of Subordinated Securities the principal of which shall have already become due and payable, either the Trustee or the Holders of not less than 25% in aggregate principal amount of the Subordinated Securities of each such affected series then Outstanding hereunder (each such series voting as a separate class) by notice in writing to the Company (and to the Trustee if given by Securityholders), may declare the entire principal (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 such series) of all Securities of such series, and the interest accrued thereon, if any, to be due and payable immediately, and upon any such declaration, the same shall become immediately due and payable.

The foregoing provisions, however, are subject to the condition that if, at any time after the principal amount (or, if the Subordinated Securities are Original Issue Discount Subordinated Securities, such portion of the principal as may be specified in the terms thereof of the Subordinated Securities of any one or more series (or of all the Subordinated Securities, as the case may be) shall have been so declared due and payable, and before any judgment or decree for the payment of moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all matured installments of interest upon all the Subordinated Securities of such series (or upon all the Subordinated Securities, as the case may be) and the principal of any and all Subordinated Securities of such series (or of any and all the Subordinated Securities, as the case may be) which shall have become due otherwise than by declaration (with interest on overdue installments of interest to the extent permitted by law and on such principal at the rate or rates of interest borne by, or prescribed therefor in the Subordinated Securities of such series to the date of such payment or deposit) and interest upon such principal and, to the extent that payment of such interest is enforceable under applicable law, on overdue installments of interest, at the same rate as the rate of interest or Yield to Maturity (in the case of Original Issue Discount Securities) specified in the Securities of such series (or at the respective rates of interest or Yields to Maturity of all the Securities, as the case may be) to the date of such payment or deposit; and the amounts payable to the Trustee under Section 7.06 and any and all defaults under the Subordinated Indenture with respect to Subordinated Securities of such series (or all Subordinated Securities, as the case may be), other than the non—payment of principal of and any accrued interest on Subordinated Securities of such series (or any Subordinated Securities, as the case may be) which shall have become due by declaration shall have been cured, remedied or waived as provided in Section 6.09—then and in every such case the Holders of a majority in principal amount of the Subordinated Securities of such series (or of all the Subordinated Securities, as the case may be) then Outstanding (such series or all series voting as one class if more than one series are so entitled) by written notice to the Company and to the Trustee, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair any right consequent thereon.

For all purposes under this Subordinated Indenture, if a portion of the principal of any Original Issue Discount Securities shall have been accelerated and declared due and payable pursuant to the provisions hereof, then, from and after such declaration, unless such declaration has been rescinded and annulled, the principal amount of such Original Issue Discount Securities shall be deemed, for all purposes hereunder, to be such portion of the principal thereof as shall be due and payable as a result of such acceleration, and payment of such portion of the principal thereof as shall be due and payable as a result of such acceleration, together with interest, if any, thereon and all other amounts owing thereunder, shall constitute payment in full of such Original Issue Discount Securities.

In case the Trustee shall have proceeded to enforce any right under this Subordinated Indenture and such proceedings shall have been discontinued or abandoned because of such rescission or annulment or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Trustee and the Holders of the Subordinated Securities of such series (or of all the Subordinated Securities, as the case may be) shall be restored respectively to their former positions and rights hereunder, and all rights, remedies and powers of the Company and the Trustee and the Holders of the Subordinated Securities of such series (or of all the Subordinated Securities, as the case may be) shall continue as though no such proceedings had been taken.

SECTION 6.02. Covenant of Company to Pay to Trustee Whole Amount Due on Subordinated Securities on Default in Payment of Interest or Principal. The Company covenants that:

(a) in case default shall be made in the payment of any installment of interest on any of the Subordinated Securities of any series as and when the same shall become due and payable and which payment has not been extended in accordance with the provisions of a Supplemental Subordinated Indenture, and such default shall have continued for a period of 30 days;

(b) in case default shall be made in the payment of all or any part of the principal of any of the Subordinated Securities of any series when the same shall have become due and payable and which payment has not been extended in accordance with the provisions of a Supplemental Subordinated Indenture, whether at the Stated Maturity of such series or by any call for redemption or by declaration of acceleration or otherwise; or

(c) upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of the Holders of the Subordinated Securities of such series, the whole amount that then shall have become due and payable on all such

Subordinated Securities of such series for principal (and any premium) and interest together with interest upon the overdue principal and installments of interest (to the extent permitted by law) at the rate or rates of interest borne by or Yield to Maturity (in the case of Original Issue Discount Subordinated Securities), or prescribed therefor in, the Subordinated Securities of such series; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expense of collection, including a reasonable compensation to the Trustee, its agents and counsel, and any expenses or liabilities incurred, and all advances made, by the Trustee hereunder other than through its negligence or bad faith.

In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as Trustee of an express trust, shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company or any other obligor upon such Subordinated Securities, and collect in the manner provided by law out of the property of the Company or any other obligor upon such Subordinated Securities wherever situated the moneys adjudged or decreed to be payable.

If an Event of Default with respect to Subordinated Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Subordinated 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 Subordinated Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

SECTION 6.03. Trustee May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other similar judicial proceeding relative to the Company or any other obligor upon the Subordinated Securities or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Subordinated Securities of any series shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered, to the fullest extent permitted by law, by intervention in such proceeding or otherwise:

(a) 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 Subordinated Securities (or, if the Subordinated Securities are Original Issue Discount Subordinated Securities, such portion of the principal amount as may be specified in the terms of such Subordinated Securities) and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due 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 7.06.

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

SECTION 6.04. Trustee May Enforce Claims Without Possession of Subordinated Securities. All rights of action and claims under this Subordinated Indenture or the Subordinated Securities of any series may be prosecuted and enforced by the Trustee to the fullest extent permitted by law without the possession of any of the Subordinated Securities of any 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 agents and counsel, be for the ratable benefit of the Holders of the Subordinated Securities in respect of which such judgment has been recovered.

SECTION 6.05. Application of Moneys Collected by Trustee. Any moneys collected by the Trustee pursuant to Section 6.02 shall be applied in the order following, at the date or dates fixed by the Trustee for the distribution of such moneys, upon presentation of the several Subordinated Securities in respect of which moneys have been collected, and stamping thereon the payment, if only partially paid, and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due to the Trustee under Section 7.06;

SECOND: In case the principal of the Outstanding Subordinated Securities in respect of which moneys have been collected shall not have become due and be unpaid, to the payment of any interest on such Subordinated Securities, in the order of the maturity of the installments of such interest, with interest upon the overdue installments of interest (so far as permitted by law and to the extent that such interest has been collected by the Trustee at the rate or rates of interest borne by or Yield to Maturity (in the case of Original Issue Discount Subordinated Securities) of such Subordinated Securities or prescribed therefor therein) such payments to be made ratably to the Persons entitled thereto, without discrimination or preference;

THIRD: In case the principal of the Outstanding Subordinated Securities in respect of which such moneys have been collected shall have become due, by declaration or otherwise, to the payment of the whole amount then owing and unpaid upon such Subordinated Securities for principal and interest, if any, with interest on the overdue principal and any installments of interest (so far as permitted by law and to the extent that such interest has been collected by the Trustee) at the rate or rates of interest borne by or Yield to Maturity (in the case of Original Issue Discount Subordinated Securities), or prescribed therefor in, such Subordinated Securities; and in case such moneys shall be insufficient to pay in full the whole amount so due and unpaid upon such Subordinated Securities, then to the payment of such principal and interest or Yield to Maturity, without preference or priority of principal over interest or Yield to Maturity, or of interest or Yield to Maturity over principal, or of any installment of interest over any other installment of interest, or of any Subordinated Security over any other Subordinated Security, ratably to the aggregate of such principal and accrued and unpaid interest or Yield to Maturity; and

FOURTH: To the payment of the remainder, with appropriate interest to the Company or its successors or assigns, or to whomsoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

SECTION 6.06. Limitation on Suits by Holders of Subordinated Securities. No Holder of any Subordinated Security of any series shall have any right by virtue or by availing of any provision of this Subordinated Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Subordinated Indenture or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless such Holder previously shall have given to the Trustee written notice of a continuing Event of Default, as hereinbefore provided, and unless also the Holders of not less than 25% in principal amount of the Subordinated Securities of such series then Outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby (including the reasonable fees of counsel for the Trustee), and the Trustee, for 60 days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding and no direction inconsistent with such written request shall have been given to the Trustee by the holders of a majority in principal amount of the outstanding debt securities pursuant to this Section 6.06; it being understood and intended, and being expressly covenanted by the taker and Holder of every Subordinated Security with every other taker and Holder and the Trustee, that no one or more Holders of Subordinated Securities of any series shall have any right in any manner whatever by virtue or by availing of any provision of this Subordinated Indenture to affect, disturb or prejudice the rights of the Holders of any other of such Subordinated Securities, or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under this Subordinated Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders of Subordinated Securities of the

applicable series. For the protection and enforcement of the provisions of this Section 6.06, each and every Holder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provisions in this Subordinated Indenture, the right of any Holder of any Subordinated Security to receive payment of the principal of and interest on such Subordinated Security on or after the respective due dates expressed in such Subordinated Security (or, in the case of redemption, on or after the date fixed for redemption), or to institute suit for the enforcement of any such payment on or after such respective dates shall not be impaired or affected without the consent of such Holder.

SECTION 6.07. Rights and Remedies Cumulative. All powers and remedies given by this Article Six to the Trustee or to the Holders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the Holders, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Subordinated Indenture, and no delay or omission of the Trustee or of any Holder of any of the Subordinated Securities to exercise any right or power accruing upon any default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and, subject to the provisions of Section 6.06, every power and remedy given by this Article Six or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders. 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 6.08. Delay or Omission Not Waiver. No delay or omission of the Trustee or of any Holder of any Subordinated Securities 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. Subject to the provisions of Section 6.06, every right and remedy given by this Article Six or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

SECTION 6.09. Control by Holders; Waiver of Past Defaults. The Holders of a majority in principal amount of the Subordinated Securities of all series (voting as one class) at the time Outstanding (determined as provided in Section 8.04) 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; provided, however, that, subject to Section 7.01 the Trustee shall have the right to decline to follow any such direction if the Trustee in reliance upon an Opinion of Counsel determines that the action so directed may not lawfully be taken, or if the Trustee in good faith shall, by a Responsible Officer or Officers of the Trustee, determine that the proceedings so directed would be illegal or involve it in personal liability or be unduly prejudicial to the rights of Holders not parties to such direction, and provided further that nothing in this Subordinated Indenture shall impair the right of the Trustee to take any action deemed proper by the Trustee and which is not inconsistent with such direction by the Holders.

