

AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION  
ON DECEMBER 23, 1999

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM T-3

FOR APPLICATIONS FOR QUALIFICATION OF INDENTURES  
UNDER THE TRUST INDENTURE ACT OF 1939

CHEMED CORPORATION  
CHEMED CAPITAL TRUST  
(NAME OF APPLICANT)

255 EAST FIFTH STREET  
2600 CHEMED CENTER  
CINCINNATI, OHIO 45202-4726  
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)

SECURITIES TO BE ISSUED UNDER THE INDENTURES TO BE QUALIFIED

TITLE OF CLASS	AMOUNT
JUNIOR SUBORDINATED DEBENTURES OF CHEMED CORPORATION.....	\$54,000,000
CONVERTIBLE TRUST PREFERRED SECURITIES OF CHEMED CAPITAL TRUST.....	\$54,000,000
GUARANTEE OF CONVERTIBLE TRUST PREFERRED SECURITIES OF CHEMED CAPITAL TRUST.....	\$54,000,000

Approximate date of proposed public offering: As soon as practicable after filing this application for Qualification.

Name and Address of Agent for service:

NAOMI C. DALLOB  
VICE PRESIDENT AND SECRETARY  
2600 CHEMED CENTER  
255 EAST FIFTH STREET  
CINCINNATI, OHIO 45202-4726  
(513) 762-6900

WITH COPIES TO:  
ROBERT ROSENMAN, ESQ.  
CRAVATH, SWAINE & MOORE  
825 EIGHTH AVENUE  
NEW YORK, NEW YORK 10019  
(212) 474-1000

## GENERAL

## ITEM 1. GENERAL INFORMATION.

Furnish the following information as to the Applicants:

## (a) Form of organization:

Chemed Corporation: A Corporation.  
Chemed Capital Trust: A Statutory Business Trust

## (b) State or other sovereign power under the laws of which organized:

Chemed Corporation: State of Delaware.  
Chemed Capital Trust: State of Delaware.

## ITEM 2. SECURITIES ACT EXEMPTION APPLICABLE.

State briefly the facts relied upon by the Applicants as a basis for the claim that registration of the indenture securities under the Securities Act of 1933 is not required.

Chemed Corporation, a Delaware corporation (the "Company") and Chemed Capital Trust, a Delaware statutory business trust (the "Trust"), are relying upon the exemption from the registration requirements of the Securities Act of 1933 (the "Securities Act") provided by Section 3(a)(9) thereunder, in connection with the offer by the Company and the Trust, upon the terms and subject to the conditions set forth in the Offering Circular dated December 23, 1999, and the accompanying Letter of Transmittal (which together constitute the "Exchange Offer"), to exchange Convertible Trust Preferred Securities representing preferred undivided beneficial interests in the assets of the Trust (the "Preferred Securities"), for up to 2,000,000 of the outstanding shares (the "Shares") of Capital Stock, par value \$1 per share (the "Capital Stock"), of the Company. Concurrently with the issuance of Preferred Securities in exchange for Shares validly tendered in the Exchange Offer, the Company will deposit in the Trust as trust assets its Convertible Junior Subordinated Debentures due 2030 (the "Junior Subordinated Debentures"), having an aggregate principal amount equal to the aggregate stated liquidation amount of the Preferred Securities to be issued by the Trust in the Exchange Offer. The Company will irrevocably guarantee (the "Guarantee"), on a subordinated basis, the Trust's obligations under the Preferred Securities.

There have not been any sales of securities of the same series as the Preferred Securities, the Guarantee or the Junior Subordinated Debentures by the Company or the Trust, and no such sales are contemplated, by or through an underwriter, at or about the time of the Exchange Offer.

The Company and the Trust retained Credit Suisse First Boston Corporation ("CSFB") to advise the Company and the Trust as to the structure, process and financial matters related to the Exchange Offer. CSFB's services to the Company and the Trust are limited solely to such advisory services, and CSFB will not, directly or indirectly, solicit the exchange of Preferred Securities for Shares under the Exchange Offer or otherwise make recommendations with respect to acceptance or rejection of the Exchange Offer. In exchange for such advisory services, CSFB will be paid a flat fee which is not dependent upon the outcome of the transaction. CSFB will not be paid any commission or similar variable type of remuneration.

The Company also has retained D.F. King as the "Information Agent" and Norwest Bank Minnesota, N.A. as the "Exchange Agent" in connection with the Exchange Offer. The Information Agent and the Exchange Agent will provide to holders of Shares only information otherwise contained in the Offering Circular and general information regarding the mechanics of the Exchange Offer. Neither the Information Agent nor the Exchange Agent will solicit exchanges in connection with the Exchange Offer and will not make recommendations as to the acceptance or rejection of the Exchange Offer.

No cash payment will be made to or by any holder of Preferred Securities in connection with such holder's participation in the Exchange Offer.

## AFFILIATIONS

## ITEM 3. AFFILIATES.

Furnish a list or diagram of all affiliates of the Applicants and indicate the respective percentages of voting securities or other bases of control.

Set forth below is a list of all the Company's subsidiaries. The Company owns, directly or indirectly, 100% of the voting securities of the following subsidiaries (unless otherwise noted):

ACD, Inc.  
 AJJ, Inc.  
 ARR Enterprises, Inc.  
 Cadre Computer Resource, Inc.  
 Caring Companions, Inc.  
 Complete Plumbing Services, Inc. (49%)  
 Consolidated HVAC, Inc.  
 Dell HealthCare Inc.  
 Elder Care Solutions, Inc.  
 Georgia Nursing Services, Inc.  
 Jet Resource, Inc.  
 Medical Personnel Services, Inc.  
 National Home Care, Inc.  
 Nurotoco of Massachusetts, Inc.  
 Nurotoco of New Jersey, Inc.  
 O C R Holding Company  
 O C R Michigan, Inc.  
 Patient Care, Inc.  
 Patient Care Medical Services, Inc. (Ohio)  
 Patient Care Medical Services, Inc.  
 Priority Care, Inc.  
 Roto-Rooter, Inc.  
 Roto-Rooter of Canada, Ltd.  
 Roto-Rooter Corporation  
 Roto-Rooter Development Company  
 Roto-Rooter Management Company  
 Roto-Rooter Services Company  
 RR Plumbing Services Corporation (49%)  
 R R UK, Inc.  
 Service America Network, Inc.  
 Service America Systems, Inc.  
 Starburst, Inc.  
 Sure-Flow Inc.

The Company has the exclusive right, subject to the terms of the Declaration (as defined herein), to appoint, replace or remove trustees of the Trust and to increase or decrease the number of trustees of the Trust, subject to the right of holders of Preferred Securities to appoint a trustee of the Trust (the "Special Trustee") upon the occurrence of certain events described in the Declaration.

See Item 4 for the directors and executive officers of the Company and the trustees of the Trust, some of whom may be deemed to be "affiliates" of the Company and the Trust by virtue of their positions.

## MANAGEMENT AND CONTROL

## ITEM 4. DIRECTORS AND EXECUTIVE OFFICERS.

List the names and complete mailing addresses of all directors and executive officers of the Applicant and all persons chosen to become directors or executive officers. Indicate all offices with the Applicant held or to be held by each person named.

The following table sets forth the names, positions and mailing addresses of all the directors and executive officers of the Company as of the date of this application.

NAME - - - - -	POSITION - - - - -	MAILING ADDRESS - - - - -
Rick L. Arquilla.....	Director	*
James H. Devlin.....	Vice President and Director	*
Charles H. Erhart, Jr.....	Director	*
Joel F. Gemunder.....	Director	*
Patrick P. Grace.....	Director	*
Edward L. Hutton.....	Chairman, Chief Executive Officer and Director	*
Thomas C. Hutton.....	Vice President and Director	*
Walter L. Krebs.....	Director	*
Sandra E. Laney.....	Senior Vice President, Chief Administrative Officer and Director	*
Spencer S. Lee.....	Director	*
Kevin J. McNamara.....	President and Director	*
John M. Mount.....	Vice President and Director	*
Timothy S. O'Toole.....	Executive Vice President, Treasurer and Director	*
Donald E. Saunders.....	Director	*
Arthur V. Tucker, Jr.....	Vice President and Controller	*
Paul C. Voet.....	Executive Vice President and Director	*
George J. Walsh III....	Director	*

\* The mailing address for each officer and director is c/o Chemed Corporation, 2600 Chemed Center, 255 East Fifth Street, Cincinnati, Ohio 45202-4726.

The following table sets forth the names, positions and mailing addresses of the trustees of the Trust as of the date of this application.

NAME - - - - -	POSITION - - - - -	MAILING ADDRESS - - - - -
Kevin J. McNamara.....	Administrative Trustee	*
Timothy S. O'Toole.....	Administrative Trustee	*
Sandra E. Laney.....	Administrative Trustee	*
Firststar Bank, National Association.....	Property Trustee	425 Walnut Street Cincinnati, Ohio 45202
First Union Trust Company, National Association.....	Delaware Trustee	One Rodney Square, Suite 100 920 King Street Wilmington, Delaware 19801

\* The mailing address for each Administrative Trustee is c/o Chemed Corporation, 2600 Chemed Center, 255 East Fifth Street, Cincinnati, Ohio 45202-4726.

## ITEM 5. PRINCIPAL OWNERS OF VOTING SECURITIES.

Furnish the following information as to each person owning 10 percent or more of the voting securities of the Applicant.

As of December 20, 1999, there were no persons or entities known by the Company to beneficially own more than 10% of the voting securities of the Company.

The Company has the exclusive right, subject to the terms of the Declaration, to appoint, replace or remove trustees of the Trust and to increase or decrease the number of trustees of the Trust, subject to the right of holders of Preferred Securities to appoint a trustee of the Trust (the "Special Trustee") upon the occurrence of certain events described in the Declaration.

## ITEM 6. UNDERWRITERS.

Give the name and complete mailing address of (a) each person who within three years prior to the date of filing the application, acted as an underwriter of any securities of the obligor which were outstanding on the date of filing the application, and (b) each proposed principal underwriter of the securities proposed to be offered. As to each person specified in (a), give the title of each class of securities underwritten.

(a) The Company and the Trust have not sold securities in an underwritten offering during the last three years.

(b) There are no underwriters of the securities that are the subject of this application.

## CAPITAL SECURITIES

## ITEM 7. CAPITALIZATION.

(a) Furnish the following information as to each authorized class of securities of the Applicants.

As of December 20, 1999, the Company had the following authorized class of securities:

TITLE OF CLASS -----	AMOUNT AUTHORIZED -----	AMOUNT OUTSTANDING -----
Capital Stock, par value \$1 per share.....	15,000,000	10,398,781

Upon the consummation of the Exchange Offer, the Company will have the following additional authorized classes of securities:

TITLE OF CLASS -----	AMOUNT AUTHORIZED -----	AMOUNT OUTSTANDING -----
Convertible Junior Subordinated Debentures due 2030.....	\$54,000,000	--
	aggregate principal amount	
Guarantee of Convertible Trust Preferred Securities of Chemed Capital Trust.....	\$54,000,000	--

Upon the consummation of the Exchange Offer, the Trust will have the following authorized classes of securities:

TITLE OF CLASS -----	AMOUNT AUTHORIZED -----	AMOUNT OUTSTANDING -----
Convertible Common Securities.....	61,856	--
Convertible Trust Preferred Securities.....	2,000,000	--

(b) Give a brief outline of the voting rights of each class of voting securities referred to in paragraph (a) above.

The holders of the Capital Stock are entitled to one vote for each Share on all matters on which the holders of Capital Stock are entitled to vote and do not have any cumulative voting rights. The Junior Subordinated Debentures, the Guarantee and the Convertible Common Securities do not have any voting rights.

Holders of Preferred Securities do not have any voting rights in the Company although they may appoint the Special Trustee of the Trust upon the occurrence of certain events described in the Declaration.

Without the consent of each holder of Securities (as defined in the Declaration), the Declaration may not be amended to (i) change the amount or timing of any Distribution on the Securities or otherwise adversely affect the amount of any Distribution required to be made in respect of the Securities of a specified date or (ii) restrict the right of a holder of Securities to institute suit for the enforcement of any such payment on or after such date.

The Declaration may be amended by the Trustees and the Company with (i) the consent of holders representing not less than a majority in liquidation amount of the outstanding Preferred Securities, and (ii) receipt by the Trustees of an opinion of counsel to the effect that such amendment or the exercise of any power granted to the Trustees in accordance with such amendment will not affect the Trust's status as a grantor trust for United States federal income tax purposes or the Trust's exemption from status as an "investment company" under the Investment Company Act.

#### INDENTURE SECURITIES

##### ITEM 8. ANALYSIS OF INDENTURE PROVISIONS.

Insert at this point the analysis of indenture provisions required under section 305(a)(2) of the Act.

1. The following is an analysis of the provisions of the Amended and Restated Declaration of Trust (the "Declaration") relating to the Preferred Securities. Capitalized terms are defined in the Declaration or the Offering Circular.

##### (A) EVENTS OF DEFAULT

The following are Events of Default under the Declaration with respect to the Preferred Securities:

(i) an Event of Default under the Junior Subordinated Debentures; (ii) default by the Trust in the payment of any Distribution when it becomes due and payable, and continuation of such default for a period of 30 days (subject to the deferral of any due date in the case of a Deferral Period); (iii) default by the Trust in the payment of any Redemption Price of any Trust Security when it becomes due and payable; (iv) default in the performance, or breach, in any material respect, of any covenant or warranty of the Trustees in the Declaration (other than a covenant or warranty, a default in the performance of which or the breach of which is addressed in clause (ii) or (iii)), and continuation of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the defaulting Issuer Trustee or Issuer Trustees by the holders of at least 25% in aggregate liquidation amount of the outstanding Preferred Securities, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" under the Declaration; or (v) the failure of the Company to appoint a successor Property Trustee in the manner required by Section 5.06(c) of the Declaration.

##### (B) AUTHENTICATION AND DELIVERY

The Preferred Securities will be signed on behalf of the Trust by one Administrative Trustee. In case any Administrative Trustee of the Trust who will have signed any of the Securities will cease to be such Administrative Trustee before the Securities so signed will be delivered by the Trust, such Preferred Securities nevertheless may be delivered as though the person who signed such Preferred Securities had not ceased to be such Administrative Trustee; and any Preferred Securities may be signed on behalf of the Trust by such persons who, at the actual date of execution of such Security, will be the Administrative Trustees of the Trust, although at the date of the execution and delivery of the Declaration any such person was not such a Administrative Trustee. One Administrative Trustee will sign the Preferred Securities for the Trust by manual or facsimile signature.

A Preferred Security will not be valid until authenticated by the manual signature of an authorized signatory of the Property Trustee. The signature will be conclusive evidence that the Preferred Security has been authenticated under the Declaration.

Upon a written order of the Trust signed by one Administrative Trustee, the Property Trustee will authenticate the Preferred Securities for original issue by executing the Property Trustee's certificate of authentication contained in the form of Preferred Securities attached to the Declaration.

The Property Trustee may appoint an authenticating agent acceptable to the Trust to authenticate Preferred Securities. An authenticating agent may authenticate Preferred Securities whenever the Property Trustee may do so.

(C) RELEASE OF PROPERTY SUBJECT TO LIEN

The Trust's obligations under the Preferred Securities are not secured by any liens or security interests on any assets of the Company or the Trust. Therefore, the Declaration does not contain any provisions with respect to the release or the release and substitution of any property subject to such a lien.

(D) SATISFACTION AND DISCHARGE

The Trust will terminate upon the earliest to occur of the following:

(i) the bankruptcy of the Holder of the Common Securities or the Company; (ii) the filing of a certificate of dissolution or its equivalent with respect to the Holder of the Common Securities or the Company; the filing of a certificate of cancellation with respect to the Trust or the revocation of the charter of the Holder of the Common Securities or the Company and the expiration of 90 days after the date of revocation without a reinstatement thereof; (iii) the distribution of a Like Amount of Debentures to Holders of the Securities in accordance with the terms of the Securities; (iv) all the Securities shall have been called for redemption and the amounts necessary for redemption thereof shall have been paid to the Holders in accordance with the terms of the Securities; (v) the expiration of the term of the Trust on [ ], 20[ ]; (vi) the entry of a decree of judicial dissolution of the Holder of the Common Securities, the Company or the Trust; (vii) when all of the Securities shall have been called for redemption and the amounts necessary for redemption thereof shall have been paid to the Holders in accordance with the terms of the Securities; (viii) upon the distribution of the Capital Stock of the Company to Holders of all outstanding Securities upon conversion of all such Securities; or (ix) before the issuance of any Securities, with the consent of all the Administrative Trustees and the Sponsor.

(E) EVIDENCE OF COMPLIANCE WITH CONDITIONS AND COVENANTS

Each of the Company and the Administrative Trustees on behalf of the Trust are obligated to provide to the Property Trustee such documents, reports and information as required by sec. 314 of the Trust Indenture Act (if any) and the compliance certificate required by sec. 314 of the Trust Indenture Act in the form, in the manner and at the times required by sec. 314 of the Trust Indenture Act. Each of the Company and the Administrative Trustees on behalf of the Trust are obligated to provide to the Property Trustee such evidence of compliance with any conditions precedent, if any, provided for in the Declaration that relate to any of the matters set forth in sec. 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to sec. 314(c)(1) may be given in the form of an Officers' Certificate.