The Company may set a special record date for purposes of determining the identity of the Holders of Subordinated Securities entitled to vote or consent to any action by vote or consent authorized or permitted by this Section 6.09. Such record date shall be the later of 15 days prior to the first solicitation of such consent or the date of the most recent list of Holders furnished to the Trustee pursuant to Section 5.01 of this Subordinated Indenture prior to such solicitation.

The Holders of not less than a majority in principal amount of the Subordinated Securities of any series at the time Outstanding (determined as provided in Section 8.04) may on behalf of the Holders of all the Subordinated Securities of such series waive any past Event of Default with respect to such series and its consequences (subject to Section 6.02), except a continuing Event of Default specified in Section 6.01(a), (b) or (c), or in respect of a covenant or provision of this Subordinated Indenture which under Article Ten cannot be modified or amended without the consent of the Holder of each Subordinated Security so affected. Upon any such waiver, the Company, the Trustee and the Holders of the Subordinated Securities of such series shall be restored to their former positions and rights hereunder, respectively, and such Event of Default shall be deemed to have been cured and not continuing for every purpose of this Subordinated Indenture; but no such waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

SECTION 6.10. Trustee to Give Notice of Defaults Known to it, but May Withhold in Certain Circumstances. The Trustee shall, within 90 days after the occurrence of a default with respect to the Subordinated Securities of any series, give notice of all defaults with respect to that series known to the Trustee to all Holders of Subordinated Securities of such series in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act, unless in each case such defaults shall have been cured before the mailing or publication of such notice (the term "default" for the purpose of this Section being hereby defined to mean any event or condition which is, or with notice or lapse of time or both would become, an Event of Default); provided, that, except in the case of default in the payment of the principal of or interest on any of the Subordinated 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 or trustees and/or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Subordinated Securityholders of such series.

SECTION 6.11. Requirement of an Undertaking to Pay Costs in Certain Suits Under the Subordinated Indenture or Against the Trustee. All parties to this Subordinated Indenture agree, and each Holder of any Subordinated Security by such Holder's 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 Subordinated 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 6.11 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder of Subordinated Securities of any series, or group of such Holders, holding in the aggregate more than ten percent in principal amount of the Subordinated Securities of such series Outstanding, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or any interest or premium on any Subordinated Security, on or after the due date expressed in such Subordinated Security or for such interest (or in the case of any redemption, on or after the dated fixed for redemption).

SECTION 6.12. Waiver of Stay, or Extension Laws. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereinafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that they 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 7

CONCERNING THE TRUSTEE

SECTION 7.01. Certain Duties and Responsibilities of Trustee. The Trustee, prior to the occurrence of an Event of Default and after the curing, remedying or waiving of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Subordinated Indenture. In case an Event of Default has occurred (which has not been cured, remedied or waived), the Trustee shall exercise such of the rights and powers vested in it by this Subordinated 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 his or her own affairs.

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

(a) prior to the occurrence of an Event of Default and after the curing, remedying or waving of all Events of Default which may have occurred:

(1) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Subordinated Indenture and the Trustee shall not be liable except for the performance of such duties and obligations

as are specifically set forth in this Subordinated Indenture, and no implied covenants or obligations shall be read into this Subordinated Indenture against the Trustee;

(2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Subordinated 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 Subordinated Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein); and;

(3) this Subsection shall not be construed to limit the effect of the first paragraph and the second to last paragraph of this Section;

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

(c) 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 Subordinated Securities pursuant to Section 6.09 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 Subordinated Indenture.

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

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

(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, consent, order, approval, bond, debenture, note or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate (unless other evidence in respect thereof shall be herein specifically prescribed); and any resolution of the Board of Directors may be evidenced to the Trustee by a Board Resolution;

(c) the Trustee may consult with counsel 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 accordance with such written advice or Opinion of Counsel;

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

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

(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, consent, order, approval, bond, debenture, note or other paper or document, unless requested in writing so to do by the Holders of Subordinated Securities pursuant to Section 6.09; provided, however, that if the payment within a reasonable time to the Trustee of the costs, expenses

or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Subordinated Indenture, the Trustee may require reasonable indemnity against such costs, expenses or liabilities as a condition to such proceeding; and provided further, that nothing in this subsection (f) shall require the Trustee to give the Subordinated Securityholders any notice other than that required by Section 6.10. The reasonable expense of every such examination shall be paid by the Company or, if paid by the Trustee, shall be reimbursed by the Company upon demand;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents 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;

(h) the Trustee shall be under no responsibility for the approval by it in good faith of any expert for any of the purposes expressed in this Subordinated Indenture;

(i) the Trustee shall not be deemed to have notice or be charged with knowledge of any default (within the meaning of Section 602) or Event of Default with respect to the Securities of any series for which it is acting as Trustee unless written notice of such default or Event of Default, as the case may be, is received by the Trustee at the Corporate Trust Office of the Trustee from the Company, any other obligor upon such Securities or by any Holder of such Securities, and such notice references the Securities and this Indenture;

(j) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder;

(k) the Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any persons authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded;

(l) the permissive right of the Trustee hereunder to take or omit to take any action shall not be construed as a duty; and

(m) anything in this Indenture notwithstanding, in no event shall the Trustee be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to loss of profit), even if the Company has been advised as to the likelihood of such loss or damage and regardless of the form of action.

SECTION 7.03. Trustee Not Responsible for Recitals or Application of Proceeds. The recitals contained herein and in the Subordinated Securities (other than the certificate of authentication on the Subordinated Securities) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Subordinated Indenture or of the Subordinated Securities. The Trustee shall not be accountable for the use or application by the Company of any of the Subordinated Securities or of the proceeds thereof.

SECTION 7.04. Trustee May Own Subordinated Securities. The Trustee, any Paying Agent, registrar or any agent of the Company or of the Trustee, in its individual or any other capacity, may become the owner or pledgee of Subordinated Securities with the same rights it would have if it were not Trustee, Paying Agent, registrar or such other agent.

SECTION 7.05. Moneys Received by Trustee to be Held in Trust. Moneys held by the Trustee in trust need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

SECTION 7.06. Trustee Entitled to Compensation, Reimbursement and Indemnity. The Company agrees to pay to the Trustee from time to time reasonable compensation (which shall not be limited by any provision of law in

regard to the compensation of a trustee of any express trust), and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in connection with the acceptance or administration of its trust under this Subordinated Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence or bad faith. The Company also agrees to indemnify the Trustee and its officers, directors, agents and employees for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on the part of the Trustee and arising out of or in connection with the acceptance or administration of this trust, including the reasonable costs and expenses of defending itself against any claim of liability in the premises. The obligations of the Company under this Section to compensate the Trustee, to pay or reimburse the Trustee for expenses, disbursements and advances and to indemnify and hold harmless the Trustee and its officers, directors, agents and employees shall constitute additional indebtedness hereunder and shall survive the satisfaction and discharge of this Subordinated Indenture and the resignation or removal of the Trustee. Such additional indebtedness shall be secured by a lien prior to that of the Subordinated 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 or interest or redemption premium on particular Subordinated Securities.

In addition and without prejudice to the rights provided to the Trustee under any of the provisions of this Indenture, when the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 601(e) or Section 601(f), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable Federal and State bankruptcy, insolvency or other similar law.

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

SECTION 7.08. Disqualification; Conflicting Interest. If the Trustee has or shall acquire a conflicting interest within the meaning of Section 310(b) of the Trust Indenture Act, the Trustee shall eliminate such interest, apply to the Commission for permission to continue as trustee (if any of the Securities are registered pursuant to the Securities Act) or, resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture. To the extent permitted by such Act, the Trustee, by virtue of its capacity as Trustee of the Securities of any series shall not be deemed to have a conflicting interest arising from its capacity as trustee in respect of the Securities of any other series issued under this Indenture. 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 7.09. Requirements for Eligibility of Trustee. There shall always be at least one Trustee hereunder. The Trustee hereunder shall at all times be a Company organized and doing business as a commercial bank under the laws of the United States of America or any state thereof or of the District of Columbia or a Company or other Person permitted to act as a trustee by the Commission and, in each case, authorized under such laws to exercise corporate trust powers, having (or, in the case of a subsidiary of a bank holding company, its bank holding company parent shall have) a combined capital and surplus of at least \$50,000,000, and subject to supervision or examination by Federal, State or District of Columbia authority. If such Company or bank holding company parent 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 Company or bank holding company parent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. No obligor on the Subordinated Securities or Person directly or indirectly controlling, controlled by or under common control with such obligor shall serve as Trustee. In case at any time the

Trustee shall cease to be eligible in accordance with the provisions of this Section 7.09, the Trustee shall resign immediately in the manner and with the effect specified in this Article Seven.

SECTION 7.10. Resignation and Removal of Trustee; 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 in accordance with the applicable requirements of Section 6.11.

The Trustee, may resign at any time with respect to the Subordinated Securities of one or more series of by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 7.11 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may, at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

The Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series, delivered to the Trustee and to the Company. If the instrument of acceptance by a successor Trustee required by Section 6.11 shall not have been delivered to the Trustee within 30 days after the Trustee's receipt of such notice of removal, the departing Trustee may, at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Subordinated Security of such series.

(b) In case at any time any of the following shall occur:

(1) the Trustee shall fail to comply with the provisions of subsection (a) of Section 7.08 after written request therefor by the Company or by any Subordinated Securityholder who has been a bona fide Holder of a Subordinated Security or Subordinated Securities of the applicable series for at least six months; or

(2) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.09 and shall fail to resign after written request therefor by the Company or by any such Subordinated Securityholder; or

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

(4) the Company shall determine that the Trustee has failed to perform its obligations under this Subordinated Indenture in any material respect, then, in any such case, the Company may remove the Trustee and appoint a successor trustee by written instrument executed by an authorized officer of the Company, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.11, any Subordinated Securityholder who has been a bona fide Holder of a Subordinated Security or Subordinated Securities of the affected series for at least six months may, on such Person's behalf and on behalf of 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 such series. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The Holders of a majority in principal amount of the Subordinated Securities Outstanding (determined as provided in Section 8.04) may at any time remove the Trustee and appoint a successor trustee by written instrument or instruments signed by such Holders or their attorneys—in—fact duly authorized, or by the affidavits of the permanent chairman and secretary of a meeting of the Subordinated Securityholders evidencing the vote upon a resolution or resolutions submitted thereto with respect to such removal and appointment (as provided in Article Nine), and by delivery thereof to the Trustee so removed, to the successor trustee and to the Company.