2. The following is an analysis of the provisions of the Indenture between the Company and Firststar Bank, N.A., as Debenture Trustee. Capitalized terms are described in the Indenture or the Offering Circular.

(A) EVENTS OF DEFAULT

The following are Events of Default under the Indenture:

(i) default in the payment of any interest upon any Junior Subordinated Debenture, including any Additional Payments, when it becomes due and payable, and continuance of such default for a period of 30 days (subject to the deferral of any due date in the case of a Deferral Period);  
(ii) default in the payment

of the principal of any Junior Subordinated Debenture when due, whether at its Maturity, upon redemption, by declaration of acceleration or otherwise; (iii) default in the observation or performance, in any material respect, of any covenant of the Company in the Indenture, and continuance of such default for a period of 90 days after there has been given, by registered or certified mail, to the Company by the Debenture Trustee or to the Company and the Debenture Trustee by the Holders of at least 25% in aggregate outstanding principal amount of the Junior Subordinated Debentures a written notice specifying such default and requiring it to be remedied; (iv) failure by the Company to issue and deliver Capital Stock upon an election to convert the Junior Subordinated Debentures into Capital Stock; (v) the entry or a decree or order by a court having jurisdiction in the premises adjudging the Company as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; (vi) the institution by the Company of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due and its willingness to be adjudicated a bankrupt, or the taking of corporate action by the Company in furtherance of any such action; (vii) the voluntary or involuntary dissolution, winding up or termination of the Trust, except in connection with (i) the distribution of Junior Subordinated Debentures to holders of Preferred Securities in liquidation or redemption of their interests in the Trust, (ii) the redemption of all of the outstanding Preferred Securities of the Trust or (iii) certain mergers, consolidations or amalgamations, each as permitted by the Declaration.

**(B) AUTHENTICATION AND DELIVERY**

The Junior Subordinated Debentures will be executed on behalf of the Company by its Chairman, its President or one of its Vice Presidents, under its corporate seal reproduced thereon attested by its Secretary or one of its Assistant Secretaries. The signature of any of these officers on the Junior Subordinated Debentures may be manual or facsimile.

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

At any time and from time to time after the execution and delivery of the Indenture, the Company may deliver Junior Subordinated Debentures executed by the Company to the Debenture Trustee for authentication, together with a Company Order for the authentication and delivery of such Junior Subordinated Debentures; and the Debenture Trustee in accordance with such Company Order will manually authenticate and make available for delivery such Junior Subordinated Debentures as in the Indenture provided and not otherwise.

No Junior Subordinated Debenture will be entitled to any benefit under the Indenture or be valid or obligatory for any purpose unless there appears on such Junior Subordinated Debentures a certificate of authentication substantially in the form provided for in the Indenture executed by the Debenture Trustee by manual signature, and such certificate upon any Junior Subordinated Debenture will be conclusive evidence, and the only evidence, that such Junior Subordinated Debentures has been duly authenticated and delivered under the Indenture.



## (C) RELEASE OF PROPERTY SUBJECT TO LIEN

The Company's obligations under the Junior Subordinated Debentures are not secured by any liens or security interests on any assets of the Company. Therefore, the Indenture does not contain any provisions with respect to the release or the release and substitution of any property subject to such a lien.

## (D) SATISFACTION AND DISCHARGE

The Indenture will cease to be of effect (except as to any surviving rights of conversion, registration of transfer or exchange of Securities expressly provided for in the Indenture), and the Debenture Trustee, on demand of and at the expense of the Company, will execute proper instruments acknowledging satisfaction and discharge of the Indenture, when

(1) either (A) all Junior Subordinated Debentures theretofore authenticated and delivered under the Indenture (other than (i) Junior Subordinated Debentures which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.06 of the Indenture and (ii) Junior Subordinated Debentures for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 10.03 of the Indenture) have been delivered to the Debenture Trustee for cancellation; or (B) all such Junior Subordinated Debentures not theretofore delivered to the Debenture Trustee for cancellation (i) have become due and payable, (ii) will become due and payable at their Stated Maturity within one year, or (iii) are to be called for redemption within one year under arrangements satisfactory to the Debenture Trustee for the giving of notice of redemption by the Debenture Trustee in the name, and at the expense, of the Company and the Company, in the case of (B)(i), (B)(ii) or (B)(iii), has deposited or caused to be deposited with the Debenture Trustee as trust funds in trust for the purpose an amount sufficient to pay and discharge the entire indebtedness on such Junior Subordinated Debentures not theretofore delivered to the Debenture Trustee for cancellation, for principal and interest (including Compounded Interest) to the date of such deposit (in the case of Junior Subordinated Debentures which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

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

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

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Debenture Trustee under Section 6.07 of the Indenture and, if money shall have been deposited with the Debenture Trustee pursuant to subclause (B) of clause (1) above, the obligations of the Debenture Trustee under Section 4.02 and the last paragraph of Section 10.03 of the Indenture will survive.

## (E) EVIDENCE OF COMPLIANCE WITH CONDITIONS AND COVENANTS

Upon any application or request by the Company to the Debenture Trustee to take any action under any provision of the Indenture, the Company is required to furnish to the Debenture Trustee such certificates and opinions as may be required under the Trust Indenture Act or reasonably requested by the Debenture Trustee in connection with such application or request. Each such certificate or opinion will be given in the form of an Officers' Certificate, if to be given by an officer of the Company, or an Opinion of Counsel, if to be given by counsel, and will comply with the applicable requirements of the Trust Indenture Act and any other applicable requirement set forth in the Indenture.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in the Indenture is required to include:

(1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions in the Indenture relating thereto; (2) a brief statement as to the nature and scope

of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (3) a statement that, in the opinion of each such individual, he or she has made or caused to be made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

3. The following is an analysis of the provisions of the Preferred Securities Guarantee Agreement between the Company and the Guarantee Trustee (the "Guarantee"). Capitalized terms are described in the Guarantee or the Offering Circular.

(A) EVENTS OF DEFAULT

The following are Events of Default under the Guarantee:

A default by the Company on any of its payments or other obligations under the Guarantee; provided, however, that except with respect to a default in payment of any Guarantee Payment, the Company shall have received notice of default and shall not have cured such default within 60 days after receipt of such notice.

(B) AUTHENTICATION AND DELIVERY

The Guarantee will be executed on behalf of the Company by its Chairman, President or a Vice-President, and delivered to the Guarantee Trustee.

(C) RELEASE OF PROPERTY SUBJECT TO LIEN

The Company's obligations under the Guarantee are not secured by any liens or security interests on any assets of the Company. Therefore, the Guarantee does not contain any provisions with respect to the release or the release and substitution of any property subject to such a lien.

(D) SATISFACTION AND DISCHARGE

The Guarantee will terminate upon (i) full payment of the amount payable upon redemption of all Preferred Securities, (ii) the distribution of the Capital Stock to the Holders in respect of the conversion of the Preferred Securities into the Capital Stock or the distribution of the Debentures to the Holders of all of the Preferred Securities or (iii) full payment of the amounts payable in accordance with the Declaration upon liquidation of the Trust. Notwithstanding the foregoing, the Guarantee will continue to be effective or will be reinstated, as the case may be, if at any time any Holder must restore payment of any sums paid under the Preferred Securities or under the Guarantee.

(E) EVIDENCE OF COMPLIANCE WITH CONDITIONS AND COVENANTS

The Company is required to provide to the Guarantee Trustee such evidence of compliance with any conditions precedent, if any, provided for in the Guarantee which relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to Section 314(c)(1) may be given in the form of an Officers' Certificate.

ITEM 9. OTHER OBLIGORS.

Give the name and complete mailing address of any person, other than the Applicants, who is an obligor upon the indenture securities.

There are no obligors under the indenture securities other than the Company and the Trust.

\* \* \*

Contents of application for qualification. This application for qualification comprises --

(a) Pages numbered 1 to 12, consecutively.

- (b) The statement of eligibility and qualification of each trustee under the Declaration, the Indenture and the Guarantee to be qualified (included herein as Exhibit 99 and incorporated herein by reference).
- (c) The following exhibits in addition to those filed as a part of the statement of eligibility and qualification of each trustee.

Exhibit T3A	Certificate of Incorporation of the Company, incorporated by reference to Exhibit 3.1 to the Company's Annual Report on Form 10-K for the year ended December 31, 1998 (SEC File No. 1-8351).
Exhibit T3B	By-Laws of the Company, incorporated by reference to Exhibit 3.2 to the Company's Annual Report on Form 10-K for the year ended December 31, 1998 (SEC File No. 1-8351).
Exhibit T3C.1	Declaration of Trust dated as of December 21, 1999, of the Trust.
Exhibit T3C.2	Form of Amended and Restated Declaration of Trust dated as of January --, 1999, of the Trust.
Exhibit T3C.3	Form of Indenture between Chemed Corporation and Firststar Bank, N.A., as Debenture Trustee, dated as of January --, 1999.
Exhibit T3C.4	Form of Guarantee Agreement between Chemed Corporation and First Union Trust Company, N.A., as Guarantee Trustee, dated as of January --, 1999.
Exhibit T3E.1	Offering Circular dated December 23, 1999.
Exhibit T3E.2	Letter of Transmittal (together with Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9).
Exhibit T3E.3	Notice of Guaranteed Delivery.
Exhibit T3E.4	Press Release dated December 23, 1999.
Exhibit T3E.5	Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Nominees.
Exhibit T3E.6	Form of Letter from Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees to their clients.
Exhibit T3F	The cross reference sheet showing the location in the Indenture of the provisions inserted therein pursuant to Section 310 through 318(a), inclusive, of the Trust Indenture Act, is contained in the Form of Indenture between Chemed Corporation and Firststar Bank, N.A., as Debenture Trustee, dated as of January --, 1999, which is filed herewith as Exhibit T3C.3.
Exhibit 99.1	Form T-1, Statement of Eligibility and Qualification on Form T-1 of Firststar Bank, N.A., as Property Trustee, Debenture Trustee and Guarantee Trustee.
Exhibit 99.2	Form T-1, Statement of Eligibility and Qualification on Form T-1 of First Union Trust Company, N.A., as Delaware Trustee.

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, the Applicants, Chemed Corporation, a corporation organized and existing under the laws of Delaware, and Chemed Capital Trust, a statutory business trust organized under the laws of Delaware, have duly caused this application to be signed on their behalf by the undersigned, thereunto duly authorized, and their seal to be hereunto affixed and attested, all in the city of Cincinnati, in the State of Ohio, on the 23rd day of December, 1999.

(SEAL)

CHEMED CORPORATION

By: /s/ NAOMI C. DALLOB

-----  
Name: Naomi C. Dallob  
Title: Vice President and Secretary

Attest: /s/

-----  
Name:

CHEMED CAPITAL TRUST  
By: Chemed Corporation  
as sponsor

By: /s/ NAOMI C. DALLOB

-----  
Name: Naomi C. Dallob  
Title: Vice President and Secretary

Attest: /s/

-----  
Name:

-----  
DECLARATION OF TRUST  
Chemed Capital Trust  
Dated as of December 21, 1999  
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DECLARATION OF TRUST  
OF  
Chemed Capital Trust

December 21, 1999

DECLARATION OF TRUST ("Declaration") dated and effective as of December 21, 1999, by the Trustees (as defined herein), the Sponsor (as defined herein), and by the holders, from time to time, of undivided beneficial interests in the Trust to be issued pursuant to this Declaration;

WHEREAS, the Trustees and the Sponsor desire to establish a trust (the "Trust") pursuant to the Delaware Business Trust Act for the sole purpose of issuing and offering to exchange Preferred Securities (as defined herein) representing undivided beneficial interests in the assets of the Trust for outstanding shares of capital stock \$1 par value, of the Parent ("Parent Stock") and exchanging these shares and Common Securities (as defined herein) for certain Debentures of the Debenture Issuer; and

NOW, THEREFORE, it being the intention of the parties hereto that the Trust constitute a business trust under the Business Trust Act and that this Declaration constitute the governing instrument of such business trust, the Trustees declare that all assets contributed to the Trust will be held in trust for the exclusive benefit of the holders, from time to time, of the securities representing undivided beneficial interests in the assets of the Trust issued hereunder, subject to the provisions of this Declaration.

ARTICLE I

Definitions

SECTION 1.01. Definitions. Unless the context otherwise requires:

(a) capitalized terms used in this Declaration but not defined in the preamble above have the respective meanings assigned to them in this Section 1.01;

(b) a term defined anywhere in this Declaration has the same meaning throughout;



(c) all references to "the Declaration" or "this Declaration" are to this Declaration of Trust as modified, supplemented or amended from time to time;

(d) all references in this Declaration to Articles and Sections are to Articles and Sections of this Declaration unless otherwise specified; and

(e) a reference to the singular includes the plural and vice versa.

"Administrative Trustee" means any Trustee other than the Delaware Trustee and the Property Trustee (as hereinafter defined).

"Affiliate" has the same meaning as given to that term in Rule 405 of the Securities Act or any successor rule thereunder.

"Business Day" means any day other than a day on which banking institutions in New York, New York or Wilmington, Delaware are authorized or required by law to close.

"Business Trust Act" means Chapter 38 of Title 12 of the Delaware Code, 12 Del. Code Section 3801 et seq., as it may be amended from time to time, or any successor legislation.

"Certificate of Trust" means the Certificate of Trust of Chemed Capital Trust, substantially in the form attached hereto as Exhibit A, to be filed pursuant to Section 3810 of the Business Trust Act.

"Commission" means the Securities and Exchange Commission.

"Common Security" means a security representing an undivided beneficial interest in the assets of the Trust with such terms as may be set out in any amendment to this Declaration.

"Company Indemnified Person" means (a) any Administrative Trustee; (b) any Affiliate of any Administrative Trustee; (c) any officers, directors, shareholders, members, partners, employees, representatives or agents of any Administrative Trustee; or (d) any employee or agent of the Trust or its Affiliates.

"Covered Person" means (a) any trustee, officer, director, shareholder, partner, member, representative,

employee or agent of (i) the Trust or (ii) the Trust's Affiliates and (b) any holder of Securities.

"Debenture Issuer" means the Parent in its capacity as the issuer of the Debentures under the Indenture.

"Debentures" means the series of Debentures to be issued by the Debenture Issuer pursuant to the Indenture and acquired by the Trust.

"Debenture Trustee" means the trustee under the Indenture until a successor is appointed thereunder, and thereafter means such successor trustee.

"Delaware Secretary of State" means the officer of the Secretary of the State of Delaware.

"Delaware Trustee" has the meaning set forth in Section 3.01.

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time or any successor legislation.

"Fiduciary Indemnified Person" has the meaning set forth in Section 4.03(b).

"Indemnified Person" means a Company Indemnified Person or a Fiduciary Indemnified Person.

"Indenture" means the indenture to be entered into between the Parent and the Debenture Trustee and any indenture supplemental thereto pursuant to which the Debentures are to be issued.

"Parent" means Chemed Corporation, a Delaware corporation, or any successor entity in a merger.

"Parent Stock" has the meaning set forth in the Whereas clause at the beginning of the Declaration of Trust.

"Person" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

"Preferred Security" means a security representing an undivided beneficial interest in the assets of the Trust

with such terms as may be set out in any amendment to this Declaration.

"Property Trustee" has the meaning set forth in Section 3.04.

"Securities" means the Common Securities and the Preferred Securities.

"Securities Act" means the Securities Act of 1933, as amended from time to time, or any successor legislation.

"Sponsor" means the Parent in its capacity as sponsor of the Trust.

"Trustee" or "Trustees" means each Person who has signed this Declaration as a trustee, so long as such Person shall continue in office in accordance with the terms hereof, and all other Persons who may from time to time be duly appointed, qualified and serving as Trustees in accordance with the provisions hereof, and references herein to a Trustee or the Trustees shall refer to such Person or Persons solely in their capacity as trustees hereunder.

## ARTICLE II

### Organization

SECTION 2.01. Name. The Trust created by this Declaration is named "Chemed Capital Trust". The Trust's activities may be conducted under the name of the Trust or any other name deemed advisable by the Administrative Trustees.

SECTION 2.02. Office. The address of the principal office of the Trust is c/o Chemed Corporation, 2600 Chemed Center, 255 East Fifth Street, Cincinnati, Ohio 45202-4726. At any time, the Administrative Trustees may designate another principal office.

SECTION 2.03. Purpose. The exclusive purposes and functions of the Trust are (a) to issue and offer Preferred Securities in exchange for outstanding shares of Parent Stock and to exchange such shares of Parent Stock, and issue shares of Common Securities, for Debentures, and (b) except as otherwise limited herein, to engage in only those other activities necessary or incidental thereto. The Trust shall not borrow money, issue debt or reinvest proceeds derived from investments, pledge any of its assets, or otherwise undertake (or permit to be undertaken) any

activity that would cause the Trust not to be classified for United States Federal income tax purposes as a grantor trust.

SECTION 2.04. Authority. Subject to the limitations provided in this Declaration, the Administrative Trustees shall have exclusive and complete authority to carry out the purposes of the Trust. An action taken by the Administrative Trustees in accordance with their powers shall constitute the act of and serve to bind the Trust. In dealing with the Administrative Trustees acting on behalf of the Trust, no person shall be required to inquire into the authority of the Administrative Trustees to bind the Trust. Persons dealing with the Trust are entitled to rely conclusively on the power and authority of the Administrative Trustees as set forth in this Declaration.

SECTION 2.05. Title to Property of the Trust. Legal title to all assets of the Trust shall be vested in the Trust or the Property Trustee on behalf of the Trust.

SECTION 2.06. Powers of the Trustees. The Administrative Trustees shall have the exclusive power and authority to cause the Trust to engage in the following activities:

(a) to issue and offer for exchange the Preferred Securities and issue the Common Securities in accordance with this Declaration; provided, however, that the Trust may issue no more than one series of Preferred Securities and no more than one series of Common Securities, and, provided further, that there shall be no interests in the Trust other than the Securities and the issuance of the Securities shall be limited to a one-time, simultaneous issuance of both Preferred Securities and Common Securities;

(b) in connection with the issue and offer for exchange of the Preferred Securities, at the direction of the Sponsor, to:

(i) execute and file with the Commission a tender offer statement on Schedule 13E-4 prepared by the Sponsor, including any amendments thereto in relation to the Preferred Securities;

(ii) execute and file any documents prepared by the Sponsor, or take any acts as determined by the Sponsor to be necessary in order to qualify or register all or part of the Preferred Securities in any State in which the Sponsor has determined

to qualify or register such Preferred Securities for sale;

(iii) execute and file an application, prepared by the Sponsor, to the New York Stock Exchange or any other national stock exchange or the Nasdaq Stock Market's National Market for listing upon notice of issuance of any Preferred Securities; and

(iv) execute and file with the Commission a registration statement on Form 8-A, including any amendments thereto, prepared by the Sponsor relating to the registration of the Preferred Securities under Section 12(b) of the Exchange Act; and

(c) to employ or otherwise engage employees and agents (who may be designated as officers with titles) and managers, contractors, advisors, and consultants and provide for reasonable compensation for such services;

(d) to incur expenses which are necessary or incidental to carry out any of the purposes of this Declaration; and

(e) to execute all documents or instruments, perform all duties and powers, and do all things for and on behalf of the Trust in all matters necessary or incidental to the foregoing.

SECTION 2.07. Filing of Certificate of Trust. On or after the date of execution of this Declaration, the Trustees shall cause the filing of the Certificate of Trust for the Trust in the form attached hereto as Exhibit A with the Delaware Secretary of State.

SECTION 2.08. Duration of Trust. The Trust, absent termination pursuant to the provisions of Section 5.02, shall have existence for fifty-five (55) years from the date hereof.

SECTION 2.09. Responsibilities of the Sponsor. In connection with the issue and offer for exchange of the Preferred Securities, the Sponsor shall have the exclusive right and responsibility to engage in the following activities:

(a) to prepare for filing by the Trust with the Commission a tender offer on Schedule 13E-4 in relation

to the Preferred Securities, including any amendments thereto;

(b) to determine the States in which to take appropriate action to qualify or register for sale all or part of the Preferred Securities and to do any and all such acts, other than actions which must be taken by the Trust, and advise the Trust of actions it must take, and prepare for execution and filing any documents to be executed and filed by the Trust, as the Sponsor deems necessary or advisable in order to comply with the applicable laws of any such States;

(c) to prepare for filing by the Trust an application to the New York Stock Exchange or any other national stock exchange or the Nasdaq National Market for listing upon notice of issuance of any Preferred Securities; and

(d) to prepare for filing by the Trust with the Commission a registration statement on Form 8-A relating to the registration of the class of Preferred Securities under Section 12(b) of the Exchange Act, including any amendments thereto; and

SECTION 2.10. Declaration Binding on Securities Holders. Every Person by virtue of having become a holder of a Security or any interest therein in accordance with the terms of this Declaration, shall be deemed to have expressly assented and agreed to the terms of, and shall be bound by, this Declaration.

### ARTICLE III

#### Trustees

SECTION 3.01. Trustees. The number of Trustees initially shall be four (4), and thereafter the number of Trustees shall be such number as shall be fixed from time to time by a written instrument signed by the Sponsor. The Sponsor is entitled to appoint or remove without cause any Trustee at any time; provided further that one Trustee, in the case of a natural person, shall be a person who is a resident of the State of Delaware or that, if not a natural person, is an entity which has its principal place of business in the State of Delaware (the "Delaware Trustee"); provided further that there shall be at least one trustee who is an employee or officer of, or is affiliated with the Parent (a "Administrative Trustee").

SECTION 3.02. Administrative Trustees. The initial Administrative Trustees shall be:

Kevin J. McNamara  
Timothy F. O'Toole  
Sandra Laney

(a) Except as expressly set forth in this Declaration, any power of the Administrative Trustees may be exercised by, or with the consent of, any one such Administrative Trustee.

(b) Unless otherwise determined by the Administrative Trustees, and except as otherwise required by the Business Trust Act, any Administrative Trustee is authorized to execute on behalf of the Trust any documents which the Administrative Trustees have the power and authority to cause the Trust to execute pursuant to Section 2.06; and

(c) An Administrative Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purposes of signing any documents which the Administrative Trustees have power and authority to cause the Trust to execute pursuant to Section 2.06.

SECTION 3.03. Delaware Trustee. The initial Delaware Trustee shall be:

First Union Trust Company, National Association  
One Rodney Square  
920 King Street, 1st Floor  
Wilmington, Delaware 19801

Notwithstanding any other provision of this Declaration, the Delaware Trustee shall not be entitled to exercise any of the powers, nor shall the Delaware Trustee have any of the duties and responsibilities of the Administrative Trustees or the Property Trustee described in this Declaration. The Delaware Trustee shall be a Trustee for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Business Trust Act. Notwithstanding anything herein to the contrary, the Delaware Trustee shall not be liable for the acts or omissions to act of the Trust or of the Administrative Trustees or the Property Trustee except such acts as the Delaware Trustee is expressly obligated or authorized to undertake under this Declaration or the Business Trust Act and except for the gross negligence or willful misconduct of the Delaware Trustee.

SECTION 3.04. Property Trustee. Prior to the issuance of the Preferred Securities and Common Securities, the Sponsor shall appoint another trustee (the "Property Trustee") meeting the requirements of an eligible trustee of the Trust Indenture Act of 1939, by the execution of an amendment to this Declaration executed by the Administrative Trustees, the Sponsor, the Property Trustee and the Delaware Trustee.

SECTION 3.05. Not Responsible for Recitals or Sufficiency of Declaration. The recitals contained in this Declaration shall be taken as the statements of the Sponsor, and the Trustees do not assume any responsibility for their correctness. The Trustees make no representations as to the value or condition of the property of the Trust or any part thereof. The Trustees make no representations as to the validity or sufficiency of this Declaration.

#### ARTICLE IV

##### Limitation of Liability of Holders of Securities, Trustees or Others

SECTION 4.01. Exculpation. (a) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Trust or any Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Declaration or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's negligence or willful misconduct with respect to such acts or omissions.

(b) An Indemnified Person shall be fully protected in relying in good faith upon the records of the Trust and upon such information, opinions, reports or statements presented to the Trust by any Person as to matters the Indemnified Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Trust, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits, losses, or any other facts pertinent to the existence and amount of assets from which distributions to holders of Securities might properly be paid.



SECTION 4.02. Fiduciary Duty. (a) To the extent that, at law or in equity, an Indemnified Person has duties (including fiduciary duties) and liabilities relating thereto to the Trust or to any other Covered Person, an Indemnified Person acting under this Declaration shall not be liable to the Trust or to any other Covered Person for its good faith reliance on the provisions of this Declaration. The provisions of this Declaration, to the extent that they restrict the duties and liabilities of an Indemnified Person otherwise existing at law or in equity, are agreed by the parties hereto to replace such other duties and liabilities of such Indemnified Person; (b) unless otherwise expressly provided herein:

(i) whenever a conflict of interest exists or arises between Covered Persons; or

(ii) whenever this Declaration or any other agreement contemplated herein or therein provides that an Indemnified Person shall act in a manner that is, or provides terms that are, fair and reasonable to the Trust or any holder of Securities,

the Indemnified Person shall resolve such conflict of interest, take such action or provide such terms, considering in each case the relative interest of each party (including its own interest) to such conflict, agreement, transaction or situation and the benefits and burdens relating to such interests, any customary or accepted industry practices, and any applicable generally accepted accounting practices or principles. In the absence of bad faith by the Indemnified Person, the resolution, action or term so made, taken or provided by the Indemnified Person shall not constitute a breach of this Declaration or any other agreement contemplated herein or of any duty or obligation of the Indemnified Person at law or in equity or otherwise; and

(c) whenever in this Declaration an Indemnified Person is permitted or required to make a decision:

(i) in its "discretion" or under a grant of similar authority, the Indemnified Person shall be entitled to consider such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Trust or any other Person; or

(ii) in its "good faith" or under another express standard, the Indemnified Person shall act under such

express standard and shall not be subject to any other or different standard imposed by this Declaration or by applicable law.

SECTION 4.03. Indemnification. (a) (i) The Sponsor shall indemnify, to the fullest extent permitted by law, any Company Indemnified Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Trust) by reason of the fact that he is or was a Company Indemnified Person against expenses (including attorneys, fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Trust, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Company Indemnified Person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Trust, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(ii) The Sponsor shall indemnify, to the fullest extent permitted by law, any Company Indemnified Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Trust to procure a judgment in its favor by reason of the fact that he is or was a Company Indemnified Person against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Trust and except that no such indemnification shall be made in respect of any claim, issue or matter as to which such Company Indemnified Person shall have been adjudged to be liable to the Trust unless and only to the extent that the Court of Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such Court of Chancery or such other court shall deem proper.

(iii) To the extent that a Company Indemnified Person shall be successful on the merits or otherwise (including dismissal of an action without prejudice or the settlement of an action without admission of liability) in defense of any action, suit or proceeding referred to in paragraphs (i) and (ii) of this Section 4.3(a), or in defense of any claim, issue or matter therein, he shall be indemnified, to the full extent permitted by law, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(iv) Any indemnification under paragraphs (i) and (ii) of this Section 4.3(a) (unless ordered by a court) shall be made by the Sponsor only as authorized in the specific case upon a determination that indemnification of the Company Indemnified Person is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraphs (i) and (ii). Such determination shall be made (1) by the Administrative Trustees by a majority vote of a quorum consisting of such Administrative Trustees who were not parties to such action, suit or proceeding, (2) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Administrative Trustees so directs, by independent legal counsel in a written opinion, or (3) by the Common Security Holder of the Trust.

(v) Expenses (including attorneys' fees) incurred by a Company Indemnified Person in defending a civil, criminal, administrative or investigative action, suit or proceeding referred to in paragraphs (i) and (ii) of this Section 4.3(a) shall be paid by the Sponsor in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Company Indemnified Person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Debenture Issuer as authorized in this Section 4.3(a). Notwithstanding the foregoing, no advance shall be made by the Sponsor if a determination is reasonably and promptly made (i) by the Administrative Trustees by a majority vote of a quorum of disinterested Administrative Trustees, (ii) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Administrative Trustees so directs, by independent legal counsel in a written opinion or (iii) the Common Security Holder of the Trust, that, based upon the facts known to the Administrative Trustees, counsel or the Common Security Holder at the time such determination is made, such Company Indemnified Person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Trust, or, with respect

to any criminal proceeding, that such Company Indemnified Person believed or had reasonable cause to believe his conduct was unlawful. In no event shall any advance be made in instances where the Administrative Trustees, independent legal counsel or Common Security Holder reasonably determine that such person deliberately breached his duty to the Trust or its Common or Preferred Security Holders.

(vi) The indemnification and advancement of expenses provided by, or granted pursuant to, the other paragraphs of this Section 4.3(a) shall not be deemed exclusive of any other rights to which those seeking indemnification and advancement of expenses may be entitled under any agreement, vote of stockholders or disinterested directors of the Debenture Issuer or Preferred Security Holders of the Trust or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. All rights to indemnification under this Section 4.3(a) shall be deemed to be provided by a contract between the Sponsor and each Company Indemnified Person who serves in such capacity at any time while this Section 4.3(a) is in effect. Any repeal or modification of this Section 4.3(a) shall not affect any rights or obligations then existing.

(vii) The Sponsor or the Trust may purchase and maintain insurance on behalf of any person who is or was a Company Indemnified Person against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Sponsor would have the power to indemnify him against such liability under the provisions of this Section 4.3(a).

(viii) For purposes of this Section 4.3(a), references to "the Trust" shall include, in addition to the resulting or surviving entity, any constituent entity (including any constituent of a constituent) absorbed in a consolidation or merger, so that any person who is or was a director, trustee, officer or employee of such constituent entity, or is or was serving at the request of such constituent entity as a director, trustee, officer, employee or agent of another entity, shall stand in the same position under the provisions of this Section 4.3(a) with respect to the resulting or surviving entity as he would have with respect to such constituent entity if its separate existence had continued.

(ix) The indemnification and advancement of expenses provided by, or granted pursuant to, this Section 4.3(a) shall, unless otherwise provided when authorized or ratified, continue as to a person who has

ceased to be a Company Indemnified Person and shall inure to the benefit of the heirs, executors and administrators of such a person.

(b) The Sponsor agrees to indemnify (i) the Delaware Trustee, (ii) any Affiliate of the Delaware Trustee, and (iii) any officers, directors, shareholders, members, partners, employees, representatives, nominees, custodians or agents of the Delaware Trustee (each of the Persons in (i) through (iii) being referred to as a "Fiduciary Indemnified Person") for, and to hold each Fiduciary Indemnified Person harmless against, any loss, liability, claim, action, suit, cost or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses (including reasonable legal fees and expenses) of defending itself against, or investigating, any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The obligation to indemnify as set forth in this Section 4.3(b) shall survive the termination of this Declaration and the resignation or removal of the Delaware Trustee.

SECTION 4.04. Outside Businesses. Any Covered Person, the Sponsor and the Delaware Trustee may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Trust, and the Trust and the holders of Securities shall have no rights by virtue of this Declaration in and to such independent ventures or the income or profits derived therefrom and the pursuit of any such venture, even if competitive with the business of the Trust, shall not be deemed wrongful or improper. No Covered Person, the Sponsor or the Delaware Trustee shall be obligated to present any particular investment or other opportunity to the Trust even if such opportunity is of a character that, if presented to the Trust, could be taken by the Trust, and any Covered Person, the Sponsor and the Delaware Trustee shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment or other opportunity. Any Covered Person and the Delaware Trustee may engage or be interested in any financial or other transaction with the Sponsor or any Affiliate of the Sponsor, or may act as depository for, trustee or agent for or may act on any committee or body of holders of, securities or other obligations of the Sponsor or its Affiliates.

## ARTICLE V

## Amendments, Termination, Miscellaneous

SECTION 5.01. Amendments. At any time before the issue of any Securities, this Declaration may be amended by, and only by, a written instrument executed by all of the Administrative Trustees and the Sponsor.

SECTION 5.02. Termination of Trust. (a) The Trust shall terminate and be of no further force or effect:

(i) upon the bankruptcy of the Sponsor;

(ii) upon the filing of a certificate of dissolution or its equivalent with respect to the Sponsor or the revocation of the Sponsor's charter or of the Trust's certificate of trust;

(iii) upon the entry of a decree of judicial dissolution of the Sponsor, or the Trust; and

(iv) before the issue of any Securities, with the consent of all of the Administrative Trustees and the Sponsor; and

(b) as soon as is practicable after the occurrence of an event referred to in Section 5.2(a), the Trustees shall file a certificate of cancellation with the Delaware Secretary of State.

SECTION 5.03. Governing Law. This Declaration and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Delaware and all rights and remedies shall be governed by such laws without regard to principles of conflict of laws. The parties hereto hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of the State of Delaware and of the United States District Courts located in Delaware for any lawsuits, claims or other proceedings arising out of or relating to this Agreement and agree not to commence any such lawsuit, claim or other proceeding except in such courts. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any lawsuit, claim, or other proceeding arising out of or relating to this Agreement in the courts of the State of Delaware or the United States District Courts located in Delaware, and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such

lawsuit, claim or other proceeding brought in any such court has been brought in an inconvenient forum.

SECTION 5.04. Headings. Headings contained in this Declaration are inserted for convenience of reference only and do not affect the interpretation of this Declaration or any provision hereof.

SECTION 5.05. Successors and Assigns. Whenever in this Declaration any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included, and all covenants and agreements in this Declaration by the Sponsor and the Trustees shall bind and inure to the benefit of their respective successors and assigns, whether so expressed.

SECTION 5.06. Partial Enforceability. If any provision of this Declaration, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this Declaration, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

SECTION 5.07. Counterparts. This Declaration may contain more than one counterpart of the signature page and this Declaration may be executed by the affixing of the signature of each of the Trustees to one of such counterpart signature pages. All of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed as of the day and year first above written.

-----  
Name: Kevin J. McNamara  
Title: Administrative Trustee

-----  
Name: Timothy F. O'Toole  
Title: Administrative Trustee

-----  
Name: Sandra Laney  
Title: Administrative Trustee

FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION, as Delaware Trustee

by -----  
Name:  
Title: Authorized Signatory

FIRSTAR BANK, NATIONAL ASSOCIATION, as Property Trustee

by -----  
Name:  
Title:

CHEMED CORPORATION, as Sponsor

by -----  
Name:  
Title:



CERTIFICATE OF TRUST  
OF  
CHEMED CAPITAL TRUST

THIS Certificate of Trust of Chemed Capital Trust (the "Trust") is being duly executed and filed on behalf of the Trust by the undersigned, as trustees, to form a business trust under the Delaware Business Trust Act (12 Del.C. Section 3810 et seq.)(the "Act").