(d) Any resignation or removal of the Trustee and any appointment of a successor trustee pursuant to any of the provisions of this Section 7.10 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.11.

SECTION 7.11. Acceptance of Appointment by Successor Trustee. Any successor trustee appointed as provided in Section 7.10 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations with respect to such series of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers with respect to the trustee so ceasing to act. Upon written request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 7.06.

No successor trustee shall accept appointment as provided in this Section 7.11 unless at the time of such acceptance such successor trustee shall be qualified under the provisions of Section 7.08 and eligible under the provisions of Section 7.09.

SECTION 7.12. Successor to Trustee by Merger, Consolidation or Succession to Business. Any Company into which the Trustee may be merged or converted or with which it may be consolidated, or any Company resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Company succeeding to all or substantially all of the corporate trust business of the Trustee (including the administration of the trust created by this Indenture), shall be the successor of the Trustee hereunder, provided such Company shall be qualified under the provisions of Section 7.08 and eligible under the provisions of Section 7.09, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

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

SECTION 7.13. Preferential Collection of Claims Against Company. If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Subordinated Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

SECTION 7.14. Appointment of Authenticating Agent. As long as any Subordinated Securities of a series remain Outstanding, the Trustee may, by an instrument in writing, appoint with the approval of the Company an authenticating agent (the "*Authenticating Agent*") which shall be authorized to act on behalf of the Trustee to authenticate Subordinated Securities, including Subordinated Securities issued upon exchange, registration of transfer, partial redemption or pursuant to Section 2.09. Subordinated Securities of each such series authenticated by such Authenticating Agent shall be entitled to the benefits of this Subordinated Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee. Whenever reference is made in this Subordinated Indenture to the authentication and delivery of Subordinated Securities of any series by the Trustee or to 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 for such series and a Certificate of Authentication executed on behalf of the Trustee by such Authenticating Agent. Such Authenticating Agent shall at all times be a corporation organized and doing business under the laws of the United States of America or of any State, authorized under such laws to exercise corporate trust powers, having (or in the case of a subsidiary of a bank holding company, its bank

holding company parent shall have) a combined capital and surplus of at least \$45,000,000 (determined as provided in Section 7.09 with respect to the Trustee) and subject to supervision or examination by Federal or State authority.

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

Upon receiving such a notice of resignation or upon such a termination, or in case in any time any Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 7.14 with respect to one or more series of Subordinated Securities, the Trustee shall upon receipt of a Company Order appoint a successor Authenticating Agent and the Company shall provide notice of such appointment to all Holders of Subordinated Securities of such series in the manner and to the extent provided in Section 13.02. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all rights, powers, duties and responsibilities of its predecessor hereunder, with like effect as if originally named as Authenticating Agent. The Company agrees to pay to the Authenticating Agent for such series from time to time reasonable compensation. The Authenticating Agent for the Subordinated Securities of any series shall have no responsibility or liability for any action taken by it as such at the direction of the Trustee.

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

This is one of the Subordinated Securities described in the within—mentioned Subordinated Indenture.

_____, as Trustee

By _____
As Authenticating Agent

By _____
Authorized Signatory

Sections 7.02, 7.03, 7.04, 7.06 and 8.03 shall be applicable to any Authenticating Agent.

ARTICLE 8

CONCERNING THE SUBORDINATED SECURITYHOLDERS

SECTION 8.01. Evidence of Action by Subordinated Securityholders. Whenever in this Subordinated Indenture it is provided that the Holders of a specified percentage in principal amount of the Subordinated Securities of any or all series may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the Holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by such Subordinated Securityholders in Person or by agent or proxy appointed in writing, or (b) by the record of such Holders of Subordinated Securities voting in favor thereof at any meeting of such Subordinated Securityholders duly called and held in accordance with the provisions of Article Nine, or (c) by a combination of such instrument or instruments and any such record of such a meeting of such Subordinated Securityholders.

SECTION 8.02. Proof of Execution of Instruments and of Holding of Subordinated Securities. Subject to the provisions of Sections 7.01, 7.02 and 9.05, proof of the execution of any instrument by a Subordinated Securityholder or such Holder's agent or proxy and proof of the holding by any Person of any of the Subordinated Securities shall be sufficient if made in the following manner:

(a) The fact and date of the execution by any such Person of any instrument may be proved in any reasonable manner acceptable to the Trustee;

(b) The ownership of Subordinated Securities of any series shall be proved by the Register of such Subordinated Securities of such series, or by certificates of the Subordinated Security registrar or registrars thereof.

The Trustee shall not be bound to recognize any Person as a Subordinated Securityholder unless and until such Person's title to the Subordinated Securities held by it is proved in the manner in this Article Eight provided.

The record of any Subordinated Securityholders' meeting shall be proved in the manner provided in Section 9.06.

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

SECTION 8.03. Who May be Deemed Owners of Subordinated Securities. Prior to due presentment for transfer of any Subordinated Security, the Company, the Trustee and any agent of the Company or the Trustee may deem and treat the Person in whose name such Subordinated Security shall be registered upon the Register of Subordinated Securities of the series of which such Subordinated Security is a part as the absolute owner of such Subordinated Security (whether or not such Subordinated Security shall be overdue and notwithstanding any notation of ownership or other writing thereon) for the purpose of receiving payment of or on account of the principal of and interest, subject to the provisions of this Subordinated Indenture, on such Subordinated Security and for all other purposes; and neither the Company nor the Trustee nor any agent of the Company or the Trustee shall be affected by any notice to the contrary. All such payments so made to any such Holder for the time being, or upon such Holder's order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability of moneys payable upon any such Subordinated Security.

If the Subordinated Securities of any series are issued in the form of one or more Global Subordinated Securities, the Depository therefor may grant proxies to Persons having a beneficial ownership in such Global Subordinated Security or Subordinated Securities for purposes of voting or otherwise responding to any request for consent, waiver or other action which the Holder of such Registered Subordinated Security is entitled to grant or take under this Subordinated Indenture and the Trustee shall accept such proxies for the purposes granted; provided that neither the Trustee nor the Company shall have any obligation with respect to the grant of or solicitation by the Depository of such proxies.

SECTION 8.04. Subordinated Securities Owned by the Company or Controlled or Controlling Persons Disregarded for Certain Purposes. In determining whether the Holders of the requisite principal amount of Subordinated Securities have concurred in any demand, direction, request, notice, vote, consent, waiver or other action under this Subordinated Indenture, Subordinated Securities which are owned by the Company or any other obligor on the Subordinated Securities or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Subordinated Securities shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, provided that for the purposes of determining whether the Trustee shall be protected in relying on any such demand, direction, request, notice, vote, consent, waiver or other action, only Subordinated Securities which a Responsible Officer of the Trustee assigned to its Principal Office knows are so owned shall be so disregarded. Subordinated Securities so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section 8.04, if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Subordinated Securities and that the pledgee is not a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor.

Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officer's Certificate listing and identifying all Subordinated Securities, if any, known by the Company to be owned or held by or for the account of the Company or any other obligor on the Subordinated Securities or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on the Subordinated Securities; and, subject to the provisions of Section 7.01, the Trustee shall be entitled to accept such Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all Subordinated Securities not listed therein are Outstanding for the purpose of any such determination.

SECTION 8.05. Instruments Executed by Subordinated Securityholders Bind Future Holders. At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the Holders of the percentage in principal amount of the Subordinated Securities specified in this Subordinated Indenture in connection with such action, any Holder of a Subordinated Security which is shown by the evidence to be included in the Subordinated Securities the Holders of which have consented to such action may, by filing written notice with the Trustee at its principal office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Subordinated Security. Except as aforesaid any such action taken by the Holder of any Subordinated Security and any direction, demand, request, notice, waiver, consent, vote or other action of the Holder of any Subordinated Security which by any provisions of this Subordinated Indenture is required or permitted to be given shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Subordinated Security, and of any Subordinated Security issued in lieu thereof, irrespective of whether any notation in regard thereto is made upon such Subordinated Security. Any action taken by the Holders of the percentage in principal amount of the Subordinated Securities of any or all series specified in this Subordinated Indenture in connection with such action shall be conclusively binding upon the Company, the Trustee and the Holders of all of the Subordinated Securities of such series subject, however, to the provisions of Section 7.01.

ARTICLE 9

SUBORDINATED SECURITYHOLDERS' MEETINGS

SECTION 9.01. Purposes for Which Meetings May be Called. A meeting of Holders of Subordinated Securities of any or all series may be called at any time and from time to time pursuant to the provisions of this Article for any of the following purposes:

(a) to give any notice to the Company or to the Trustee, or to give any directions to the Trustee, or to consent to the waiving of any default hereunder and its consequences, or to take any other action authorized to be taken by Holders of Subordinated Securities of any or all series, as the case may be, pursuant to any of the provisions of Article Six;

(b) to remove the Trustee and appoint a successor trustee pursuant to the provisions of Article Seven;

(c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 10.02; or

(d) to take any other action authorized to be taken by or on behalf of the Holders of any specified principal amount of the Subordinated Securities of any or all series, as the case may be, under any other provision of this Subordinated Indenture or under applicable law.

SECTION 9.02. Manner of Calling Meetings. The Trustee may at any time call a meeting of Subordinated Securityholders to take any action specified in Section 9.01, to be held at such time and at such place in The City of New York, New York, or such other city as the Trustee shall determine. Notice of every meeting of Subordinated Securityholders, setting forth the time and place of such meeting and in general terms the action proposed to be taken at such meeting, shall be mailed not less than 20 nor more than 60 days prior to the date fixed for the meeting.