1. Name. The name of the business trust formed by this Certificate of Trust is Chemed Capital Trust.

2. Delaware Trustee. The name and business address of the trustee of the Trust in the State of Delaware are First Union Trust Company, National Association, One Rodney Square, 920 King Street, 1st Floor, Wilmington Delaware 19801, Attn: Corporate Trust Administration.

3. Effective Date. This Certificate of Trust shall be effective upon filing.

IN WITNESS WHEREOF, the undersigned have duly executed this Certificate of Trust in accordance with Section 3811(a)(1) of the Act.

-----  
Name: Kevin J. McNamara  
Title: Administrative Trustee

-----  
Name: Timothy F. O'Toole  
Title: Administrative Trustee

-----  
Name: Sandra Laney  
Title: Administrative Trustee

FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION, as Delaware Trustee

by \_\_\_\_\_  
Name:  
Title: Authorized Signatory

FIRSTAR BANK, NATIONAL ASSOCIATION, as Property Trustee

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

CHEMED CORPORATION, as Sponsor

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

AMENDED AND RESTATED  
DECLARATION OF TRUST

of

CHEMED CAPITAL TRUST

Dated as of January -, 2000

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310(a) .....	5.03(a)
310(c) .....	Inapplicable
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\* This Cross-Reference Table does not constitute part of the Declaration and shall not affect the interpretation of any of its terms or provisions.



AMENDED AND RESTATED  
DECLARATION OF TRUST  
OF  
CHEMED CAPITAL TRUST

JANUARY -, 2000

AMENDED AND RESTATED DECLARATION OF TRUST ("Declaration") dated and effective as of January -, 2000, by the undersigned trustees (together with all other Persons from time to time duly appointed and serving as trustees in accordance with the provisions of this Declaration, the "Trustees"), Chemed Corporation, a Delaware corporation, as trust sponsor (the "Sponsor"), and by the holders, from time to time, of undivided beneficial interests in the Trust (as defined below) issued pursuant to this Declaration;

WHEREAS, the Trustees and the Sponsor established Chemed Capital Trust (the "Trust") under the Business Trust Act (as hereinafter defined) pursuant to a Declaration of Trust dated as of December 21, 1999 (the "Original Declaration"), and a Certificate of Trust filed with the Secretary of State of the State of Delaware on December 21, 1999, for the sole purpose of issuing and offering to exchange Preferred Securities representing undivided beneficial interests in the assets of the Trust for outstanding shares of capital stock, \$1.00 par value, of the Parent ("Parent Stock"), and exchanging the Parent Stock and Common Securities (as defined herein) for certain Debentures of the Debenture Issuer (as hereinafter defined); and

WHEREAS, as of the date hereof, no interests in the Trust have been issued;

WHEREAS, all of the Trustees and the Sponsor, by this Declaration, amend and restate each and every term and provision of the Original Declaration for the purpose of issuing and offering to exchange Preferred Securities representing undivided beneficial interests in the assets of the Trust for outstanding shares of Parent Stock and exchanging the Parent Stock and the Common Securities for certain Debentures of the Debenture Issuer; and

NOW, THEREFORE, it being the intention of the parties hereto to continue the Trust as a business trust under the Business Trust Act and that this Declaration constitute the governing instrument of such business trust, the Trustees declare that all assets contributed to the Trust will be held in trust for the benefit of the holders,

from time to time, of the securities representing undivided beneficial interests in the assets of the Trust issued hereunder, subject to the provisions of this Declaration.

## ARTICLE I

### Interpretation and Definitions

SECTION 1.01. Definitions. Unless the context otherwise requires:

(a) Capitalized terms used in this Declaration but not defined in the preamble above have the respective meanings assigned to them in this Declaration, and any capitalized term not defined in this Declaration shall have the meaning assigned thereto in the Indenture;

(b) a term defined anywhere in this Declaration or the Indenture has the same meaning throughout;

(c) all references to "the Declaration" or "this Declaration" are to this Declaration as modified, supplemented or amended from time to time;

(d) all references in this Declaration to Articles, Sections, Annexes and Exhibits are to Articles and Sections of and Annexes and Exhibits to this Declaration unless otherwise specified;

(e) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles;

(f) a term defined in the Trust Indenture Act has the same meaning when used in this Declaration unless otherwise defined in this Declaration or unless the context otherwise requires; and

(g) a reference to the singular includes the plural and vice versa.

"Administrative Action" has the meaning set forth in the definition of "Tax Event".

"Administrative Trustee" means any Trustee other than the Property Trustee and the Delaware Trustee.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with

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

"Agent" means any Registrar, Paying Agent, Conversion Agent or co-registrar.

"Appointment Event" means an event defined in the terms of the Preferred Securities, as set forth in Annex I, which entitles the Holders of a Majority in liquidation amount of the Preferred Securities to appoint a Special Trustee.

"Authorized Officer" of a Person means any Person that is authorized to bind such Person.

"Beneficiaries" has the meaning set forth in Section 4.03(a).

"Book Entry Interest" means a beneficial interest in a global certificate, ownership and transfers of which shall be maintained and made through book entries by a Depository.

"Business Day" means any day other than a Saturday or a Sunday, a day on which banking institutions in New York, New York and Wilmington, Delaware are authorized or required by law to close.

"Business Trust Act" means Chapter 38 of Title 12 of the Delaware Code, 12 Del. Code Section 3801 et seq., as it may be amended from time to time, or any successor legislation.

"Certificate" means a certificate in global or definitive form representing a Common Security or a Preferred Security.

"Certificate of Trust" means the Certificate of Trust of Chemed Capital Trust, substantially in the form attached hereto as Exhibit A, to be filed pursuant to Section 3810 of the Business Trust Act.

"Clearing Agency" means an organization registered as a "Clearing Agency" pursuant to Section 17A of the Exchange Act that is acting as depository for the Preferred Securities and in whose name or in the name of a nominee of that organization shall be registered a global certificate

and which shall undertake to effect book entry transfers and pledges of the Preferred Securities.

"Closing Date" means January -, 2000.

"Code" means the Internal Revenue Code of 1986, or any successor legislation.

"Commission" means the Securities and Exchange Commission.

"Common Securities" has the meaning specified in Section 7.01(a).

"Common Securities Guarantee" means the guarantee agreement to be dated as of January -, 2000, of the Sponsor in respect of the Common Securities.

"Conversion Agent" has the meaning set forth in Section 7.04.

"Covered Person" means: (a) any officer, director, shareholder, partner, member, representative, employee or agent of (i) the Trust or (ii) the Trust's Affiliates; and (b) any Holder of Securities.

"Debenture Event of Default" in respect of the Securities means an Event of Default (as defined in the Indenture) has occurred and is continuing in respect of the Debentures.

"Debenture Issuer" means the Sponsor in its capacity as issuer of the Debentures.

"Debenture Trustee" means Firststar Bank, National Association, a United States banking corporation, as trustee under the Indenture until a successor is appointed thereunder, and thereafter means such successor trustee.

"Debentures" means the series of Debentures to be issued by the Debenture Issuer under the Indenture to be held by the Property Trustee, in the form attached to the Indenture as Exhibit A.

"Deferral Period" has the meaning set forth in the Indenture.

"Definitive Preferred Securities" has the meaning set forth in Section 7.03(c).

"Delaware Secretary of State" means the officer of the Secretary of the State of Delaware.

"Delaware Trustee" has the meaning set forth in Section 5.02.

"Depository" means The Depository Trust Company, the initial clearing agency, until a successor shall be appointed pursuant to Section 9.06, and thereafter means such successor Depository.

"Distribution" means a distribution payable to Holders of Securities in accordance with Section 6.01.

"Event of Default" means:

(i) a Debenture Event of Default; or

(ii) default by the Trust in the payment of any Distribution when it becomes due and payable, and continuation of such default for a period of 30 days (subject to the deferral of any due date in the case of a Deferral Period); or

(iii) default by the Trust in the payment of any Redemption Price of any Security when it becomes due and payable; or

(iv) default in the performance, or breach, in any material respect, of any covenant or warranty of the Trustees in the Declaration (other than a covenant or warranty, a default in the performance of which or the breach of which is addressed in clause (ii) or (iii) above), and continuation of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the defaulting Issuer Trustee or Issuer Trustees by the holders of at least 25% in aggregate liquidation amount of the outstanding Preferred Securities, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" under the Declaration; or

(v) the failure of the Sponsor to appoint a successor Property Trustee in the manner required by Section 5.06(c).

"Exchange Act" means the Securities Exchange Act of 1934 as amended from time to time, or any successor legislation.

"Global Preferred Securities" has the meaning set forth in Section 7.03(a).

"Holder" means a Person in whose name a Certificate representing a Security is registered, such Person being a beneficial owner within the meaning of the Business Trust Act.

"Indemnified Person" means (a) any Trustee; (b) any Affiliate of any Trustee; (c) any officers, directors, shareholders, members, partners, employees, representatives or agents of any Trustee; or (d) any employee or agent of the Trust or its Affiliates.

"Indenture" means the Indenture dated as of January - , 2000, between the Debenture Issuer and the Debenture Trustee, as it may be amended from time to time.

"Investment Company" means an investment company as defined in the Investment Company Act.

"Investment Company Act" means the Investment Company Act of 1940 as amended from time to time, or any successor legislation.

"Legal Action" has the meaning set forth in Section 3.06(g).

"Like Amount" means (i) with respect to a redemption of Preferred Securities, Preferred Securities having an aggregate liquidation amount equal to that portion of the principal amount of Debentures to be contemporaneously redeemed in accordance with the Indenture, allocated to the Common Securities and to the Preferred Securities based upon the relative liquidation amounts of such classes and the proceeds of which will be used to pay the applicable Redemption Price of the Preferred Securities and (ii) with respect to a distribution of Debentures to holders of Preferred Securities in connection with a dissolution or liquidation of the Trust, Debentures having a principal amount equal to the aggregate liquidation amount of the Securities of the Holder to whom such Debentures are distributed.

"List of Holders" has the meaning set forth in Section 2.02(a).

"Majority in liquidation amount of the Securities" means, except as provided in the terms of the Preferred Securities and by the Trust Indenture Act, Holder(s) of outstanding Securities voting together as a single class or, as

the context may require, Holders of outstanding Preferred Securities or Holders of outstanding Common Securities voting separately as a class, who are the record owners of more than 50% of the aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Securities of the relevant class.

"Ministerial Action" has the meaning set forth in the terms of the Securities as set forth in Annex I.

"Obligations" means any costs, expenses or liabilities of the Trust, other than obligations of the Trust to pay to Holders of any Securities or other similar interests in the Trust the amounts due such Holders pursuant to the terms of the Securities or such other similar interests, as the case may be.

"Offering Circular" means the Offering Circular, dated as of December 23, 1999, relating to the issuance by the Trust of Preferred Securities in exchange for Parent Stock.

"Officers' Certificate" means, with respect to any Person, a certificate signed by two Authorized Officers of such Person. Any Officers' Certificate delivered with respect to compliance with a condition or covenant provided for in this Declaration (other than pursuant to Section 314(a)(4) of the Trust Indenture Act) shall include:

(a) a statement that each officer signing the Certificate has read the covenant or condition and the definition relating thereto;

(b) a brief statement of the nature and scope of the examination or investigation undertaken by each officer in rendering the Certificate;

(c) a statement that each such officer has made such examination or investigation as, in such officer's opinion, is necessary to enable such officer to express an informed opinion as to whether or not such covenant or condition has been complied with; and

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

"Parent Stock" has the meaning set forth in the recitals.

"Participants" has the meaning set forth in Section 7.03(b).

"Paying Agent" has the meaning specified in Section 7.04.

"Person" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

"Preferred Securities" has the meaning specified in Section 7.01(a).

"Preferred Securities Guarantee" means the guarantee agreement to be dated as of January - , 2000, of the Sponsor in respect of the Preferred Securities.

"Preferred Security Beneficial Owner" means, with respect to a Book Entry Interest, a Person who is the beneficial owner of such Book Entry Interest, as reflected on the books of the Depositary, or on the books of a Person maintaining an account with such Depositary (directly as a Participant or as an indirect participant, in each case in accordance with the rules of such Depositary).

"Property Trustee" means the Trustee meeting the eligibility requirements set forth in Section 5.03.

"Property Trustee Account" has the meaning set forth in Section 3.08(c).

"Quorum" means a majority of the Administrative Trustees or, if there are only two Administrative Trustees, both of them.

"Redemption Price" has the meaning set forth in Annex I.

"Registrar" has the meaning set forth in Section 7.04.



"Related Party" means, with respect to the Sponsor, any direct or indirect wholly owned subsidiary of the Sponsor or any other Person that owns, directly or indirectly, 100% of the outstanding voting securities of the Sponsor.

"Responsible Officer" means, with respect to the Property Trustee, any vice-president, any assistant vice-president, the treasurer, any assistant treasurer, any trust officer or assistant trust officer or any other officer in the Corporate Trust Department of the Property Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer's knowledge of and familiarity with the particular subject.

"Securities" means the Common Securities and the Preferred Securities.

"Securities Act" means the Securities Act of 1933 as amended from time to time, or any successor legislation.

"Securities Custodian" means the custodian with respect to any Preferred Security in global form.

"Securities Guarantees" means the Preferred Securities Guarantee and the Common Securities Guarantee.

"Special Trustee" means a trustee appointed by the Holders of a Majority in liquidation amount of the Preferred Securities in accordance with Section 5.06(a)(ii)(B).

"Sponsor" means Chemed Corporation, a Delaware corporation, or any successor entity in a merger, consolidation or amalgamation, in its capacity as sponsor of the Trust.

"Successor Delaware Trustee" has the meaning set forth in Section 5.06(d).

"Successor Entity" has the meaning set forth in Section 3.15(b).

"Successor Property Trustee" has the meaning set forth in Section 5.06(b).

"Successor Securities" has the meaning set forth in Section 3.15(b).

"Super Majority" has the meaning set forth in Section 2.06(a)(ii).

"Tax Event" means the Property Trustee shall have received an opinion of nationally recognized independent tax counsel to the Sponsor (reasonably acceptable to the Trustees) experienced in such matters (a "Dissolution Tax Opinion") to the effect that, as a result of (i) any amendment to or change (including any announced prospective change (which shall not include a proposed change), provided that a Tax Event shall not occur more than 90 days before the effective date of any such prospective change) in the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein, (ii) any judicial decision or official administrative pronouncement, ruling, regulatory procedure, notice or announcement, including any notice or announcement of intent to adopt such procedures or regulations (an "Administrative Action") or (iii) any amendment to or change in the administrative position or interpretation of any Administrative Action or judicial decision that differs from the theretofore generally accepted position, in each case, by any legislative body, court, governmental agency or regulatory body, irrespective of the manner in which such amendment or change is made known, which amendment or change is effective or such Administrative Action or decision is announced, in each case, on or after the date of original issuance of the Debentures or the issue date of the Preferred Securities issued by the Trust, there is more than an insubstantial risk that (a) if the Debentures are held by the Property Trustee, (I) the Trust is, or will be within 90 days of the date of such opinion, subject to United States Federal income tax with respect to interest accrued or received on the Debentures or subject to more than a de minimis amount of other taxes, duties or other governmental charges as determined by such counsel, or (II) any portion of interest payable by the Sponsor to the Trust on the Debentures is not, or within 90 days of the date of such opinion will not be, deductible by the Sponsor in whole or in part for United States Federal income tax purposes or (b) with respect to Debentures which are no longer held by the Property Trustee, any portion of interest payable by the Sponsor on the Debentures is not, or within 90 days of the date of such opinion will not be, deductible by the Sponsor in whole or in part for United States Federal income tax purposes.

"10% in liquidation amount of the Securities" means, except as provided in the terms of the Preferred Securities or by the Trust Indenture Act, Holders of outstanding Securities voting together as a single class or, as

the context may require, Holders of outstanding Preferred Securities or Holders of outstanding Common Securities, voting separately as a class, representing 10% of the aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Securities of the relevant class.

"Treasury Regulations" means the income tax regulations, including temporary and proposed regulations, promulgated under the Code by the United States Treasury, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"Trust Indenture Act" means the Trust Indenture Act of 1939 as amended from time to time, or any successor legislation.

"Trustee" or "Trustees" means each Person who has signed this Declaration as a trustee, so long as such Person shall continue in office in accordance with the terms hereof, and all other Persons who may from time to time be duly appointed, qualified and serving as Trustees in accordance with the provisions hereof, and references herein to a Trustee or the Trustees shall refer to such Person or Persons solely in their capacity as trustees hereunder.

## ARTICLE II

### Trust Indenture Act

SECTION 2.01. Trust Indenture Act; Application. (a) This Declaration is subject to the provisions of the Trust Indenture Act that are required to be part of this Declaration, which are incorporated by reference in and made part of this Declaration and shall, to the extent applicable, be governed by such provisions.

(b) The Property Trustee shall be the only Trustee which is a Trustee for the purposes of the Trust Indenture Act.

(c) If and to the extent that any provision of this Declaration limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control.

(d) The application of the Trust Indenture Act to this Declaration shall not affect the nature of the

Securities as equity securities representing undivided beneficial interests in the assets of the Trust.