SECTION 9.03. Call of Meeting by the Company or Subordinated Securityholders. In case at any time the Company pursuant to a resolution of its Board of Directors, or the Holders of not less than ten percent in principal amount of the Subordinated Securities of any or all series, as the case may be, then Outstanding, shall have requested the Trustee to call a meeting of Holders of Subordinated Securities of any or all series, as the case may be, to take any action authorized in Section 9.01 by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed notice of such meeting within 20 days after receipt of such request, then the Company or such Holders of Subordinated Securities in the amount above specified may determine the time and place in any of the City of Seattle, Washington, County of King, Washington or The City of New York, New York for such meeting and may call such meeting to take any action authorized in Section 9.01, by mailing (and publishing, if required) notice thereof as provided in Section 9.02.

SECTION 9.04. Who May Attend and Vote at Meetings. To be entitled to vote at any meeting of Subordinated Securityholders a Person shall (a) be a Holder of one or more Subordinated Securities with respect to which the meeting is being held; or (b) be a Person appointed by an instrument in writing as proxy by such Holder of one or more Subordinated Securities. The only Persons who shall be entitled to be present or to speak at any meeting of Subordinated Securityholders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

SECTION 9.05. Regulations May be Made by Trustee; Conduct of the Meeting; Voting Rights—Adjournment. Notwithstanding any other provisions of this Subordinated Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Subordinated Securityholders, in regard to proof of the holding of Subordinated Securities and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit. Except as otherwise permitted or required by any such regulations, the holding of Subordinated Securities shall be proved in the manner specified in Section 8.02. and the appointment of any proxy shall be proved in the manner specified in said Section 8.02; provided, however, that such regulations may provide that written instruments appointing proxies regular on their face, may be presumed valid and genuine without the proof hereinabove or in said Section 8.02 specified.

The Trustee shall by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Subordinated Securityholders as provided in Section 9.03, in which case the Company or the Subordinated Securityholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by majority vote of the meeting.

Subject to the provisions of Section 8.04, at any meeting each Subordinated Securityholder or proxy shall be entitled to one vote for each \$1,000 principal amount (in the case of Original Issue Discount Subordinated Securities, such principal amount shall be equal to such portion of the principal amount as may be specified in the terms of such series) of Subordinated Securities held or represented by such Holder; provided, however, that no vote shall be cast or counted at any meeting in respect of any Subordinated Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Subordinated Securities held by such Person or instruments in writing as aforesaid duly designating such Person as the Person to vote on behalf of other Subordinated Securityholders. Any meeting of Subordinated Securityholders duly called pursuant to the provisions of Section 9.02 or 9.03 may be adjourned from time to time, and the meeting may be held so adjourned without further notice.

At any meeting of Subordinated Securityholders, the presence of Persons holding or representing Subordinated Securities in principal amount sufficient to take action on the business for the transaction of which such meeting was called shall constitute a quorum, but, if less than a quorum is present, the Persons holding or representing a majority in principal amount of the Subordinated Securities represented at the meeting may adjourn such meeting with the same effect for all intents and purposes, as though a quorum had been present.

SECTION 9.06. Manner of Voting at Meetings and Record to be Kept. The vote upon any resolution submitted to any meeting of Subordinated Securityholders shall be by written ballots on which shall be subscribed the signatures of the Holders of Subordinated Securities or of their representatives by proxy and the principal amount or principal amounts of the Subordinated Securities held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Subordinated Securityholders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 9.02. The record shall show the principal amount or principal amounts of the Subordinated Securities voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one copy thereof shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee.

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

SECTION 9.07. Exercise of Rights of Trustee and Subordinated Securityholders Not to be Hindered or Delayed. Nothing in this Article Nine contained shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Subordinated Securityholders or any rights expressly or impliedly conferred hereunder to make such call, any hindrances or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Subordinated Securityholders under any of the provisions of this Subordinated Indenture or of the Subordinated Securities.

ARTICLE 10

SUPPLEMENTAL SUBORDINATED INDENTURES

SECTION 10.01. Purposes for Which Supplemental Subordinated Indentures May be Entered into Without Consent of Subordinated Securityholders. Without the consent of the Holders of any Subordinated Securities, the Company and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall comply with the provisions of the Trust Indenture Act as then in effect) for one or more of the following purposes:

- (a) to convey, transfer, assign, mortgage or pledge to the Trustee as security for the Subordinated Securities of one or more series any property or assets;
- (b) if deemed appropriate by the Company or required by law, to evidence the succession of another Company to the Company or successive successions and the assumption by the successor Company of the covenants, agreements and obligations of the Company pursuant to Article Four hereof;
- (c) to add to the covenants of the Company such further covenants, restrictions or conditions as its Board of Directors and the Trustee shall consider to be for the protection of the Holders of all or any series of Subordinated Securities (and if such covenants, restrictions or conditions are to be for the benefit of less than all series of Subordinated Securities, stating that such covenants, restrictions or conditions are expressly being included solely for the benefit of such series), and to make the occurrence, or the occurrence and continuance, of a default in any such additional covenants, restrictions or conditions an Event of Default permitting the enforcement of all or any of the several remedies provided in this Subordinated Indenture as herein set forth; provided, however, that in respect to any such additional covenant, restriction or condition such Supplemental Subordinated Indenture may provide for

a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default;

(d) to add or change any of the provisions of this Subordinated Indenture to such extent as shall be necessary to facilitate the issuance of Subordinated Securities in (i) global form or (ii) bearer form, registerable or not registerable as to principal or principal and interest, and with or without coupons;

(e) to change or eliminate any of the provisions of this Subordinated Indenture; provided, however, that any such change or elimination shall become effective only when there is no Subordinated Security of any series Outstanding created prior to the execution of such Supplemental Subordinated Indenture which is entitled to the benefit of such provision;

(f) to establish the form or terms of Subordinated Securities of any series as permitted by Sections 2.01 and 2.03;

(g) to appoint, at the request of the Trustee, a successor Trustee for a particular series of Subordinated Securities to act as such pursuant to the provisions of this Subordinated Indenture and to add to or change the provisions of this Subordinated Indenture to such extent as shall be necessary to facilitate the performance of the duties of such trustee; and

(h) to cure any ambiguity or to correct or supplement any provisions contained herein or in any Supplemental Subordinated Indenture which may be defective or inconsistent with any other provision contained herein or in any Supplemental Subordinated Indenture, or to make such other provisions in regard to matters or questions arising under this Subordinated Indenture or any Supplemental Subordinated Indenture which shall not adversely affect the interests of the Holders of the Subordinated Securities.

SECTION 10.02. Modification of Subordinated Indenture with Consent of Holders of Subordinated Securities. With the consent (evidenced as provided in Section 8.01) of the Holders of not less than a majority in principal amount of the Subordinated Securities of all series at the time Outstanding (determined as provided in Section 8.04) affected by such Supplemental Subordinated Indenture (voting as one class), the Company and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall comply with the provisions of the Trust Indenture Act as then in effect) for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Subordinated Indenture or of any Supplemental Subordinated Indenture or of modifying in any manner the rights of the Holders of the Subordinated Securities of each such series; provided, however, that no such Supplemental Subordinated Indenture shall, without the consent of the Holders of each Outstanding Subordinated Security affect thereby:

(a) change the Stated Maturity of the principal of, or any installment of principal of or interest on, any Subordinated Security, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, or reduce the amount of the principal of an Original Issue Discount Subordinated Security or any other Subordinated Security which would be due and payable upon a declaration of acceleration of the Stated Maturity thereof pursuant to Section 6.01, or change any place of payment where, or the coin or currency in which, any Subordinated 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 Stated Maturity thereof (or, in the case of redemption, on or after the date fixed for redemption), or modify the provisions of this Subordinated Indenture with respect to this subordination of the Subordinated Securities in a manner adverse to the Holders, or

(b) Reduce the percentage in principal amount of the Outstanding Subordinated Securities the consent of the Holders of which is required for any such Supplemental Subordinated Indenture, or the consent of the Holders of which is required for any waiver (of compliance with certain provisions of this Subordinated Indenture or certain defaults hereunder and their consequences) provided for in this Subordinated Indenture or

(c) Change the time of payment or reduce the amount of any minimum sinking account or fund payment or

(d) Modify any of the provisions of this Section 10.02, except to increase any such percentage or to provide that certain other provisions of this Subordinated Indenture cannot be modified or waived without the consent of the Holder of each Subordinated Security affected thereby.

A supplemental indenture which changes or eliminates any covenant or other provision of this Subordinated Indenture which has expressly been included solely for the benefit of one or more particular series of Subordinated Securities, or which modifies the rights of Holders of Subordinated Securities of such series with respect to such covenant or provision, shall be deemed not to affect the rights under this Subordinated Indenture of the Holders of Subordinated Securities of any other series.

Upon the request of the Company, accompanied by a copy of a resolution of the Board of Directors (which resolution may provide general terms or parameters for such action and may provide that the specific terms of such action may be determined in accordance with or pursuant to a Company Order) certified by the secretary or an assistant secretary of the Company authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of the Holders of the Subordinated Securities as aforesaid and other documents, if any, required by Section 8.01, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Subordinated Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

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

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions to this Section, the Trustee shall give notice thereof to the Holders of then Outstanding Registered Subordinated Securities of each series affected thereby, by mailing a notice thereof by first-class mail to such Holders at their addresses as they shall appear on the Security Register and in each case such notice shall set forth in general terms the substance of such supplemental indenture. Any failure of the Company to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

SECTION 10.03. Effect of Supplemental Subordinated Indentures. Upon the execution of any Supplemental Subordinated Indenture pursuant to the provisions of this Article Ten, this Subordinated Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Subordinated Indenture of the Trustee, the Company and the Holders of Subordinated Securities shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such Supplemental Subordinated Indenture shall be and be deemed to be part of the terms and conditions of this Subordinated Indenture for any and all purposes.

The Trustee shall be entitled to receive, and subject to the provisions of Section 7.01 shall be entitled to rely upon, an Opinion of Counsel as conclusive evidence that any such Supplemental Subordinated Indenture complies with the provisions of this Article Ten and that the Subordinated Securities affected by the Supplemental Subordinated Indenture, when such Subordinated Securities are authenticated and delivered by the Trustee and executed and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will be valid and binding obligations of the Company, except as any rights thereunder may be limited by bankruptcy, insolvency and other similar laws affecting the enforcement of creditors' rights generally and by general equity principles.

SECTION 10.04. Subordinated Securities May Bear Notation of Changes by Supplemental Subordinated Indentures. Subordinated Securities authenticated and delivered after the execution of any Supplemental Subordinated Indenture pursuant to the provisions of this Article Ten, or after any action taken at a Subordinated Securityholders' meeting pursuant to Article Nine, may bear a notation in form approved by the Trustee as to any matter provided for in such Supplemental Subordinated Indenture or as to any action taken at any such meeting. If the Company or the Trustee shall so determine, new Subordinated Securities so modified as to conform, in the opinion of the Trustee and the Company, to any modification of this Subordinated Indenture contained in any such

Supplemental Subordinated Indenture may be prepared by the Company, authenticated by the Trustee and delivered in exchange for the Subordinated Securities then Outstanding.

ARTICLE 11

DISCHARGE; DEFEASANCE

SECTION 11.01. Satisfaction and Discharge of Subordinated Indenture.

(A) . If at any time (i) the Company shall have paid or caused to be paid the principal of and interest on all the Subordinated Securities of any series Outstanding hereunder (other than Subordinated Securities of such series which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.09) as and when the same shall have become due and payable, or (ii) the Company shall have delivered to the Trustee for cancellation all Subordinated Securities of any series theretofore authenticated (other than any Subordinated Securities of such series which shall have been destroyed, lost or stolen and which shall have been replaced or paid as provided in Section 2.09) or (iii) in the case of any series of Subordinated Securities where the exact amount (including the currency of payment) of principal of and interest due on which can be determined at the time of making the deposit referred to in clause (b) below, (a) all the Subordinated 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 (b) the Company shall have irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust the entire amount in (i) cash (other than moneys repaid by the Trustee or any Paying Agent to the Company in accordance with Section 11.04), (ii) in the case of any series of Subordinated Securities the payments on which may only be made in Dollars, direct obligations of the United States of America, backed by its full faith and credit ("*U.S. Government Obligations*"), maturing as to principal and interest at such times and in such amounts as will insure the availability of cash sufficient to pay at such Maturity or upon such redemption, as the case may be, or (iii) a combination thereof, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay (a) the principal and interest on all Subordinated Securities of such series on each date that such principal or interest is due and payable in accordance with the terms of the Subordinated Indenture and the Subordinated Securities of such series; (x) the principal and interest on all Subordinated Securities of such series on each date that such principal or interest is due and payable and in accordance with the terms of the Subordinated Indenture and the Subordinated Securities of such series; and if, in any such case, the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Subordinated Indenture shall cease to be of further effect (except as to (i) rights of registration of transfer and exchange of Subordinated Securities of such series and the Company's right of optional redemption, if any, (ii) substitution of mutilated, defaced, destroyed, lost or stolen Subordinated Securities, (iii) rights of Holders of Subordinated Securities to receive payments of principal thereof and interest thereon, upon the original stated due dates therefore (but not upon acceleration), (iv) any optional redemption rights of such series of Subordinated Securities to the extent to be exercised to make such call for redemption within one year, (v) the rights, obligations, duties and immunities of the Trustee hereunder, including without limitation those under Section 7.6, (vi) the rights of the Holders of securities of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them, and (vii) the obligations of the Company under Section 4.03 and the Trustee, on demand of the Company accompanied by an Officer's Certificate and an Opinion of Counsel and at the cost and expense of the Company, shall execute proper instruments acknowledging such satisfaction of and discharging this Subordinated Indenture; provided, that the rights of Holders of the Subordinated Securities to receive amounts in respect of principal of and interest on the Subordinated Securities held by them shall not be delayed longer than required by then applicable mandatory rules or policies of any securities exchange upon which the Subordinated Securities are listed. The Company agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Subordinated Indenture or the Subordinated Securities of such series.

(B) The following provisions shall apply to the Subordinated Securities of each series unless specifically otherwise provided in an Officer's Certificate or indenture supplemental hereto provided pursuant to Section 2.03. In addition to discharge of the Subordinated Indenture pursuant to the next preceding paragraph, in the case of any

series of Subordinated Securities the exact amounts (including the currency of payment) of principal of and interest due on which can be determined at the time of making the deposit referred to in clause (a) below, the Company shall be deemed to have paid and discharged the entire indebtedness on all the Subordinated Securities of such a series on the date of the deposit referred to in clause (a) below, and the provisions of this Subordinated Indenture with respect to the Subordinated Securities of such series shall no longer be in effect (except as to (i) rights of registration of transfer and exchange of Subordinated Securities of such series and the Company's right of optional redemption, if any, (ii) substitution of mutilated, defaced, destroyed, lost or stolen Subordinated Securities, (iii) rights of Holders of Subordinated Securities to receive payments of principal thereof and interest thereon, upon the original stated due dates therefor (but not upon acceleration), (iv) any optional redemption rights of such series of Subordinated Securities to the extent to be exercised to make such call for redemption within one year, (v) the rights, obligations, duties and immunities of the Trustee hereunder, (vi) the rights of the Holders of Subordinated Securities of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them and (vii) the obligations of the Company under Section 4.03 and the Trustee, at the expense of the Company, shall at the Company's request, execute proper instruments acknowledging the same, if

(a) with reference to this provision the Company has irrevocably deposited or caused to be irrevocably deposited with the Trustee as trust funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of the Subordinated Securities of such series (i) cash in an amount, or (ii) in the case of any series of Subordinated Securities the payments on which may only be made in United States Dollars, U.S. Government Obligations, maturing as to principal and interest at such times and in such amounts as will insure the availability of cash or (iii) a combination thereof, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay the principal and interest on all Subordinated Securities of such series on each date that such principal or interest is due and payable in accordance with the terms of the Subordinated Indenture and the Subordinated Securities of such series;

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

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

(d) no event or condition exists that, based on the subordination provisions applicable to the Subordinated Securities of such series, would prevent the Company from making payments of principal of, premium, if any, and interest on any of the applicable Subordinated Securities at the date of the irrevocable deposit referred to in Section 11.01(B)(a) above or at any time during the period ending on the 91st day after such deposit date; and

(e) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for relating to the defeasance contemplated by this provision have been complied with.

(C) The Company shall be released from its obligations under Sections 4.02 and unless otherwise provided for in the Board Resolution, Officer's Certificate or Subordinated Indenture supplemental hereto establishing such series of Subordinated Securities, from all covenants and other obligations referred to in Section 2.03(18) or 2.03(20) with respect to such series of Subordinated Securities outstanding on and after the date the conditions set forth below are satisfied (hereinafter, "covenant defeasance"). For this purpose, such covenant defeasance means that, with respect to the Outstanding Subordinated Securities of any series, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in such Section, whether directly or indirectly by reason of any reference elsewhere herein to such Section or by reason of any reference in such Section to any other provision herein or in any other document and such omission to comply shall not constitute an

Event of Default under Section 6.01, but the remainder of this Subordinated Indenture and such Subordinated Securities shall be unaffected thereby. The following shall be the conditions to application of this subsection C of this Section 11.01:

(a) The Company has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the holders of the Subordinated Securities of such series (i) cash in an amount, or (ii) in the case of any series of Subordinated Securities the payments on which may only be made in United States Dollars, U.S. Government Obligations maturing as to principal and interest at such times and in such amounts as will insure the availability of cash or (iii) a combination thereof, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay the principal and interest on all Subordinated Securities of such series in accordance with the terms of the Subordinated Indenture and the Subordinated Securities of such series;

(b) No Event of Default or event which with notice or lapse of time or both would become an Event of Default with respect to the Subordinated Securities shall have occurred and be continuing on the date of such deposit;

(c) Such covenant defeasance shall not cause the Trustee to have a conflicting interest as defined in Section 7.08 and for purposes of the Trust Indenture Act with respect to any securities of the Company;

(d) Such covenant defeasance shall not result in a breach or violation of, or constitute a default under, this Subordinated Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(e) Such covenant defeasance shall not cause any Subordinated Securities then listed on any registered national securities exchange under the Exchange Act to be delisted;

(f) The Company shall have delivered to the Trustee an Officer's Certificate and Opinion of Counsel to the effect that the Holders of the Subordinated Securities of such series will not recognize income, gain or loss for United States Federal income tax purposes as a result of such covenant defeasance and will be subject to United States 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

(g) The Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for relating to the covenant defeasance contemplated by this provision have been complied with.

SECTION 11.02. Application by Trustee of Funds Deposited for Payment of Subordinated Securities. Subject to Section 11.04, all moneys deposited with the Trustee (for other trustee) pursuant to Section 11.01 shall be held in trust and applied by it to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent), to the Holders of the particular Subordinated Securities of such series for the payment or redemption of which such moneys have been deposited with the Trustee, of all sums due and to become due thereon for principal and interest; but such money need not be segregated from other funds except to the extent required by law.

SECTION 11.03. Repayment of Moneys Held by Paying Agent. In connection with the satisfaction and discharge of this Subordinated Indenture with respect to Subordinated Securities of any series, all moneys then held by any Paying Agent under the provisions of this Subordinated Indenture with respect to such series of Subordinated Securities shall, upon demand of the Company, be repaid to it or paid to the Trustee and thereupon such Paying Agent shall be released from all further liability with respect to such moneys.

SECTION 11.04. Return of Moneys Held by Trustee and Paying Agent Unclaimed for Two Years. Any moneys deposited with or paid to the Trustee or any Paying Agent for the payment of the principal of and any premium and interest on any Subordinated Security and not so applied but remaining unclaimed under applicable

law shall be transferred by the Trustee to the appropriate Persons in accordance with applicable laws, and the Holder of such Subordinated Security of such series shall thereafter look only to such Persons for any payment which such Holder may be entitled to collect and all liability of the Trustee and such Paying Agent with respect to such moneys shall thereupon cease.

SECTION 11.05. Indemnity for U.S. Government of Obligations. The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations deposited pursuant to Section 11.01 or the principal or interest received in respect of such obligations.

ARTICLE 12

IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

SECTION 12.01. Incorporators, Stockholders, Officers and Directors of Company Exempt From Individual Liability. No recourse under or upon any obligation, covenant or agreement of this Subordinated Indenture, or of any Subordinated Security, or for any claim based thereon or otherwise in respect thereof, shall be had against any incorporator, stockholder, officer or director, as such past, present or future, of the Company, either directly or through the Company, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Subordinated Indenture and the obligations issued hereunder are solely corporate obligations, and that no personal liability whatever shall attach to, or is or shall be incurred by, the incorporators, stockholders, officers or directors, as such, of the Company because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Subordinated Indenture or in any of the Subordinated Securities or implied therefrom; and that any and all such personal liability of every name and nature, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer or director, as such, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Subordinated Indenture or in any of the Subordinated Securities or implied therefrom are hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Subordinated Indenture and the issue of such Subordinated Securities.