SECTION 2.02. Lists of Holders of Securities. (a) Each of the Sponsor and the Administrative Trustees on behalf of the Trust shall provide the Property Trustee (i) within 14 days after each record date for payment of Distributions, a list, in such form as the Property Trustee may reasonably require, of the names and addresses of the Holders of the Securities ("List of Holders") as of such record date, provided that neither the Sponsor nor the Administrative Trustees on behalf of the Trust shall be obligated to provide such List of Holders at any time the List of Holders does not differ from the most recent List of Holders given to the Property Trustee by the Sponsor and the Administrative Trustees on behalf of the Trust, and (ii) at any other time, within 30 days of receipt by the Trust of a written request for a List of Holders as of a date no more than 14 days before such List of Holders is given to the Property Trustee. The Property Trustee shall preserve, in as current a form as is reasonably practicable, all information contained in Lists of Holders given to it or which it receives in its capacity as Paying Agent (if acting in such capacity), provided that the Property Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

(b) The Property Trustee shall comply with its obligations under Sections 311(a), 311(b) and 312(b) of the Trust Indenture Act.

SECTION 2.03. Reports by the Property Trustee. Within 60 days after March 15 of each year, commencing March 15, 2000, the Property Trustee shall provide to the Holders of the Preferred Securities such reports as are required by Section 313(a) of the Trust Indenture Act, if any, in the form and in the manner provided by Section 313 of the Trust Indenture Act. The Property Trustee shall also comply with the other requirements of Section 313 of the Trust Indenture Act.

SECTION 2.04. Periodic Reports to Property Trustee. Each of the Sponsor and the Administrative Trustees on behalf of the Trust shall provide to the Property Trustee such documents, reports and information as required by Section 314(a)(4) of the Trust Indenture Act (if any) and the compliance certificate required by Section 314 of the Trust Indenture Act in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act, provided that such compliance certificate shall be delivered on or before 120 days after the end of each fiscal year of the Sponsor.

SECTION 2.05. Evidence of Compliance with Conditions Precedent. Each of the Sponsor and the Administrative Trustees on behalf of the Trust shall provide to the Property Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Declaration that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to Section 314(c)(1) may be given in the form of an Officers' Certificate.

SECTION 2.06. Events of Default; Waiver. (a) The Holders of a Majority in liquidation amount of Preferred Securities may, by vote, on behalf of the Holders of all of the Preferred Securities, waive any past Event of Default in respect of the Preferred Securities and its consequences, provided that, if the Event of Default:

(i) is caused by a Debenture Event of Default that is not waivable under the Indenture, the Event of Default under the Declaration shall also not be waivable;

(ii) is caused by a Debenture Event of Default that requires the consent or vote of greater than a majority in principal amount of the holders of the Debentures (a "Super Majority") to be waived under the Indenture, the Event of Default under the Declaration may only be waived by the vote of the Holders of at least the proportion in liquidation amount of the Preferred Securities that the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding;

(iii) is the result of a default by the Trust in the payment of any Distribution when it becomes due and payable, which default has continued for 30 days (subject to the deferral of any due date in the case of a Default Period), the Event of Default shall not be waivable; or

(iv) is the result of a default by the Trust in the payment of any Redemption Price of any preferred Security when it becomes due and payable, the Event of Default shall not be waivable.

The foregoing provisions of this Section 2.06(a) shall be in lieu of Section 316(a)(1)(B) of the Trust Indenture Act and such Section 316(a)(1)(B) of the Trust Indenture Act is hereby expressly excluded from this Declaration and the Securities, as permitted by the Trust Indenture Act.

Upon such waiver, any such default shall cease to exist, and any Event of Default with respect to the Preferred Securities arising therefrom shall be deemed to have been cured for every purpose of this Declaration, but no such waiver shall extend to any subsequent or other default or an Event of Default with respect to the Preferred Securities or impair any right consequent thereon. Any waiver by the Holders of the Preferred Securities of an Event of Default with respect to the Preferred Securities shall also be deemed to constitute a waiver by the Holders of the Common Securities of any such Event of Default with respect to the Common Securities for all purposes of this Declaration without any further act, vote, or consent of the Holders of the Common Securities.

(b) The Holders of a Majority in liquidation amount of the Common Securities may, by vote, on behalf of the Holders of all of the Common Securities, waive any past Event of Default with respect to the Common Securities and its consequences, provided that, if the Event of Default is caused by a Debenture Event of Default that:

(i) is not waivable under the Indenture, except where the Holders of the Common Securities are deemed to have waived such Event of Default under the Declaration as provided below in this Section 2.06(b), the Event of Default under the Declaration shall also not be waivable; or

(ii) requires the consent or vote of a Super Majority to be waived, except where the Holders of the Common Securities are deemed to have waived such Event of Default under the Declaration as provided below in this Section 2.06(b), the Event of Default under the Declaration may only be waived by the vote of the Holders of at least the proportion in liquidation amount of the Preferred Securities that the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding;

provided further, each Holder of Common Securities will be deemed to have waived any such Event of Default and all Events of Default with respect to the Common Securities and its consequences until the effects of all Events of Default with respect to the Preferred Securities have been cured, waived or otherwise eliminated, and until such Events of Default have been so cured, waived or otherwise eliminated, the Property Trustee will be deemed to be acting solely on behalf of the Holders of the Preferred Securities and only the Holders of the Preferred Securities will have the right to direct the Property Trustee in accordance with the terms

of the Securities. The foregoing provisions of this Section 2.06(b) shall be in lieu of Sections 316(a)(1)(A) and 316(a)(1)(B) of the Trust Indenture Act and such Section 316(a)(1)(A) and 316(a)(1)(B) of the Trust Indenture Act are hereby expressly excluded from this Declaration and the Securities, as permitted by the Trust Indenture Act. Subject to the foregoing provisions of this Section 2.06(b), upon such waiver, any such default shall cease to exist and any Event of Default with respect to the Common Securities arising therefrom shall be deemed to have been cured for every purpose of this Declaration, but no such waiver shall extend to any subsequent or other default or Event of Default with respect to the Common Securities or impair any right consequent thereon.

(c) A waiver of an Event of Default under the Indenture by the Property Trustee at the direction of the Holders of the Preferred Securities, constitutes a waiver of the corresponding Event of Default under this Declaration. The foregoing provisions of this Section 2.06(c) shall be in lieu of Section 316(a)(1)(B) of the Trust Indenture Act and such Section 316(a)(1)(B) of the Trust Indenture Act is hereby expressly excluded from this Declaration and the Securities, as permitted by the Trust Indenture Act.

SECTION 2.07. Event of Default; Notice. (a) The Property Trustee shall, within 90 days after the occurrence of an Event of Default actually known to the Trustee, (i) transmit by mail, first-class postage prepaid, to the Holders of the Securities, and (ii) transmit by any means provided for in this Declaration to the Administrative Trustees and the Sponsor, notices of all defaults actually known to the Property Trustee, unless such defaults have been cured before the giving of such notice (the term "defaults" for the purposes of this Section 2.07(a) being hereby defined to be an Event of Default, not including any periods of grace and irrespective of the giving of any notice); provided that, except for a default in the payment of principal of (or premium, if any) or interest on any of the Debentures or in the payment of any sinking fund installment established for the Debentures, the Property Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or Responsible Officers of the Property Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of the Securities.

(b) The Property Trustee shall not be deemed to have knowledge of any default except:

(i) a default under Sections 5.01(1) and 5.01(2) of the Indenture; or

(ii) any default as to which the Property Trustee shall have received written notice.

### ARTICLE III

#### Organization

SECTION 3.01. Name. The Trust is named "Chemed Capital Trust," as such name may be modified from time to time by the Administrative Trustees following written notice to the Holders of Securities. The Trust's activities may be conducted under the name of the Trust or any other name deemed advisable by the Administrative Trustees.

SECTION 3.02. Office. The address of the principal office of the Trust is c/o Chemed Corporation, 2600 Chemed Center, 255 East Fifth Street, Cincinnati, Ohio 45202-4726 Attention: Chief Financial Officer. On ten Business Days written notice to the Holders of Securities, the Administrative Trustees may designate another principal office.

SECTION 3.03. Purpose. The exclusive purposes and functions of the Trust are (a) to issue and to offer to exchange Preferred Securities for outstanding shares of Parent Stock and to exchange the Parent Stock and the Common Securities for certain Debentures of the Debenture Issuer and (b) except as otherwise limited herein, to engage in only those other activities necessary or incidental thereto. The Trust shall not borrow money, issue debt or reinvest proceeds derived from investments, pledge any of its assets, or otherwise undertake (or permit to be undertaken) any activity that would cause the Trust not to be classified for United States Federal income tax purposes as a grantor trust.

SECTION 3.04. Authority. (a) Subject to the limitations provided in this Declaration and to the specific duties of the Property Trustee, the Administrative Trustees shall have exclusive and complete authority to carry out the purposes of the Trust. An action taken by the Administrative Trustees in accordance with their powers shall constitute the act of and serve to bind the Trust and an action taken by the Property Trustee in accordance with its powers shall constitute the act of and serve to bind the Trust. In dealing with the Trustees acting on behalf of the Trust, no person shall be required to inquire into the



authority of the Trustees to bind the Trust. Persons dealing with the Trust are entitled to rely conclusively on the power and authority of the Trustees as set forth in this Declaration.

(b) Except as expressly set forth in this Declaration and except if a meeting of the Administrative Trustees is called with respect to any matter over which the Administrative Trustees have power to act, any power of the Administrative Trustees may be exercised by, or with the consent of, any one such Administrative Trustee.

(c) An Administrative Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purposes of signing any documents which the Administrative Trustees have power and authority to cause the Trust to execute pursuant to Section 3.06.

SECTION 3.05. Title to Property of the Trust. Except as provided in Section 3.08 with respect to the Debentures and the Property Trustee Account or as otherwise provided in this Declaration, legal title to all assets of the Trust shall be vested in the Trust. The Holders shall not have legal title to any part of the assets of the Trust, but shall have an undivided beneficial interest in the assets of the Trust.

SECTION 3.06. Powers and Duties of the Administrative Trustees. The Administrative Trustees shall have, together (except in the case of paragraphs (a), (b) and (c) of this Section 3.06) with any Special Trustee holding office pursuant to Section 5.06, if any, the exclusive power, duty and authority to cause the Trust to engage in the following activities:

(a) to issue and offer to exchange the Preferred Securities and the Common Securities in accordance with this Declaration; provided, however, that the Trust may issue no more than one series of Preferred Securities and no more than one series of Common Securities, and, provided further, that there shall be no interests in the Trust other than the Securities, and the issuance of Securities shall be limited to simultaneous issuances of both Preferred Securities and Common Securities on the Closing Date;

(b) in connection with the issue and offer to exchange pursuant to the Offering Circular of the Preferred Securities, at the direction of the Sponsor, to:

(i) assist in the preparation of the Offering Circular and Form 13E-4, prepared by the Sponsor, relating to the offer to holders of Parent Stock to exchange the Preferred Securities for shares of Parent Stock;

(ii) execute and file any documents prepared by the Sponsor, or take any acts as determined by the Sponsor to be necessary in order to qualify or register all or part of the Preferred Securities in any State or foreign jurisdiction in which the Sponsor has determined to qualify or register such Preferred Securities for sale;

(iii) execute and file an application, prepared by the Sponsor, to the New York Stock Exchange or any other national stock exchange or the Nasdaq National Market for listing or quotation of the Preferred Securities;

(iv) to execute and deliver letters, documents, or instruments with The Depository Trust Company relating the Preferred Securities; and

(v) execute and file with the Commission, at such time as determined by the Sponsor, a registration statement on Form 8-A, including any amendments thereto, prepared by the Sponsor relating to the registration of the Preferred Securities under Section 12 of the Exchange Act.

(c) to exchange the Parent Stock and the Common Securities for the Debentures of the Debenture Issuer; provided, however, that the Administrative Trustees shall cause legal title to the Debentures to be held of record in the name of the Property Trustee in trust for the benefit of the Holders of the Securities;

(d) to give the Sponsor and the Property Trustee prompt written notice of the occurrence of a Tax Event; provided that the Administrative Trustees (and Special Trustee, if any) shall consult with the Sponsor and the Property Trustee before taking or refraining from taking any Ministerial Action in relation to a Tax Event;

(e) to establish a record date with respect to all actions to be taken hereunder that require a record date be established, including and with respect to, for the purposes of Section 316(c) of the Trust Indenture Act, Distributions, voting rights, redemptions and exchanges, and to issue relevant notices to the Holders of Preferred Securities and Holders of Common Securities as to such actions and applicable record dates;

(f) to take all actions and perform such duties as may be required of the Administrative Trustees pursuant to the terms of the Securities;

(g) to bring or defend, pay, collect, compromise, arbitrate, resort to legal action, or otherwise adjust claims or demands of or against the Trust ("Legal Action"), unless pursuant to Section 3.08(e), the Property Trustee has the exclusive power to bring such Legal Action;

(h) to employ or otherwise engage employees and agents (who may be designated as officers with titles) and managers, contractors, advisors, and consultants and pay reasonable compensation for such services;

(i) to cause the Trust to comply with the Trust's obligations under the Trust Indenture Act;

(j) to give the certificate required by Section 314(a)(4) of the Trust Indenture Act to the Property Trustee, which certificate may be executed by any Administrative Trustee;

(k) to incur expenses that are necessary or incidental to carry out any of the purposes of the Trust;

(l) to act as, or appoint another Person to act as, registrar and transfer agent for the Securities;

(m) to give prompt written notice to the Holders of the Securities of any notice received from the Debenture Issuer of its election to defer payments of interest on the Debentures by extending the interest payment period under the Indenture;

(n) to execute all documents or instruments, perform all duties and powers, and do all things for and on behalf of the Trust in all matters necessary or incidental to the foregoing;

(o) to take all action that may be necessary or appropriate for the preservation and the continuation of the Trust's valid existence, rights, franchises and privileges as a statutory business trust under the laws of the State of Delaware and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Holders of the Preferred Securities or to enable the Trust to effect the purposes for which the Trust was created;

(p) to take any action, not inconsistent with this Declaration or with applicable law, that the Administrative Trustees determine in their discretion to be necessary or

desirable in carrying out the activities of the Trust as set out in this Section 3.06, including, but not limited to:

(i) causing the Trust not to be deemed to be an Investment Company required to be registered under the Investment Company Act;

(ii) causing the Trust to be classified for United States federal income tax purposes as a grantor trust; and

(iii) cooperating with the Debenture Issuer to ensure that the Debentures will be treated as indebtedness of the Debenture Issuer for United States federal income tax purposes,

provided that such action does not adversely affect the interests of Holders; and

(q) to take all action necessary to cause all applicable tax returns and tax information reports that are required to be filed with respect to the Trust to be duly prepared and filed by the Administrative Trustees, on behalf of the Trust.

The Administrative Trustees must exercise the powers set forth in this Section 3.06 in a manner that is consistent with the purposes and functions of the Trust set out in Section 3.03, and the Administrative Trustees shall not take any action that is inconsistent with the purposes and functions of the Trust set forth in Section 3.03.

Subject to this Section 3.06, the Administrative Trustees shall have none of the powers or the authority of the Property Trustee set forth in Section 3.08.

Any expenses incurred by the Administrative Trustee (or the Special Trustee, if any) pursuant to this Section 3.06 shall be reimbursed by the Debenture Issuer.

SECTION 3.07. Prohibition of Actions by the Trust and the Trustees.  
(a) The Trust shall not, and the Trustees (including the Property Trustee) on behalf of the Trust shall not, engage in any activity other than as required or authorized by this Declaration. In particular, the Trust shall not and the Trustees (including the Property Trustee) shall cause the Trust not to:

(i) invest any proceeds received by the Trust from holding the Debentures, but shall distribute all such

proceeds to Holders of Securities pursuant to the terms of this Declaration and of the Securities;

(ii) acquire any assets other than as expressly provided herein;

(iii) possess Trust property for other than a Trust purpose;

(iv) make any loans or incur any indebtedness other than loans represented by the Debentures;

(v) possess any power or otherwise act in such a way as to vary the Trust assets or the terms of the Securities in any way whatsoever;

(vi) issue any securities or other evidences of beneficial ownership of, or beneficial interest in, the Trust other than the Securities; or

(vii) other than as provided in the Declaration or Annex I hereto, (A) direct the time, method and place of exercising any trust or power conferred upon the Debenture Trustee with respect to the Debentures, (B) waive any past default that is waivable under Section 5.13 of the Indenture, (C) exercise any right to rescind or annul any declaration that the principal of all the Debentures shall be due and payable, or (D) consent to any amendment, modification or termination of the Indenture or the Debentures where such consent shall be required unless, in the case of each action described in clause (A), (B), (C) or (D), the Trust shall have received an opinion of counsel to the effect that such modification will not cause more than an insubstantial risk that for United States federal income tax purposes the Trust will not be classified as a grantor trust.

SECTION 3.08. Powers and Duties of the Property Trustee. (a) The legal title to the Debentures shall be owned by and held of record in the name of the Property Trustee in trust for the benefit of the Holders of the Securities. The right, title and interest of the Property Trustee to the Debentures shall vest automatically in each Person who may hereafter be appointed as Property Trustee in accordance with Section 5.06. Such vesting and cessation of title shall be effective whether or not conveyancing documents with regard to the Debentures have been executed and delivered.

(b) The Property Trustee shall not transfer its right, title and interest in the Debentures to the Administrative Trustees or to the Delaware Trustee (if the Property Trustee does not also act as Delaware Trustee).