ARTICLE 13

MISCELLANEOUS PROVISIONS

SECTION 13.01. Successors and Assigns of the Company Bound by Subordinated Indenture. All the covenants, stipulations, promises and agreements in this Subordinated Indenture contained by or in behalf of the Company shall bind its successors and assigns, whether so expressed or not.

SECTION 13.02. Notices; Effectiveness. Any notice or demand which by any provision of this Subordinated Indenture is required or permitted to be given or served by the Trustee or by the Holders of Subordinated Securities to or on the Company, or by the Company or by the Holders of Subordinated Securities to the Trustee or upon the Depository by the Company or the Trustee may be electronically communicated or hand delivered or sent by overnight courier, addressed to the relevant party as provided in this Section 13.02.

All communications intended for the Company shall be sent to:

Achieve Life Sciences, Inc.
1001 W. Broadway, Suite 400
Vancouver, British Columbia, V6H 4B1
Attention: Chief Financial Officer

All communications intended for the Trustee shall be sent to:

Attention: _____

or at any other address of which any of the foregoing shall have notified the others in any manner prescribed in this Section 13.02.

For all purposes of this Subordinated Indenture, a notice or communication will be deemed effective:

(a) if delivered by hand or sent by overnight courier, on the day it is delivered unless (i) that day is not a Business Day in the city specified (a "Local Business Day") in the address for notice provided by the recipient or (ii) if delivered after the close of business on a Local Business Day, then on the next succeeding Local Business Day or

51

(b) if sent by facsimile transmission, on the date transmitted, provided that oral or written confirmation of receipt is obtained by the sender unless the date of transmission and confirmation is not a Local Business Day, in which case, on the next succeeding Local Business Day.

Any notice, direction, requires, demand, consent or waiver by the Company, any Subordinated Securityholder to or upon the Trustee shall be deemed to have been sufficiently given, made or filed, for all purposes, if given, made or filed in writing at the Principal Office of the Trustee in accordance with the provisions of this Section 13.02.

Any notice, request, consent or waiver by the Company or the Trustee upon the Depository shall have been sufficiently given, made or filed, for all purposes, if give or made in accordance with the provisions of this Section 13.02 at the address shown for such Depository in the Register or at such other address as the Depository shall have provided for purposes of notice.

SECTION 13.03. Compliance Certificates and Opinions. Upon on any request or application by the Company to the Trustee to take any action under any of the provisions of this Subordinated Indenture, the Company shall furnish to the Trustee an Officer's Certificate stating that all conditions precedent, if any, provided for in this Subordinated Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent have been complied with, except that in the case of any such application or demand as to which the furnishing of such document is specifically required by any provision of this Subordinated Indenture relating to such particular application or demand, no additional certificate or opinion need be furnished.

Each certificate or opinion provided for in this Subordinated Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Subordinated Indenture (other than a certificate provided pursuant to Section 5.03(d) shall include (a) a statement that the Person making such certificate or opinion has read such covenant or condition; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable such Person to express an informed opinion as to whether or not such covenant or condition has been complied with; and (d) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

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

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

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

SECTION 13.04. Days on Which Payment to be Made, Notice Given or Other Action Taken. If any date on which a payment is to be made, notice given or other action taken hereunder is a Saturday, Sunday or legal holiday in the state in which the payment, notice or other action is to be made, given or taken, then such payment, notice or other action shall be made, given or taken on the next succeeding Business Day in such state, and in the case of any payment, no interest shall accrue for the delay.

SECTION 13.05. Provisions Required by Trust Indenture Act to Control. If and to the extent that any provision of this Subordinated Indenture limits, qualifies or conflicts with another provision included in this Subordinated Indenture which is required to be included in this Subordinated Indenture by any of Sections 310 to 317, inclusive, of the Trust Indenture Act such required provision shall control.

SECTION 13.06. Governing Law and Waiver of Trial By Jury. THIS SUBORDINATED INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (INCLUDING WITHOUT LIMITATION SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW OR ANY SUCCESSOR TO SUCH STATUTE). THE TRUSTEE AND THE COMPANY AGREE TO SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF ANY UNITED STATES FEDERAL OR STATE COURT LOCATED IN THE BOROUGH OF MANHATTAN, IN THE CITY OF NEW YORK IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE OR THE SECURITIES. THIS INDENTURE IS SUBJECT TO THE PROVISIONS OF THE TRUST INDENTURE ACT THAT ARE REQUIRED TO BE PART OF THIS INDENTURE AND SHALL, TO THE EXTENT APPLICABLE, BE GOVERNED BY SUCH PROVISIONS.

THE TRUSTEE AND THE COMPANY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS INDENTURE OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE TRUSTEE OR THE COMPANY RELATING THERETO. THE COMPANY ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE TRUSTEE AND THE HOLDERS ENTERING INTO THIS INDENTURE.

SECTION 13.07. Effect of Headings. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

SECTION 13.08. Judgment Currency. The Company agrees, to the fullest extent that it may effectively do so under applicable law, that (a) if for the purpose of obtaining judgment in any court it is necessary to convert the sum due in respect of the principal of or interest on the Subordinated 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 The City of New York the Required Currency with the Judgment Currency on the day on which final unappealable judgment is entered, unless such day is not a New York Banking Day, then, to the extent permitted by applicable law, the rate of

exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the New York Banking Day preceding the day on which final unappealable judgment is entered and (b) its obligations under this Subordinated 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 Subordinated Indenture. The Company agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Trustee against loss if Dollars so purchased are less than the sum originally due to the Trustee in Dollars. For purposes of the foregoing, "New York Banking Day" means any day except a Saturday, Sunday or a legal holiday in The City of New York or a day on which banking institutions in The City of New York are authorized or required by law or executive order to close.

SECTION 13.09. Provisions of the Subordinated Indenture and Subordinated Securities for the Sole Benefit of the Parties and the Subordinated Securityholders. Nothing in this Subordinated Indenture or in the Subordinated Securities, expressed or implied, shall give or be construed to give any Person, firm or Company, other than the parties hereto and the Holders of the Subordinated Securities, any legal or equitable right, remedy or claim under or in respect of this Subordinated Indenture, or under any covenant, condition and provision herein contained; all its covenants, conditions and provisions being for the sole benefit of the parties hereto and of the Holders of the Subordinated Securities.

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

SECTION 13.11. Facsimile or PDF. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

SECTION 13.12. Force Majeure. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions or loss of utilities; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

SECTION 13.12. U.S.A. Patriot Act. The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

ARTICLE 14

SUBORDINATION OF SECURITIES

SECTION 14.01. Subordinated Securities Subordinated to Senior Indebtedness. The Company covenants and agrees, and each Holder of Subordinated Securities, by his acceptance thereof, likewise covenants and agrees, that the indebtedness represented by the Subordinated Securities and the payment of the principal of (and premium, if any) in respect of each and all of the Subordinated Securities is hereby expressly subordinated, to the extent and in the manner hereinafter set forth, in right of payment to the prior payment in full of Senior Indebtedness.

In the event (a) of any distribution of assets of the Company upon any dissolution, winding up, liquidation or reorganization of the Company whether in bankruptcy, insolvency, reorganization or receivership proceeding or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of the Company or otherwise, except a distribution in connection with a member or consolidation or a conveyance or transfer of all or substantially all of the properties of the Company which complies with the requirements of Section 4.02, or (b) that a default shall have occurred and be continuing with respect to the payment of principal of (or premium, if any) in respect of any Senior Indebtedness, or (c) that the principal of the Subordinated Securities of any series (or in the case of Original Issue Discount Securities, the portion of the principal amount thereof referred to in Section 6.01) shall have been declared due and payable pursuant to Section 6.01 and such declaration shall not have been rescinded and annulled as provided in Section 6.01, then:

(1) in a circumstance described in the foregoing clause (a) or (b) the holders of all Senior Indebtedness, and in the circumstance described in the foregoing clause (c) the holders of all Senior Indebtedness outstanding at the time the principal of such Subordinated Securities (or in the case of Original Issue Discount Securities, such portion of the principal amount) shall have been so declared due and payable, shall first be entitled to receive payment of the full amount due thereon in respect of principal, premium (if any), interest, or provision shall be made for such payment in money or money's worth, before the Holders of any of the Subordinated Securities are entitled to receive any payment on account of the principal of (or premium, if any) or interest payable in respect of the indebtedness evidenced by the Subordinated Securities;

(2) any payment by, or distribution of assets of, the Company of any kind of character, whether in cash, property or securities (other than securities of the Company as reorganized or readjusted or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in this Article with respect to the securities, to the payment of all Senior Indebtedness, provided that the rights of the holders of the Senior Indebtedness are not altered by such reorganization or readjustment), to which the Holders of any of the Subordinated Securities would be entitled except for the provisions of this Article shall be paid or delivered by the person making such payment or distribution, whether a trustee in bankruptcy, a receive or liquidating trustee or otherwise, directly to the holders of such Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instrument evidencing any of such Senior Indebtedness may have been issued, ratably according to the aggregate amounts remaining unpaid on account of such Senior Indebtedness held or represented by each, to the extent necessary to make payment in full of all Senior Indebtedness remaining unpaid after giving effect to any concurrent payment or distribution (or provision therefore) to the holders of such Senior Indebtedness, before any payment or distribution is made to the Holders of the indebtedness evidenced by the Subordinated Securities under this Subordinated Indenture; and

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

SECTION 14.02. Subrogation. Subject to the payment in full of all Senior Indebtedness to which the indebtedness evidenced by the securities is in the circumstances subordinated as provided in Section 14.01, the Holders of the Subordinated Securities shall be subrogated to the rights of the holders of such Senior Indebtedness to receive payments or distributions of cash, property or Subordinated Securities of the Company applicable to such Senior Indebtedness until all amounts owing on the Subordinated Securities shall be paid in full, and, as between the Company, its creditors other than holders of such Senior Indebtedness, and the Holders of the Subordinated Securities, no such payment or distribution made to the holders of such Senior Indebtedness by virtue of this Article

which otherwise would have been made to the Holders of the Subordinated Securities shall be deemed to be a payment by the Company on account of such Senior Indebtedness, it being understood that the provisions of this Article are and are intended solely for the purpose of defining the relative rights of the Holders of the Subordinated Securities, on the one hand, and the holders of Senior Indebtedness.

SECTION 14.03. Obligation of the Company Unconditional. Nothing contained in this Article or elsewhere in this Subordinated Indenture or in the Subordinated Securities is intended to or shall impair, as between the Company, its creditors other than the holders of Senior Indebtedness, and the Holders of the Subordinated Securities, the obligation of the Company, which is absolute and unconditional, to pay to the Holders of the Subordinated Securities the principal of (and premium, if any) and interest payable in the respect of the Subordinated 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 Subordinated Securities and creditors of the Company other than the holders of Senior Indebtedness nor shall anything herein or therein prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Subordinated Indenture, subject to the rights, if any, under this Article of the holders of Senior Indebtedness in respect of cash, property or Subordinated Securities of the Company received upon the exercise of any such remedy.

Upon any payment or distribution of assets of the Company referred to in this Article, the Trustee and the Holders of the Subordinated Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which any such dissolution, winding up, liquidation or reorganization proceeding affecting the affairs of the Company is pending or upon a certificate of the trustee in bankruptcy, receiver, assignee for the benefit of creditors, liquidating trustee or agent or other person making any payment or distribution, delivered to the Trustee or to the Holders of the Subordinated Securities, for the purpose of ascertaining the persons entitled to participate in such payment or distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount paid or distributed thereon and all other facts pertinent thereto or to this Article.

SECTION 14.04. Payments on Subordinated Securities Permitted. Nothing contained in this Article or elsewhere in this Subordinated Indenture, or in any of the Subordinated Securities, shall affect the obligation of the Company to make, or prevent the Company from making, payment of the principal of (or premium, if any) or interest payable in respect of the Subordinated Securities in accordance with the provisions hereof and thereof, except as otherwise provided in this Article.

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

SECTION 14.06. Knowledge of Trustee. Notwithstanding the provisions of this Article or any other provisions of this Subordinated Indenture, the Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness and shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment or moneys to or by the Trustee, or the taking of any other action by the Trustee, unless and until the Trustee shall have received written notice thereof from the Company, any Holder of Subordinated Securities, any paying or conversion agent of the Company or the holder or representative of any class of Senior Indebtedness; provided, however, that if the Trustee shall not have received the notice provided for in this Section at least three Business Days prior to the date upon which, by the terms hereof, any money may become payable for any purpose (including, without limitation, the payment of the principal of (or premium, if any) or interest on any Subordinated Security) then, anything herein contained to the contrary notwithstanding, the Trustee shall have all power and authority to receive such money and to apply the same to the purpose for which such money was received and shall not be affected by any notice to the contrary which may be received by it during or after such three Business Day period.

SECTION 14.07. Trustee May Hold Senior Indebtedness. The trustee in its individual capacity shall be entitled to all the rights set forth in this Article with respect to any Senior Indebtedness at the time held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in Section 313 of the Trust Indenture Act or elsewhere in this Subordinated Indenture shall deprive the Trustee of any of its rights as such holder.

Nothing in this Article shall subordinate any claims of, or payments to, the Trustee (under or pursuant to Section 7.06) to Senior Indebtedness.

SECTION 14.08. Rights of Holders of Senior Indebtedness Not Impaired. No right of any present or future holder of any Senior Indebtedness to enforce the subordination herein shall at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any non-compliance by the Company with the terms, provisions and covenants of this Subordinated Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

[Signature page follows]

IN WITNESS WHEREOF, ACHIEVE LIFE SCIENCES, INC. has caused this Subordinated Indenture to be signed by its Chairman of the Board or its President or Chief Financial Officer or one of its Vice Presidents and Trustee has caused this Subordinated Indenture to be signed and acknowledged by an appropriate officer, all as of the day and year first written above.

ACHIEVE LIFE SCIENCES, INC.

By _____

Title: _____

_____, as Trustee

By _____

Title: _____



1191 SECOND AVENUE, 10TH FLOOR SEATTLE, WA 98101
TEL: 206.389.4510 FAX: 206.389.4511 WWW.FENWICK.COM

December 26, 2018

Achieve Life Sciences, Inc.
1001 W. Broadway, Suite 400
Vancouver, British Columbia, V6H 4B1

Gentlemen/Ladies:

At your request, we have examined the Registration Statement on Form S-3 filed by Achieve Life Sciences, Inc. (the "**Company**") with the Securities and Exchange Commission (the "**Commission**") on December 26, 2018 (the "**Registration Statement**") in connection with the registration under the Securities Act of 1933, as amended (the "**Securities Act**"), of the offering and sale from time to time of (i) shares of the Company's common stock, \$0.001 par value per share (the "**Common Stock**"), (ii) shares of the Company's preferred stock, \$0.001 par value per share (the "**Preferred Stock**"), (iii) one or more series of debt securities (the "**Debt Securities**") issuable pursuant to an indenture (the "**Indenture**") by and between the Company and a financial institution to be identified therein as trustee (the "**Trustee**"), (iv) warrants to purchase Common Stock, Preferred Stock or Debt Securities (the "**Warrants**"), (v) subscription rights to purchase Common Stock, Preferred Stock or Debt Securities (the "**Subscription Rights**"), and/or (vi) units consisting of any combination of such foregoing securities described in clauses (i) through (v) above (the "**Units**"), having an aggregate public offering price of up to \$100,000,000. The Common Stock, the Preferred Stock, the Debt Securities, the Warrants, the Subscription Rights and the Units are collectively referred to herein as the "**Securities**." The Securities may be sold from time to time by the Company as set forth in the Registration Statement, the prospectus contained within the Registration Statement (the "**Prospectus**") and supplements to the Prospectus.

In connection with our opinion expressed below we have examined originals or copies of the Company's current amended and restated certificate of incorporation, including amendments thereto (the "**Restated Certificate**") and amended and restated bylaws, including amendments thereto (the "**Bylaws**") and, together with the Restated Certificate, as each may be amended, modified or restated, the "**Charter Documents**"), certain corporate proceedings of the Company's board of directors and stockholders relating to the Registration Statement, and such other agreements, documents, certificates and statements of the Company, its transfer agent and public or governmental officials, as we have deemed advisable, and have examined such questions of law as we have considered necessary. We have assumed, and express no opinion as to, the authenticity of all documents submitted to us as originals, the genuineness of all signatures on documents submitted to us, the conformity to originals of all documents submitted to us as copies, and the absence of any undisclosed termination, waiver or amendment to any document reviewed by us. In giving our opinion, we have also relied upon a good standing certificate regarding the Company issued by the Delaware Secretary of State and a management certificate addressed to us and dated of even date herewith executed by the Company containing certain factual representations (the "**Management Certificate**"). We also have assumed that any certificates or instruments representing the Securities will be, when issued, properly signed by authorized officers of the Company or their agents, and, in the case of Debt Securities, properly authenticated in accordance with the terms of the Indenture and delivered to the intended recipients with the intent that the Company be bound thereby. We also have assumed that the Indenture at the time of execution, authentication, issuance and delivery of the Debt Securities will be a valid and legally binding obligation of the Trustee.

As to matters of fact relevant to this opinion, we have relied solely upon our examination of the documents referred to above and have assumed the current accuracy and completeness of the information obtained from the documents referred to above and the representations and warranties made by representatives of the Company to us,

including but not limited to those set forth in the Management Certificate. We have made no independent investigation or other attempt to verify the accuracy of any of such information or to determine the existence or non-existence of any other factual matters.

We are admitted to practice law in the State of Washington, and we render this opinion only with respect to, and express no opinion herein concerning the application or effect of the laws of any jurisdiction other than (i) the existing federal laws of the United States of America, (ii) the existing laws of the State of Washington, (iii) the Delaware General Corporation Law and reported judicial decisions relating thereto, and (iv) solely with respect to whether or not the Debt Securities are the valid and binding obligations of the Company, the existing laws of the state of New York (clauses (i) through (iii) collectively, the “*Applicable Laws*”). To the extent that any Warrant Agreement, Subscription Rights Agreement or Unit Agreement (each as defined below) is governed by the laws of any jurisdiction other than the State of Washington, our opinion expressed below assumes that Internal Washington Law (as defined below) will exclusively apply to and govern such Warrant Agreement, Subscription Rights Agreement or Unit Agreement, without regard to any interpretation or construction that might be indicated by the laws stated as governing any such Warrant Agreement, Subscription Rights Agreement or Unit Agreement. As used herein “*Internal Washington Law*” means the internal laws of the State of Washington applicable to a contract made by Washington residents in the State of Washington that selects Washington law as the governing law of such contract, without regard to any laws or equitable principles regarding choice of law, conflict of laws or public policies that might make any other law(s) applicable. Without limitation, we express no opinion with respect to the federal laws of the United States of America or the securities or “blue sky” laws of any state or any local or regional laws.

In connection with our opinions expressed below, we have assumed that, (i) at or prior to the time of the delivery of any of the Securities there will not have occurred any change in the law or the facts affecting the validity of the Securities, (ii) if any Debt Securities are issued, such Debt Securities will only be issued pursuant to the Indenture in the form filed with the Registration Statement as an exhibit and that there will not have occurred any change in law affecting the enforceability of the Debt Securities, (iii) all applicable covenants binding on or applicable to the Company restricting the issuance of Debt Securities will have been validly waived, (iv) the Registration Statement and any amendments (including any necessary post-effective amendments) will have been declared effective under the Securities Act, (v) at the time of the offer, issuance and sale of any Securities, no stop order suspending the Registration Statement’s effectiveness will have been issued and remain in effect, (vi) no future amendments will be made to the Charter Documents that would be in conflict with or inconsistent with the Company’s right and ability to issue the Securities, (vii) at the time of the offer, issuance and sale of any Securities, the Company will have a sufficient number of authorized and unissued and unreserved shares of the applicable class or series of its capital stock included in (or purchasable upon exercise or conversion of) the Securities so issued and sold (after taking into account all other outstanding securities of the Company which may require the Company to issue shares of such applicable class or series) to be able to issue all such shares, and (viii) all purchasers of Securities will timely pay in full to the Company all amounts they have agreed to pay to purchase such Securities as approved by the Board or a duly authorized committee thereof, and that the purchase price of any Securities that are shares of capital stock will not be less than the par value thereof. We also have assumed that the terms of any Debt Securities to be established subsequent to the date hereof, the issuance and delivery of Securities subsequent to the date hereof, and the compliance by the Company with the terms of such Securities, will not violate any applicable law (including, without limitation, any law relating to usury) or result in a violation of any provision of any of the Charter Documents or of any instrument or agreement then binding upon the Company or any restriction imposed by any court or governmental body having jurisdiction over the Company.