(c) The Property Trustee shall:

(i) establish and maintain a segregated non-interest bearing trust account (the "Property Trustee Account") in the name of and under the exclusive control of the Property Trustee on behalf of the Holders of the Securities and, upon the receipt of payments of funds made in respect of the Debentures held by the Property Trustee, deposit such funds into the Property Trustee Account and make payments to the Holders of the Preferred Securities and Holders of the Common Securities from the Property Trustee Account in accordance with Section 6.01. Funds in the Property Trustee Account shall be held uninvested until disbursed in accordance with this Declaration.

(ii) engage in such ministerial activities as so directed and as shall be necessary or appropriate to effect the redemption of the Preferred Securities and the Common Securities to the extent the Debentures are redeemed or mature; and

(iii) upon written notice of distribution issued by the Administrative Trustees in accordance with the terms of the Securities, engage in such ministerial activities as so directed as shall be necessary or appropriate to effect the distribution of the Debentures to Holders of Securities upon the occurrence of certain special events (as may be defined in the terms of the Securities) arising from a change in law or a change in legal interpretation or other specified circumstances pursuant to the terms of the Securities.

(d) The Property Trustee shall take all actions and perform such duties as may be specifically required of the Property Trustee pursuant to the terms of the Securities.

(e) The Property Trustee shall take any Legal Action which arises out of or in connection with an Event of Default or the Property Trustee's duties and obligations under this Declaration or the Trust Indenture Act; provided, however, that if a Debenture Event of Default has occurred and is continuing and such event is attributable to the failure of the Sponsor to pay interest or principal on the Debentures on the date such interest or principal is otherwise payable (or in the case of redemption, on the redemption date), then a

holder of Preferred Securities may, to the extent permitted by applicable law, institute a legal proceeding directly for enforcement of payment to such Holder of the principal of or interest on the Debentures having a principal amount equal to the aggregate liquidation amount of the Preferred Securities of such Holder (a "Direct Action") on or after the respective due date specified in the Securities. In connection with such Direct Action, the rights of the Holders of the Common Securities will be subrogated to the rights of such Holder of Preferred Securities to the extent of any payment made by the Sponsor to such Holder of Preferred Securities in such Direct Action. In addition, if the Property Trustee fails to enforce its rights under the Debentures (other than rights arising from an Event of Default described in the immediately preceding sentence) after any Holder of Preferred Securities shall have made a written request to the Property Trustee to enforce such rights, such Holder of Preferred Securities may, to the fullest extent permitted by law, institute a Direct Action to enforce the Property Trustee or any other Person. Except as provided in the preceding sentences, the Holders of Preferred Securities will not be able to exercise directly any other remedy available to the holders of the Debentures.

(f) The Property Trustee shall not resign as a Trustee unless either:

(i) the Trust has been completely liquidated and the proceeds of the liquidation distributed to the Holders of Securities pursuant to the terms of the Securities; or

(ii) a Successor Property Trustee has been appointed and has accepted that appointment in accordance with Section 5.06.

(g) The Property Trustee shall have the legal power to exercise all of the rights, powers and privileges of a holder of Debentures under the Indenture and, if an Event of Default occurs and is continuing, the Property Trustee shall, for the benefit of Holders of the Securities, enforce its rights as holder of the Debentures subject to the rights of the Holders pursuant to the terms of such Securities.

(h) The Property Trustee will act as Paying Agent and Registrar in Cincinnati, Ohio to pay Distributions, redemption payments or liquidation payments on behalf of the Trust with respect to all securities and any such Paying Agent shall comply with Section 317(b) of the Trust Indenture Act. Any Paying Agent may be removed by the Property Trustee at any time and a successor Paying Agent or additional Paying Agents may be appointed at any time by the Property Trustee.

(i) Subject to this Section 3.08, the Property Trustee shall have none of the duties, liabilities, powers or the authority of the Administrative Trustees set forth in Section 3.06.

The Property Trustee must exercise the powers set forth in this Section 3.08 in a manner that is consistent with the purposes and functions of the Trust set out in Section 3.03, and the Property Trustee shall not take any action that is inconsistent with the purposes and functions of the Trust set out in Section 3.03.

SECTION 3.09. Certain Duties and Responsibilities of the Property Trustee. (a) The Property Trustee, before the occurrence of any Event of Default and after the curing of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Declaration and no implied covenants shall be read into this Declaration against the Property Trustee. In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.06), the Property Trustee shall exercise such of the rights and powers vested in it by this Declaration, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) No provision of this Declaration shall be construed to relieve the Property Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) prior to the occurrence of an Event of Default and after the curing or waiving of all such Events of Default that may have occurred:

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

(B) in the absence of bad faith on the part of the Property Trustee, the Property Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Property Trustee and conforming to the re-



quirements of this Declaration; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Property Trustee, the Property Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Declaration;

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

(iii) the Property Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a Majority in liquidation amount of the Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon the Property Trustee under this Declaration;

(iv) no provision of this Declaration shall require the Property Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers;

(v) the Property Trustee's sole duty with respect to the custody, safe keeping and physical preservation of the Debentures and the Property Trustee Account shall be to deal with such property in a similar manner as the Property Trustee deals with similar property for its own account, subject to the protections and limitations on liability afforded to the Property Trustee under this Declaration and the Trust Indenture Act;

(vi) the Property Trustee shall have no duty or liability for or with respect to the value, genuineness, existence or sufficiency of the Debentures or the payment of any taxes or assessments levied thereon or in connection therewith;

(vii) the Property Trustee shall not be liable for any interest on any money received by it except as it may otherwise agree with the Sponsor. Money held by the Property Trustee need not be segregated from other funds held by it except in relation to the Property Trustee Account maintained by the Property Trustee pursuant to

Section 3.08(c)(i) and except to the extent otherwise required by law; and

(viii) the Property Trustee shall not be responsible for monitoring the compliance by the Administrative Trustees or the Sponsor with their respective duties under this Declaration, nor shall the Property Trustee be liable for the default or misconduct of the Administrative Trustees or the Sponsor.

SECTION 3.10. Certain Rights of Property Trustee. (a) Subject to the provisions of Section 3.09:

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

(ii) any direction or act of the Sponsor or the Administrative Trustees contemplated by this Declaration shall be sufficiently evidenced by an Officers' Certificate;

(iii) whenever in the administration of this Declaration, the Property Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Property Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and rely upon an Officers' Certificate which, upon receipt of such request, shall be promptly delivered by the Sponsor or the Administrative Trustees;

(iv) the Property Trustee shall have no duty to see to any recording, filing or registration of any instrument (including any financing or continuation statement or any filing under tax or securities laws) or any rerecording, refiling or registration thereof;

(v) the Property Trustee may consult with counsel of its choice or other experts and the advice or opinion of such counsel and experts with respect to legal matters or advice within the scope of such experts' area of expertise 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 advice or opinion, such counsel may be counsel

to the Sponsor or any of its Affiliates, and may include any of its employees. The Property Trustee shall have the right at any time to seek instructions concerning the administration of this Declaration from any court of competent jurisdiction;

(vi) the Property Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Declaration at the request or direction of any Holder, unless such Holder shall have provided to the Property Trustee security satisfactory to the Property Trustee, against the costs, expenses (including its attorneys' fees and expenses) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested in writing by the Property Trustee, provided, that, nothing contained in this Section 3.10(a)(vi) shall be taken to relieve the Property Trustee, upon the occurrence of an Event of Default, of its obligation to exercise the rights and powers vested in it by this Declaration;

(vii) the Property Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, security, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Property Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit;

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

(ix) any action taken by the Property Trustee or its agents hereunder shall bind the Trust and the Holders of the Securities, and the signature of the Property Trustee or its agents alone shall be sufficient and effective to perform any such action and no third party shall be required to inquire as to the authority of the Property Trustee to so act or as to its compliance with any of the terms and provisions of this Declaration, both of which shall be conclusively evidenced by the Property Trustee's or its agent's taking such action;

(x) whenever in the administration of this Declaration the Property Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder the Property Trustee (i) may request instructions from the Holders of the Securities which instructions may only be given by the Holders of the same proportion in liquidation amount of the Securities as would be entitled to direct the Property Trustee under the terms of the Securities in respect of such remedy, right or action, (ii) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (iii) shall be protected in acting in accordance with such instructions;

(xi) except as otherwise expressly provided by this Declaration, the Property Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Declaration; and

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

(b) No provision of this Declaration shall be deemed to impose any duty or obligation on the Property Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it, in any jurisdiction in which it shall be illegal, or in which the Property Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts, or to exercise any such right, power, duty or obligation. No permissive power or authority available to the Property Trustee shall be construed to be a duty.

SECTION 3.11. Delaware Trustee. Notwithstanding any other provision of this Declaration other than Section 5.02, the Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities of the Administrative Trustees or the Property Trustee described in this Declaration. Except as set forth in Section 5.02, the Delaware Trustee shall be a Trustee for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Business Trust Act.

SECTION 3.12. Execution of Documents. Unless otherwise determined by the Administrative Trustees, and except as otherwise required by the Business Trust Act, any Administrative Trustee is authorized to execute on behalf of the Trust any documents that the Administrative Trustees have the power and authority to execute pursuant to Section 3.06; provided that, the registration statement referred to in Section 3.06(b)(i), including any amendments thereto, shall be signed by a majority of the Administrative Trustees.

SECTION 3.13. Not Responsible for Recitals or Issuance of Securities. The recitals contained in this Declaration and the Securities shall be taken as the statements of the Sponsor, and the Trustees do not assume any responsibility for their correctness. The Trustees make no representations as to the value or condition of the property of the Trust or any part thereof. The Trustees make no representations as to the validity or sufficiency of this Declaration or the Securities.

SECTION 3.14. Duration of Trust. The Trust, unless terminated pursuant to the provisions of Article VIII hereof, shall exist until - , 20[ ].

SECTION 3.15. Mergers. (a) The Trust may not consolidate, amalgamate, merge with or into, or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety to any corporation or other entity or person, except as described in Section 3.15(b) and (c).

(b) The Trust may, with the consent of a majority of the Administrative Trustees and without the consent of the Holders of the Securities, the Delaware Trustee or the Property Trustee, consolidate, amalgamate, merge with or into, or be replaced by a trust organized as such under the laws of any State or the District of Columbia; provided that:

(i) if the Trust is not the surviving entity, the successor entity (the "Successor Entity") either:

(A) expressly assumes all of the obligations of the Trust under the Securities; or

(B) substitutes for the Securities other securities having substantially the same terms as the Preferred Securities (the "Successor Securities") as long as the Successor Securities rank, with respect to participation in the profits and distributions or in the assets of the Successor

Entity at least as high as the Preferred Securities rank with respect to participation in the profits and dividends or in the assets of the Trust;

(ii) the Debenture Issuer expressly acknowledges such Successor Entity as the Holder of the Debentures;

(iii) the Preferred Securities or any Successor Securities are listed, or any Successor Securities will be listed upon notification of issuance, on any national securities exchange or with any other organization on which the Preferred Securities are then listed or quoted;

(iv) such merger, consolidation, amalgamation or replacement does not cause the Preferred Securities (including any Successor Securities) to be downgraded by any nationally recognized statistical rating organization;

(v) such merger, consolidation, amalgamation or replacement does not adversely affect the powers, preferences and other special rights of the Holders of the Preferred Securities (including any Successor Securities) in any material respect;

(vi) such Successor Entity has a purpose substantially identical to that of the Trust;

(vii) prior to such merger, consolidation, amalgamation or replacement, the Sponsor has received an opinion of a nationally recognized independent counsel (reasonably acceptable to the Property Trustee) to the Trust experienced in such matters to the effect that:

(A) the Successor Entity will be treated as a grantor trust for United States federal income tax purposes;

(B) following such merger, consolidation, amalgamation or replacement, neither the Sponsor nor the Successor Entity will be required to register as an Investment Company; and

(C) such merger, consolidation, amalgamation or replacement will not adversely affect the limited liability of the Holders of the Securities (including any Successor Securities); and

(viii) the Sponsor provides a guarantee to the Holders of the Successor

Securities with respect to the Successor Entity having substantially the same terms as the Preferred Securities Guarantee.

(c) Notwithstanding Section 3.15(b), the Trust shall not, except with the consent of Holders of 100% in liquidation amount of the Common Securities, consolidate, amalgamate, merge with or into, or be replaced by any other entity or permit any other entity to consolidate, amalgamate, merge with or into, or replace it if such consolidation, amalgamation, merger or replacement would cause the Trust or Successor Entity to be classified as other than a grantor trust for United States federal income tax purposes.

#### ARTICLE IV

##### Sponsor

SECTION 4.01. Sponsor's Purchase of Common Securities. On the Closing Date the Sponsor will purchase an amount of Common Securities issued by the Trust such that the aggregate liquidation amount of such Common Securities purchased by the Sponsor shall at such date equal 3% of the total capital of the Trust.

SECTION 4.02. Responsibilities of the Sponsor. In connection with the issue and offer to exchange of the Preferred Securities, the Sponsor shall have the exclusive right and responsibility to engage in the following activities:

(a) to prepare the Offering Circular;

(b) to determine the states and foreign jurisdictions in which to take appropriate action to qualify or register for sale all or part of the Preferred Securities and to do any and all such acts, other than actions which must be taken by the Trust, and advise the Trust of actions it must take, and prepare for execution and filing any documents to be executed and filed by the Trust, as the Sponsor deems necessary or advisable in order to comply with the applicable laws of any such States and foreign jurisdictions;

(c) to prepare for filing by the Trust an application to the New York Stock Exchange or any other national stock exchange or the Nasdaq National Market for listing or quotation of the Preferred Securities; and

(d) to prepare for filing by the Trust with the Commission a registration statement on Form 8-A relating to

the registration of the Preferred Securities under Section 12 of the Exchange Act, including any amendments thereto.

SECTION 4.03. Guarantee of Payment of Trust Obligations. (a) Subject to the terms and conditions of this Section 4.03, the Sponsor hereby irrevocably and unconditionally guarantees to each Person to whom the Trust is now or hereafter becomes indebted or liable (the "Beneficiaries") the full payment, when and as due, of any and all Obligations to such Beneficiaries.

(b) The agreement of the Sponsor in Section 4.03(a) is intended to be for the benefit of, and to be enforceable by, all such Beneficiaries, whether or not such Beneficiaries have received notice hereof.

(c) The agreement of the Sponsor set forth in Section 4.03(a) shall terminate and be of no further force and effect upon the later of (a) the date on which full payment has been made of all amounts payable to all Holders of all the Preferred Securities (whether upon redemption, liquidation, exchange or otherwise) and (b) the date on which there are no Beneficiaries remaining; provided, however, that such agreement shall continue to be effective or shall be reinstated, as the case may be, if at any time any Holder of Preferred Securities or any Beneficiary must restore payment of any sums paid under the Preferred Securities, under any Obligation, under the Preferred Securities Guarantee or under this Agreement for any reason whatsoever. Such agreement is continuing, irrevocable, unconditional and absolute.

## ARTICLE V

### Trustees

SECTION 5.01. Number of Trustees. The number of Trustees shall initially be five (5), and:

(a) at any time before the issuance of any Securities, the Sponsor may, by written instrument, increase or decrease the number of Trustees; and

(b) after the issuance of any Securities:

(i) the number of Trustees may be increased or decreased, except as provided in Sections 5.01(b)(ii) and 5.06(a)(ii)(B) with respect to the Special Trustee, by vote of the Holders of a Majority in liquidation amount of the Common Securities voting as a class at a meeting of the Holders of the Common Securities; and



(ii) the number of Trustees shall be increased automatically by one (1) if an Appointment Event has occurred and is continuing and the Holders of a Majority in liquidation amount of the Preferred Securities appoint a Special Trustee in accordance with Section 5.06(a)(ii).

SECTION 5.02. Delaware Trustee. If required by the Business Trust Act, one Trustee (the "Delaware Trustee") shall be an entity which has its principal place of business in the State of Delaware, and otherwise meets the requirements of applicable law, provided that, if the Property Trustee has its principal place of business in the State of Delaware and otherwise meets the requirements of applicable law, then the Property Trustee shall also be the Delaware Trustee and Section 3.11 shall have no application.

SECTION 5.03. Property Trustee; Eligibility. (a) There shall at all times be one Trustee which shall act as Property Trustee which shall:

(i) not be an Affiliate of the Sponsor; and

(ii) be a corporation organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or Person permitted by the Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least 50 million U.S. dollars (\$50,000,000), and subject to supervision or examination by Federal, State, Territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then for the purposes of this Section 5.03(a)(ii), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. Neither the Sponsor nor any Person directly or indirectly controlling, controlled by or under common control with the Sponsor shall serve as Trustee hereunder.

(b) If at any time the Property Trustee shall cease to be eligible to so act under Section 5.03(a), the Property Trustee shall immediately resign in the manner and with the effect set forth in Section 5.06(e).

(c) If the Property Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of

the Trust Indenture Act, the Property Trustee and the Holder of the Common Securities (as if it were the obligor referred to in Section 310(b) of the Trust Indenture Act) shall in all respects comply with the proviso of Section 310(b) of the Trust Indenture Act, subject to the penultimate paragraph thereof.

(d) The Preferred Securities Guarantee shall be deemed to be specifically described in this Declaration for purposes of clause (i) of the first provision contained in Section 310(b) of the Trust Indenture Act.

SECTION 5.04. Qualifications of Administrative Trustees and Delaware Trustee Generally. Each Administrative Trustee and the Delaware Trustee (unless the Property Trustee also acts as Delaware Trustee) shall be either a natural person who is at least 21 years of age or a legal entity that shall act through one or more Authorized Officers.