This opinion is qualified by, and is subject to, and we render no opinion with respect to, the following limitations and exceptions to the enforceability of the Debt Securities:

- (1) The effect of the laws of bankruptcy, insolvency, reorganization, arrangement, moratorium, fraudulent conveyance, assignment for the benefit of creditors, and other similar laws now or hereinafter in effect relating to or affecting the rights and remedies of creditors, including the effect of statutory or other laws regarding fraudulent transfers or preferential transfers.

- (2) The effect of general principles of equity and similar principles, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, public policy and unconscionability, and the possible unavailability of specific performance, injunctive relief, or other equitable remedies, regardless of whether considered in a proceeding in equity or at law.
- (3) The effect of laws relating to usury or permissible rates of interest for loans, forbearances or the use of money.

We express no opinion regarding the effectiveness of any waiver, stay or extension, or of any unknown future rights. Further, we express no opinion regarding the effect of provisions relating to indemnification, exculpation or contribution to the extent such provisions may be held unenforceable as contrary to federal or state securities laws or public policy.

The Company has informed us that the Company intends to issue the Securities from time to time on a delayed or continuous basis. This opinion is limited to the Applicable Laws, including the rules and regulations thereunder, as in effect on the date hereof. We are basing this opinion on our understanding that, prior to issuing any Securities in connection with the Registration Statement, the Company will advise us in writing of the terms thereof and other information material thereto, will afford us an opportunity to review the operative documents pursuant to which such Securities are to be issued (including the Registration Statement, the Prospectus and the applicable supplement to the Prospectus, as then in effect) and will file such supplement or amendment to this opinion (if any) as we may reasonably consider necessary or appropriate with respect to such Securities. However, we undertake no responsibility to monitor the Company's future compliance with applicable laws, rules or regulations of the Commission or other governmental body. In particular, we assume that the Company will obtain the requisite approval of the Board and the requisite approval of its stockholders, if required by the laws of the State of Delaware or the Charter Documents, or if necessary because the Company does not have a sufficient number of authorized but unissued and unreserved shares of its capital stock at the time of issuance to satisfy the issuance of any Securities. We also assume the Company will timely file any and all supplements to the Registration Statement and Prospectus as are necessary to comply with applicable laws in effect from time to time and duly amend its Restated Certificate to increase the authorized number of shares of its capital stock if the number of such shares to be sold pursuant to the Registration Statement would cause the Company to issue more shares than it has authorized.

Based upon the foregoing, we are of the following opinion:

1. With respect to the shares of Common Stock registered pursuant to the Registration Statement, when (i) the issuance of and the terms of the offering of such shares of Common Stock and related matters have been duly authorized by all required corporate action of the Board or a duly authorized committee thereof, and, if required, the stockholders of the Company in accordance with the Charter Documents and Applicable Laws and (ii) if required, certificates representing the shares of Common Stock have been duly executed, countersigned, registered and delivered either (a) in accordance with the applicable definitive purchase, underwriting or similar agreement approved by the Board, or upon the exercise of Warrants to purchase Common Stock, upon payment of the consideration therefor (in an amount not less than the par value of the Common Stock) provided for therein and approved by the Board or a duly authorized committee thereof, or (b) upon conversion or exercise of any other security of the Company, in accordance with the terms of such security or the instrument governing such security providing for such conversion or exercise as approved by the Board, for the consideration approved by the Board (in an amount not less than the par value per share of the Common Stock), then such shares of Common Stock will be validly issued, fully paid and nonassessable.

2. With respect to any particular series of shares of Preferred Stock registered pursuant to the Registration Statement, when (i) the issuance and terms of such shares of Preferred Stock, the terms of the offering thereof and related matters, including the adoption of a certificate of designation relating to such Preferred Stock conforming to the Company's Restated Certificate and Bylaws and the Delaware General Corporation Law (a "*Certificate*") and the filing of the Certificate with the Secretary of State of the State of Delaware (or the filing of an amendment to the Company's Certificate of Incorporation to similar effect), have been duly authorized by all required corporate action of the Board and, if required, the stockholders of the Company in accordance with the Charter Documents and Applicable Laws and (ii) if required, certificates representing the shares of Preferred Stock have been duly executed, countersigned, registered and delivered either (a) in accordance with the applicable definitive purchase, underwriting

or similar agreement approved by the Board, or upon the exercise of Warrants to purchase Preferred Stock, upon payment of the consideration therefor (in an amount not less than the par value per share of such Preferred Stock) provided for therein or (b) upon conversion or exercise of any other security of the Company, in accordance with the terms of such security or the instrument governing such security providing for such conversion or exercise as approved by the Board, for the consideration approved by the Board (in an amount not less than the par value per share of the Preferred Stock), then such shares of Preferred Stock will be validly issued, fully paid and nonassessable.

3. With respect to any Debt Securities registered pursuant to the Registration Statement, when (i) the issuance of such Debt Securities has been duly authorized by all required corporate action of the Board and, if required, the stockholders of the Company in accordance with the Charter Documents and Applicable Laws, (ii) an Indenture relating to such Debt Securities in the form filed with the Registration Statement as an exhibit has been duly authorized and validly executed and delivered by each of the Company and the Trustee, (iii) the form and terms of the Debt Securities have been duly established in accordance with the Indenture pursuant to resolutions duly adopted by the Board and as set forth in an officer's certificate or supplemental indenture duly authorized by the Board in accordance with the Charter Documents and Applicable Laws and duly executed by an authorized officer of the Company, and (iv) instruments representing such Debt Securities have been duly executed and authenticated in accordance with the terms of the Indenture and any supplement thereto, and issued, sold and delivered in the manner and for the consideration approved by the Board and stated in the Registration Statement, the Prospectus and any prospectus supplement relating thereto (as amended as of the date of such issuance, sale and delivery), any applicable definitive purchase, underwriting or similar agreement and upon the exercise of Warrants to purchase Debt Securities, upon payment of the consideration therefor provided for therein, then the Debt Securities will be validly issued and will constitute valid and binding obligations of the Company enforceable against the Company in accordance with their terms.

4. With respect to any Warrants registered pursuant to the Registration Statement, when (i) the issuance and terms of such Warrants, the terms, execution and delivery of the warrant agreement relating to the Warrants ("**Warrant Agreement**"), the terms of the offering thereof and related matters have been duly authorized by all required corporate action of the Board and, if required, the stockholders of the Company in accordance with the Charter Documents and Applicable Laws, (ii) the Warrant Agreement has been duly authorized and validly executed and delivered, and (iii) such Warrants have been duly executed, issued and delivered by duly authorized officers of the Company in accordance with the provisions of the applicable Warrant Agreement and the applicable definitive purchase, underwriting or similar agreement approved by the Board, upon payment of the consideration therefor provided for therein, such Warrants will constitute valid and binding obligations of the Company.

5. With respect to any Subscription Rights registered pursuant to the Registration Statement, when (i) the issuance and terms of such Subscription Rights, the terms, execution and delivery of the subscription rights agreement relating to the Subscription Rights ("**Subscription Rights Agreement**"), the terms of the offering thereof and related matters have been duly authorized by all required corporate action of the Board and, if required, the stockholders of the Company in accordance with the Charter Documents and Applicable Laws, (ii) the Subscription Rights Agreement has been duly authorized and validly executed and delivered, and (iii) such Subscription Rights have been duly executed, issued and delivered by duly authorized officers of the Company in accordance with the provisions of the applicable Subscription Rights Agreement and the applicable definitive purchase, underwriting or similar agreement approved by the Board, upon payment of the consideration therefor provided for therein, such Subscription Rights will constitute valid and binding obligations of the Company.

6. With respect to any Units registered pursuant to the Registration Statement, when (i) the conditions outlined in the immediately preceding paragraphs (2) through (6) that apply to the Securities that make up such Units are all met, (ii) the issuance and terms of such Units, the terms, execution and delivery of the unit purchase agreement relating to such Units ("**Unit Agreement**"), the terms of the offering thereof and related matters have been duly authorized by all required corporate action of the Board and, if required, the stockholders of the Company, (iii) the Unit Agreement has been duly authorized and validly executed and delivered, and (iv) such Units have been duly executed, issued and delivered by duly authorized officers of the Company in accordance with the provisions of the applicable Unit Agreement and the applicable definitive purchase, underwriting or similar agreement approved by the Board, upon payment of the consideration therefor provided for therein, such Units will constitute valid and binding obligations of the Company.

We consent to the use of this opinion as an exhibit to the Registration Statement and further consent to all references to us, if any, in the Registration Statement, the Prospectus constituting a part thereof and any amendments thereto. In giving this consent we do not thereby admit that we come within the category of persons whose consent is required by the Securities Act or by the rules and regulations promulgated thereunder.

This opinion is intended solely for use in connection with the issuance and sale of the Securities subject to the Registration Statement and is not to be relied upon for any other purpose. In providing this letter, we are opining only as to the specific legal issues expressly set forth above, and no opinion shall be inferred as to any other matter or matters. This opinion is rendered on, and speaks only as of, the date of this letter first written above, is based solely on our understanding of facts in existence as of such date after the aforementioned examination and does not address any potential changes in facts, circumstance or law that may occur after the date of this opinion letter. We assume no obligation to advise you of any fact, circumstance, event or change in the law or the facts that may hereafter be brought to our attention whether or not such occurrence would affect or modify any of the opinions expressed herein.

Very truly yours,

/s/ FENWICK & WEST LLP

FENWICK & WEST LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this registration statement on Form S-3 pertaining to the common stock, preferred stock, debt securities, warrants, subscription rights and units of Achieve Life Sciences, Inc. of our report dated March 1, 2018 relating to the consolidated financial statements, which appears in Achieve Life Sciences, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2017. We also consent to the reference to us under the heading "Experts" in such registration statement.

/s/ PricewaterhouseCoopers LLP

Chartered Professional Accountants
Vancouver, Canada
December 26, 2018