SECTION 5.05. Initial Trustees. The initial Administrative Trustees shall be:

Kevin J. McNamara  
c/o Chemed Corporation  
2600 Chemed Center  
255 East Fifth Street  
Cincinnati, Ohio 45202-4726

Timothy S. O'Toole  
c/o Chemed Corporation  
2600 Chemed Center  
255 East Fifth Street  
Cincinnati, Ohio 45202-4726

Sandra Laney  
c/o Chemed Corporation  
2600 Chemed Center  
255 East Fifth Street  
Cincinnati, Ohio 45202-4726

The initial Delaware Trustee shall be:

First Union Trust Company, National Association  
One Rodney Square  
920 King Street  
1st Floor  
Wilmington, Delaware 19810  
Attention: Corporate Trust Administration

The initial Property Trustee shall be:

Firststar Bank, National Association  
425 Walnut Street  
6th Floor  
Cincinnati, Ohio 45202  
Attention: Keith A. Maurmeier

SECTION 5.06. Appointment, Removal and Resignation of Trustees. (a) Except as provided otherwise in this Section 5.06(b), Trustees may be appointed or removed without cause at any time:

(i) until the issuance of any Securities, by written instrument executed by the Sponsor; and

(ii) after the issuance of any Securities:

(A) other than in respect to a Special Trustee, by vote of the Holders of a Majority in liquidation amount of the Common Securities voting as a class at a meeting of the Holders of the Common Securities, unless a Debenture Event of Default shall have occurred and be continuing, in which event the Property Trustee and the Delaware Trustee may only be removed by the Holders of a Majority in liquidation amount of the Preferred Securities, voting as a class at a meeting of the Holders of the Preferred Securities; and

(B) if an Appointment Event has occurred and is continuing, one (1) additional trustee (the "Special Trustee"), who shall have the same rights, powers and privileges as an Administrative Trustee, may be appointed by vote of the Holders of a Majority in liquidation amount of the Preferred Securities, voting as a class at a meeting of the Holders of the Preferred Securities, and such Special Trustee may only be removed (otherwise than by the operation of Section 5.06(e)), by vote of the Holders of a Majority in liquidation amount of the Preferred Securities voting as a class at a meeting of the Holders of the Preferred Securities.

(b) The Trustee that acts as Property Trustee shall not be removed in accordance with Section 5.06(a) until a successor Property Trustee meeting the requirements of Section 5.03 (a "Successor Property Trustee") has been appointed and has accepted such appointment by written instrument executed by such Successor Property Trustee and delivered to the Administrative Trustees and the Sponsor.

(c) The Sponsor shall remove the Property Trustee by written instrument upon:

(i) the entry or a decree or order by a court having jurisdiction in the premises adjudging the Property Trustee as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Property Trustee under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Property Trustee or of any substantial part of its property or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or

(ii) the institution by the Property Trustee of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Property Trustee or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due and its willingness to be adjudicated a bankrupt, or the taking of corporate action by the Property Trustee in furtherance of any such action; or

The Sponsor shall appoint a Successor Property Trustee within 60 days of such an event.

(d) The Trustee that acts as Delaware Trustee shall not be removed in accordance with Section 5.06(a) until a successor Trustee possessing the qualifications to act as Delaware Trustee under Sections 5.02 and 5.04 (a "Successor Delaware Trustee") has been appointed and has accepted such appointment by written instrument executed by such Successor Delaware Trustee and delivered to the Trustees and the Sponsor.

(e) A Trustee appointed to office shall hold office until his successor shall have been appointed or until his death, removal or resignation, provided that a Special Trustee

shall only hold office while an Appointment Event is continuing and shall cease to hold office immediately after the Appointment Event pursuant to which the Special Trustee was appointed and all other Appointment Events cease to be continuing. Any Trustee may resign from office (without need for prior or subsequent accounting) by an instrument in writing signed by the Trustee and delivered to the Sponsor and the Trust, which resignation shall take effect upon such delivery or upon such later date as is specified therein; provided, however, that:

(i) No such resignation of the Trustee that acts as the Property Trustee shall be effective:

(A) until a Successor Property Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Property Trustee and delivered to the Trust, the Sponsor and the resigning Property Trustee; or

(B) until the assets of the Trust have been completely liquidated and the proceeds thereof distributed to the holders of the Securities;

(ii) no such resignation of the Trustee that acts as the Delaware Trustee shall be effective until a Successor Delaware Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Delaware Trustee and delivered to the Trust, the Sponsor and the resigning Delaware Trustee; and

(iii) no such resignation of a Special Trustee shall be effective until the 60th day following delivery of the instrument of resignation of the Special Trustee to the Sponsor and the Trust or such later date specified in such instrument during which period the Holders of the Preferred Securities shall have the right to appoint a successor Special Trustee as provided in this Section 5.06.

(f) The Holders of the Common Securities shall use their best efforts to promptly appoint a Successor Property Trustee or Successor Delaware Trustee, as the case may be, if the Property Trustee or the Delaware Trustee delivers an instrument of resignation in accordance with this Section 5.06.

(g) If no Successor Property Trustee or Successor Delaware Trustee shall have been appointed and accepted appointment as provided in this Section 5.06 within 60 days after delivery to the Sponsor and the Trust of an instrument

of resignation or removal, the resigning Property Trustee or Delaware Trustee, resigning or being removed as applicable, may petition any court of competent jurisdiction for appointment of a Successor Property Trustee or Successor Delaware Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper and prescribe, appoint a Successor Property Trustee or Successor Delaware Trustee, as the case may be.

(h) No Property Trustee or Delaware Trustee shall be liable for the acts or omissions to act of any Successor Property Trustee or Successor Delaware Trustee, as the case may be.

SECTION 5.07. Vacancies among Trustees. If a Trustee ceases to hold office for any reason and the number of Trustees is not reduced pursuant to Section 5.01, or if the number of Trustees is increased pursuant to Section 5.01, a vacancy shall occur. A resolution certifying the existence of such vacancy by a majority of the Administrative Trustees shall be conclusive evidence of the existence of such vacancy. The vacancy shall be filled with a Trustee appointed in accordance with Section 5.06.

SECTION 5.08. Effect of Vacancies. The death, resignation, retirement, removal, bankruptcy, dissolution, liquidation, incompetence or incapacity to perform the duties of a Trustee shall not operate to annul the Trust. Whenever a vacancy in the number of Administrative Trustees shall occur, until such vacancy is filled by the appointment of a Administrative Trustee in accordance with Section 5.06, the Administrative Trustees in office, regardless of their number, shall have all the powers granted to the Administrative Trustees and shall discharge all the duties imposed upon the Administrative Trustees by this Declaration.

SECTION 5.09. Meetings. Meetings of the Administrative Trustees shall be held from time to time upon the call of any Administrative Trustee. Regular meetings of the Administrative Trustees may be held at a time and place fixed by resolution of the Administrative Trustees. Notice of any meetings of the Administrative Trustees shall be hand delivered or otherwise delivered in writing (including by facsimile or overnight courier) not less than 24 hours before such meeting. Notices shall contain a brief statement of the time, place and anticipated purposes of the meeting. The presence (whether in person or by telephone) of a Administrative Trustee at a meeting shall constitute a waiver of notice of such meeting except where a Administrative Trustee attends a meeting for the express purpose of objecting to the transaction of any activity on the ground that the

meeting has not been lawfully called or convened. Unless provided otherwise in this Declaration, any action of the Administrative Trustees may be taken at a meeting by vote of a majority of the Administrative Trustees present (whether in person or by telephone) and eligible to vote with respect to such matter, provided that a Quorum is present, or without a meeting by the unanimous written consent of the Administrative Trustees.

In the event there is only one Administrative Trustee, any and all action of such Administrative Trustee shall be evidenced by a written consent of such Administrative Trustee. In the event a Special Trustee is holding office pursuant to Section 5.06, such Special Trustee shall have the same rights as an Administrative Trustee with respect to participation in a meeting of the Administrative Trustees.

SECTION 5.10. Delegation of Power. (a) Any Administrative Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purpose of executing any documents contemplated in Section 3.06, including any registration statement or amendment thereto filed with the Commission, or making any other governmental filing; and

(b) the Administrative Trustees shall have power to delegate from time to time to such of their number or to officers of the Trust the doing of such things and the execution of such instruments either in the name of the Trust or the names of the Administrative Trustees or otherwise as the Administrative Trustees may deem expedient, to the extent such delegation is not prohibited by applicable law or contrary to the provisions of the Trust, as set forth herein.

SECTION 5.11. Merger, Conversion, Consolidation or Succession to Business. Any Person into which the Property Trustee or the Delaware Trustee, as the case may be, may be merged or converted or with which either may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Property Trustee or the Delaware Trustee, as the case may be, shall be a party, or any Person succeeding to all or substantially all the corporate trust business of the Property Trustee or the Delaware Trustee, as the case may be, shall be the successor of the Property Trustee or the Delaware Trustee, as the case may be, hereunder, provided such Person shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto; provides further, however that the Delaware Trustee shall file amendments to the Certificate of Trust as may be required by the Business Trust Act.

## ARTICLE VI

## Distributions

SECTION 6.01. Distributions. Holders shall receive Distributions (as defined herein) in accordance with the applicable terms of the relevant Holder's Securities. Distributions shall be made on the Preferred Securities and the Common Securities in accordance with the preferences set forth in their respective terms. If and to the extent that the Debenture Issuer makes a payment of interest (including Compounded Interest (as defined in the Indenture) and Additional Sums (as defined in the Indenture)) premium and principal on the Debentures held by the Property Trustee (the amount of any such payment being a "Payment Amount"), the Property Trustee shall and is directed, to the extent funds are available for that purpose, to make a distribution (a "Distribution") of the Payment Amount to Holders.

## ARTICLE VII

## Issuance of Securities

SECTION 7.01. General Provisions Regarding Securities. (a) The Administrative Trustees shall on behalf of the Trust issue one class of convertible preferred securities, designated as Convertible Preferred Trust Securities, liquidation amount \$27, representing undivided beneficial interests in the assets of the Trust (the "Preferred Securities"), having such terms as are set forth in Annex I and one class of convertible common securities, liquidation amount \$27, representing undivided beneficial interests in the assets of the Trust (the "Common Securities"), having such terms as are set forth in Annex I. The Trust shall have no securities or other interests in the assets of the Trust other than the Preferred Securities and the Common Securities. The Trust shall issue no Securities in bearer form.

(b) The consideration received by the Trust for the issuance of the Securities shall constitute a contribution to the capital of the Trust and shall not constitute a loan to the Trust.

(c) Upon issuance of the Securities as provided in this Declaration, the Securities so issued shall be deemed to be validly issued, fully paid and non-assessable, subject to Section 10.01 with respect to the Common Securities.



(d) Every Person, by virtue of having become a Holder or a Preferred Security Beneficial Owner in accordance with the terms of this Declaration, shall be deemed to have expressly assented and agreed to the terms of, and shall be bound by, this Declaration.

SECTION 7.02. Execution and Authentication. (a) The Securities shall be signed on behalf of the Trust by one Administrative Trustee. In case any Administrative Trustee of the Trust who shall have signed any of the Securities shall cease to be such Administrative Trustee before the Securities so signed shall be delivered by the Trust, such Securities nevertheless may be delivered as though the person who signed such Securities had not ceased to be such Administrative Trustee; and any Securities may be signed on behalf of the Trust by such persons who, at the actual date of execution of such Security, shall be the Administrative Trustees of the Trust, although at the date of the execution and delivery of the Declaration any such person was not such a Administrative Trustee.

(b) One Administrative Trustee shall sign the Preferred Securities for the Trust by manual or facsimile signature. Unless otherwise determined by the Trust, such signature shall, in the case of Common Securities, be a manual signature.

A Preferred Security shall not be valid until authenticated by the manual signature of an authorized signatory of the Property Trustee. The signature shall be conclusive evidence that the Preferred Security has been authenticated under this Declaration.

Upon a written order of the Trust signed by one Administrative Trustee, the Property Trustee shall authenticate the Preferred Securities for original issue by executing the Property Trustee's certificate of authentication contained in the form of Preferred Securities attached hereto as Exhibit A-1. The aggregate number of Preferred Securities outstanding at any time shall not exceed the number set forth in the terms in Annex I hereto except as provided in Section 7.06.

The Property Trustee may appoint an authenticating agent acceptable to the Trust to authenticate Preferred Securities. An authenticating agent may authenticate Preferred Securities whenever the Property Trustee may do so. Each reference in this Declaration to authentication by the Property Trustee includes authentication by such agent. An authenticating agent has the same rights as the Property Trustee to deal with the Company or an Affiliate.

SECTION 7.03. Form and Dating. The Preferred Securities and the Property Trustee's certificate of authentication shall be substantially in the form of Exhibit A-1 and the Common Securities shall be substantially in the form of Exhibit A-2, each of which is hereby incorporated in and expressly made a part of this Declaration. Certificates representing the Securities may be printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Administrative Trustees, as evidenced by their execution thereof. The Securities may have letters, CUSIP or other numbers, notations or other marks of identification or designation and such legends or endorsements required by law, stock exchange rule, agreements to which the Trust is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Trust). The Trust at the direction of the Sponsor shall furnish any such legend to the Property Trustee in writing. Each Preferred Security shall be dated the date of its authentication. The terms and provisions of the Securities set forth in Annex I and the forms of Securities set forth in Exhibits A-1 and A-2 are part of the terms of this Declaration and to the extent applicable, the Property Trustee and the Sponsor, by their execution and delivery of this Declaration, expressly agree to such terms and provisions and to be bound thereby.

(a) The Preferred Securities shall initially be issued in the form of one or more permanent global Securities in definitive, fully registered form without distribution coupons as set forth in Exhibit A-1 hereto (a "Global Preferred Security"), which shall be deposited on behalf of the Holders of the Preferred Securities represented thereby with the Property Trustee, as custodian for the Clearing Agency, and registered in the name of the Clearing Agency or a nominee of the Clearing Agency, duly executed by the Trust and authenticated by the Property Trustee as hereinafter provided. The number of Preferred Securities represented by a Global Preferred Security may from time to time be increased or decreased by adjustments made on the records of the Property Trustee and the Clearing Agency or its nominee as hereinafter provided.

(b) This Section 7.03(b) shall apply only to the Global Preferred Securities and such other Preferred Securities in global form as may be authorized by the Trust to be deposited with or on behalf of the Clearing Agency.

The Trust shall execute and the Property Trustee shall, in accordance with this Section 7.03, authenticate and make available for delivery initially one or more Global Preferred Securities that (i) shall be registered in the name

of Cede & Co. or other nominee of such Clearing Agency and (ii) shall be delivered by the Property Trustee to such Clearing Agency or pursuant to such Clearing Agency's written instructions or held by the Property Trustee as custodian for the Clearing Agency. Members of, or participants in, the Clearing Agency ("Participants") shall have no rights under this Declaration with respect to any Global Preferred Security held on their behalf by the Clearing Agency or by the Property Trustee as the custodian of the Clearing Agency or under such Global Preferred Security, and the Clearing Agency may be treated by the Trust, the Property Trustee and any agent of the Trust or the Property Trustee as the absolute owner of such Global Preferred Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Trust, the Property Trustee or any agent of the Trust or the Property Trustee from giving effect to any written certification, proxy or other authorization furnished by the Clearing Agency or impair, as between the Clearing Agency and its Participants, the operation of customary practices of such Clearing Agency governing the exercise of the rights of a holder of a beneficial interest in any Global Preferred Security.

(c) Except as provided in Section 7.10, 9.01 and Section 9.02, owners of beneficial interests in a Global Preferred Security will not be entitled to receive physical delivery of certificated Preferred Securities ("Definitive Preferred Securities").

(d) The Preferred Securities are issuable only in denominations of \$1,000.00 and any integral multiple thereof.

SECTION 7.04. Registrar, Paying Agent and Conversion Agent. The Trust shall maintain in Cincinnati, Ohio (i) an office or agency where Preferred Securities may be presented for registration of transfer or for exchange ("Registrar"), (ii) an office or agency where Preferred Securities may be presented for payment ("Paying Agent") and (iii) an office or agency where Securities may be presented for conversion ("Conversion Agent"). The Registrar shall keep a register of the Preferred Securities and of their transfer and exchange. The Trust may appoint the Registrar, the Paying Agent and the Conversion Agent and may appoint one or more co-registrars, one or more additional paying agents and one or more additional conversion agents in such other locations as it shall determine. The term "Paying Agent" includes any additional paying agent and the term "Conversion Agent" includes any additional conversion agent. The Trust may change any Paying Agent, Registrar, co-registrar or Conversion Agent without prior notice to any Holder. The Trust shall notify the Property Trustee of the name and address of any

Agent not a party to this Declaration. If the Trust fails to appoint or maintain another entity as Registrar, Paying Agent or Conversion Agent, the Property Trustee shall act as such. The Trust or any of its Affiliates may act as Paying Agent, Registrar, or Conversion Agent. The Trust shall act as Paying Agent, Registrar, co-registrar, and Conversion Agent for the Common Securities.

The Trust initially appoints the Property Trustee as Registrar, Paying Agent, and Conversion Agent for the Preferred Securities.

SECTION 7.05. Paying Agent to Hold Money in Trust. The Trust shall require each Paying Agent other than the Property Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Holders or the Property Trustee all money held by the Paying Agent for the payment of principal or distribution on the Securities, and will notify the Property Trustee if there are insufficient funds.

SECTION 7.06. Outstanding Preferred Securities. The Preferred Securities outstanding at any time are all the Preferred Securities authenticated by the Property Trustee except for those canceled by it, those delivered to it for cancellation, and those described in this Section as not outstanding.

If a Preferred Security is replaced, paid or purchased pursuant to Section 7.06 hereof, it ceases to be outstanding unless the Property Trustee receives proof satisfactory to it that the replaced, paid or purchased Preferred Security is held by a bona fide purchaser.

If Preferred Securities are considered paid in accordance with the terms of this Declaration, they cease to be outstanding and interest on them ceases to accrue.

A Preferred Security does not cease to be outstanding because one of the Trust, the Sponsor or an Affiliate of the Sponsor holds the Security.

SECTION 7.07. Preferred Securities in Treasury. In determining whether the Holders of the required amount of Securities have concurred in any direction, waiver or consent, Preferred Securities owned by the Trust, the Sponsor or an Affiliate of the Sponsor, as the case may be, shall be disregarded and deemed not to be outstanding, except that for the purposes of determining whether the Property Trustee shall be fully protected in relying on any such direction, waiver or consent, only Securities which the Property Trustee knows are so owned shall be so disregarded.

SECTION 7.08. Temporary Securities. Until definitive Securities are ready for delivery, the Trust may prepare and, in the case of the Preferred Securities, the Property Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of definitive Securities but may have variations that the Trust considers appropriate for temporary Securities. Without unreasonable delay, the Trust shall prepare and deliver to the Property Trustee Preferred Securities in certificated form (other than in the case of Preferred Securities in global form) and thereupon any or all temporary Preferred Securities (other than any such Preferred Securities in global form) may be surrendered in exchange therefor, at the office of the Registrar, and the Property Trustee shall authenticate and deliver an equal aggregate liquidation amount of definitive Preferred Securities in certificated form in exchange for temporary Preferred Securities (other than any such Preferred Securities in global form).

SECTION 7.09. Cancellation. The Trust at any time may deliver Preferred Securities to the Property Trustee for cancellation. The Registrar, Paying Agent and Conversion Agent shall forward to the Property Trustee any Preferred Securities surrendered to them for registration of transfer, redemption, conversion, exchange or payment. The Property Trustee shall promptly cancel all Preferred Securities, surrendered for registration of transfer, redemption, conversion, exchange, payment, replacement or cancellation and shall return such canceled Preferred Securities to the Administrative Trustees. The Trust may not issue new Preferred Securities to replace Preferred Securities that it has paid or that have been delivered to the Property Trustee for cancellation or that any holder has converted.

SECTION 7.10. Definitive Securities. (a) A Global Preferred Security deposited with the Clearing Agency or with the Property Trustee as custodian for the Clearing Agency pursuant to Section 7.03 shall be transferred to the beneficial owners thereof in the form of Definitive Preferred Securities only if such transfer complies with Section 9.01 or with Section 9.02 or (i) the Clearing Agency notifies the Sponsor that it is unwilling or unable to continue as Clearing Agency for such Global Preferred Security or if at any time such Clearing Agency ceases to be a "clearing agency" registered under the Exchange Act and a clearing agency is not appointed by the Sponsor within 90 days of such notice or of its becoming aware of such cessation, (ii) an Event of Default has occurred and is continuing or (iii) the Trust at its sole discretion elects to cause the issuance of Definitive Preferred Securities.

(b) Any Global Preferred Security that is transferable to the beneficial owners thereof in the form of Definitive Preferred Securities pursuant to this Section 7.10 shall be surrendered by the Clearing Agency to the Property Trustee located in Cincinnati, Ohio, to be so transferred, in whole or from time to time in part, without charge, and the Property Trustee shall authenticate and make available for delivery, upon such transfer of each portion of such Global Preferred Security, an equal aggregate liquidation amount of Preferred Securities of authorized denominations in the form of certificated Preferred Securities. Any portion of a Global Preferred Security so transferred pursuant to this Section 7.10(b) shall be registered in such names as the Clearing Agency shall direct.

(c) Subject to the provisions of Section 7.09(b), the Holder of a Global Preferred Security may grant proxies and otherwise authorize any Person, including Participants and persons that may hold interests through Participants, to take any action which such Holder is entitled to take under this Declaration or the Securities.

(d) In the event of the occurrence of any of the events specified in Section 7.10(a), the Trust will promptly make available to the Property Trustee a reasonable supply of certificated Preferred Securities in fully registered form without distribution coupons.

(e) Payments on the Preferred Securities that are not held by the Depository will be made by check mailed to the address of the Holder entitled thereto at the address which appears on the register.

#### ARTICLE VIII

##### Termination of Trust

SECTION 8.01. Termination of Trust. (a) The Trust shall terminate upon the earliest to occur of the following:

(i) the bankruptcy of the Holder of the Common Securities or the Sponsor;

(ii) the filing of a certificate of dissolution or its equivalent with respect to the Holder of the Common Securities or the Sponsor; the filing of a certificate of cancelation with respect to the Trust or the revocation of the charter of the Holder of the Common Securities or the Sponsor and the expiration of 90 days after the date of revocation without a reinstatement thereof;

(iii) the distribution of a Like Amount of Debentures to Holders of the Securities in accordance with the terms of the Securities;

(iv) all the Securities shall have been called for redemption and the amounts necessary for redemption thereof shall have been paid to the Holders in accordance with the terms of the Securities;

(v) the expiration of the term of the Trust on - , 20[ ];

(vi) the entry of a decree of judicial dissolution of the Holder of the Common Securities, the Sponsor or the Trust;

(vii) when all of the Securities shall have been called for redemption and the amounts necessary for redemption thereof shall have been paid to the Holders in accordance with the terms of the Securities;

(viii) upon the distribution of the Common Stock (as defined in the Indenture) of the Sponsor to Holders of all outstanding Securities upon conversion of all such Securities; or

(ix) before the issuance of any Securities, with the consent of all the Administrative Trustees and the Sponsor.

(b) As soon as is practicable after the occurrence of an event referred to in Section 8.01(a), the Trustees shall file a certificate of cancelation with the Secretary of State of the State of Delaware.

(c) The provisions of Section 3.09 and Article X shall survive the termination of the Trust.

#### ARTICLE IX

##### Transfer and Exchange

SECTION 9.01. General. (a) Where Preferred Securities are presented to the Registrar or a co-registrar with a request to register a transfer or to exchange them for an equal number of Preferred Securities represented by different certificates, the Registrar shall register the transfer or make the exchange if its requirements for such transactions are met. To permit registrations of transfers and exchanges, the Trust shall issue and the Property Trustee

shall authenticate Preferred Securities at the Registrar's request.

(b) Securities may only be transferred, in whole or in part, in accordance with the terms and conditions set forth in this Declaration and in the terms of the Securities. Any transfer or purported transfer of any Security not made in accordance with this Declaration shall be null and void.

Subject to this Article IX, the Sponsor and any Related Party may only transfer Common Securities to the Sponsor or a Related Party of the Sponsor; provided that, any such transfer is subject to the condition precedent that the transferor obtain the written opinion of nationally recognized independent counsel experienced in such matters that such transfer would not cause more than an insubstantial risk that:

(i) the Trust would not be classified for United States federal income tax purposes as a grantor trust; and

(ii) the Trust would be an Investment Company or the transferee would become an Investment Company.

(c) At the option of the Holder, Preferred Securities may be exchanged for other Preferred Securities of the same class, of any authorized denominations and of a like aggregate principal amount, upon surrender of the Preferred Securities to be exchanged at such office or agency. Whenever any Preferred Securities are so surrendered for exchange, the Trust shall execute, and the Property Trustee shall authenticate and deliver, the Preferred Securities which the Holder making the exchange is entitled to receive.

(d) All Preferred Securities issued upon any registration of transfer or exchange of Preferred Securities shall be the valid obligations of the Trust, evidencing the same debt, and entitled to the same benefits under this Declaration, as the Preferred Securities surrendered upon such registration of transfer or exchange.

(e) The Administrative Trustees shall provide for the registration of Securities and of transfers of Securities, which will be effected without charge but only upon payment (with such indemnity as the Administrative Trustees may require) in respect of any tax or other governmental charges that may be imposed in relation to it. Upon surrender for registration of transfer of any Securities, the Administrative Trustees shall cause one or more new Securities to be issued in the name of the designated transferee or transferees. Every Security surrendered for registration of transfer shall



be accompanied by a written instrument of transfer in form satisfactory to the Administrative Trustees duly executed by the Holder or such Holder's attorney duly authorized in writing. Each Security surrendered for registration of transfer shall be canceled in accordance with Section 7.09. A transferee of a Security shall be entitled to the rights and subject to the obligations of a Holder hereunder upon the receipt by such transferee of a Security. By acceptance of a Security, each transferee shall be deemed to have agreed to be bound by this Declaration.

(f) The Trust shall not be required (i) to issue, register the transfer of, or exchange, Preferred Securities during a period beginning at the opening of business 15 days before the day of any selection of Preferred Securities for redemption set forth in the terms of the Securities as set forth in Annex I hereto and ending at the close of business on the day of selection, or (ii) to register the transfer or exchange of any Preferred Security so selected for redemption in whole or in part, except the unredeemed portion of any Preferred Security being redeemed in part.

(g) All Preferred Securities issued upon any transfer or exchange pursuant to the terms of this Declaration shall evidence the same security and shall be entitled to the same benefits under this Declaration as the Preferred Securities surrendered upon such transfer or exchange.

SECTION 9.02. Transfer Procedures and Restrictions. (a) The transfer and exchange of Global Preferred Securities or beneficial interests therein shall be effected through the Clearing Agency, in accordance with this Declaration (including applicable restrictions on transfer set forth herein, if any) and the procedures of the Clearing Agency therefor.

(b) Notwithstanding any other provisions of this Declaration (other than the provisions set forth in this Section 9.02, Section 7.10 and Section 9.01, a Global Preferred Security may not be transferred as a whole except by the Clearing Agency to a nominee of the Clearing Agency or another nominee of the Clearing Agency or by the Clearing Agency or any such nominee to a successor Clearing Agency or a nominee of such successor Clearing Agency.

(c) At such time as all beneficial interests in a Global Preferred Security have been exchanged for Definitive Preferred Securities to the extent permitted by this Declaration or canceled in accordance with the terms of this Declaration, such Global Preferred Security shall be canceled by the Property Trustee. At any time prior to such

cancelation, if any beneficial interest in a Global Preferred Security is exchanged for Definitive Preferred Securities, Preferred Securities represented by such Global Preferred Security shall be reduced and an adjustment shall be made on the books and records of the Clearing Agency and the Registrar, to reflect such reduction.

(d) The Property Trustee shall have no responsibility or obligation to any beneficial owner of a Preferred Security, a Participant in the Depositary or other Person with respect to the accuracy of the records of the Depositary or its nominee or of any Participant thereof, with respect to any ownership interest in the Preferred Securities or with respect to the delivery to any Participant, beneficial owner or other Person (other than the Depositary) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Preferred Securities. All notices and communications to be given to the Holders and all payments to be made to Holders under the Preferred Securities shall be given or made only to or upon the order of the registered Holders (which shall be the Depositary or its nominee in the case of a Global Preferred Security). The rights of beneficial owners in any Global Preferred Security shall be exercised only through the Depositary subject to the applicable rules and procedures of the Depositary. The Property Trustee may conclusively rely and shall be fully protected in relying upon information furnished by the Depositary or agent thereof with respect to its Participants and any beneficial owners.

SECTION 9.03. Deemed Security Holders. The Trustees may treat the Person in whose name any Certificate shall be registered on the books and records of the Trust as the sole holder of such Certificate and of the Securities represented by such Certificate for purposes of receiving Distributions and for all other purposes whatsoever and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Certificate or in the Securities represented by such Certificate on the part of any Person, whether or not the Trust, the Property Trustee, the Registrar or a co-registrar shall have actual or other notice thereof.

SECTION 9.04. Notices to Clearing Agency. Whenever a notice or other communication to the Preferred Security Holders is required under this Declaration, the Administrative Trustees shall, in the case of any Global Preferred Security, give all such notices and communications specified herein to be given to the Preferred Security Holders to the Depositary, and shall have no notice obligations to the Preferred Security Beneficial Owners.

SECTION 9.05. Appointment of Successor Clearing Agency. If the Depository elects to discontinue its services as securities depository with respect to the Preferred Securities, the Administrative Trustees may, in their sole discretion, appoint a successor Clearing Agency with respect to such Preferred Securities.

#### ARTICLE X

##### Limitation of Liability of Holders of Securities, Trustees or Others

SECTION 10.01. Liability. (a) Except as expressly set forth in this Declaration, the Securities Guarantees and the terms of the Securities the Sponsor shall not be:

(i) personally liable for the return of any portion of the capital contributions (or any return thereon) of the Holders of the Securities which shall be made solely from assets of the Trust; or

(ii) required to pay to the Trust or to any Holder of Securities any deficit upon dissolution of the Trust or otherwise.

(b) The Holder of the Common Securities shall be liable for all of the debts and obligations of the Trust (other than with respect to the Securities) to the extent not satisfied out of the Trust's assets.

(c) Pursuant to Section 3803(a) of the Business Trust Act, the Holders of the Preferred Securities shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

SECTION 10.02. Exculpation. (a) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Trust or any Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Declaration or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's gross negligence (or, in the case of the Property Trustee, negligence) or willful misconduct with respect to such acts or omissions.

(b) An Indemnified Person shall be fully protected in relying in good faith upon the records of the Trust and upon such information, opinions, reports or statements presented to the Trust by any Person as to matters the Indemnified Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Trust, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits, losses, or any other facts pertinent to the existence and amount of assets from which Distributions to Holders of Securities might properly be paid.

SECTION 10.03. Fiduciary Duty. (a) To the extent that, at law or in equity, an Indemnified Person has duties (including fiduciary duties) and liabilities relating thereto to the Trust or to any other Covered Person, an Indemnified Person acting under this Declaration shall not be liable to the Trust or to any other Covered Person for its good faith reliance on the provisions of this Declaration. The provisions of this Declaration, to the extent that they restrict the duties and liabilities of an Indemnified Person otherwise existing at law or in equity (other than the duties imposed on the Property Trustee under the Trust Indenture Act), are agreed by the parties hereto to replace such other duties and liabilities of such Indemnified Person.

(b) Unless otherwise expressly provided herein:

(i) whenever a conflict of interest exists or arises between an Indemnified Person and any Covered Person; or

(ii) whenever this Declaration or any other agreement contemplated herein or therein provides that an Indemnified Person shall act in a manner that is, or provides terms that are, fair and reasonable to the Trust or any Holder of Securities,

the Indemnified Person shall resolve such conflict of interest, take such action or provide such terms, considering in each case the relative interest of each party (including its own interest) to such conflict, agreement, transaction or situation and the benefits and burdens relating to such interests, any customary or accepted industry practices, and any applicable generally accepted accounting practices or principles. In the absence of bad faith by the Indemnified Person, the resolution, action or term so made, taken or provided by the Indemnified Person shall not constitute a breach of this Declaration or any other agreement contemplated herein or of any duty or obligation of the Indemnified Person at law or in equity or otherwise.

(c) Whenever in this Declaration an Indemnified Person is permitted or required to make a decision

(i) in its "discretion" or under a grant of similar authority, the Indemnified Person shall be entitled to consider such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Trust or any other Person; or

(ii) in its "good faith" or under another express standard, the Indemnified Person shall act under such express standard and shall not be subject to any other or different standard imposed by this Declaration or by applicable law.

SECTION 10.04. Indemnification. (a) To the fullest extent permitted by applicable law, the Debenture Issuer shall indemnify and hold harmless each Indemnified Person from and against any loss, damage, liability, tax, penalty, expense or claim of any kind or nature whatsoever incurred by such Indemnified Person by reason of the creation, operation or termination of the Trust or any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of authority conferred on such Indemnified Person by this Declaration, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Indemnified Person by reason of gross negligence (or, in the case of the Property Trustee, negligence) or willful misconduct with respect to such acts or omissions.

(b) To the fullest extent permitted by applicable law, expenses (including legal fees and expenses) incurred by an Indemnified Person in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Debenture Issuer prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Debenture Issuer of an undertaking by or on behalf of the Indemnified Person to repay such amount if it shall be determined that the Indemnified Person is not entitled to be indemnified as authorized in Section 10.4(a). The indemnification shall survive the termination of this Declaration.

SECTION 10.05. Outside Businesses. Any Covered Person, the Sponsor, the Delaware Trustee and the Property Trustee may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Trust, and the Trust and the Holders of Securities shall have no rights by virtue of this Declaration in and to such independent ventures or the income or profits derived therefrom and the pursuit of any such venture, even if competitive with the business of the Trust,

and the trust and the Holders of Securities shall have no rights by virtue of this Declaration in and to such independent ventures or the income or profits derived therefrom and the pursuit of any such venture, even if competitive with the business of the Trust, shall not be deemed wrongful or improper. None of the Sponsor, any Covered Person, the Delaware Trustee, or the Property Trustee shall be obligated to present any particular investment or other opportunity to the Trust even if such opportunity is of a character that, if presented to the Trust, could be taken by the Trust, and any Covered Person, the Sponsor, the Delaware Trustee and the Property Trustee shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment or other opportunity. Any Covered Person, the Delaware Trustee and the Property Trustee may engage or be interested in any financial or other transaction with the Sponsor or any Affiliate of the Sponsor, or may act as depositary for, trustee or agent for, or act on any committee or body of holders of, securities or other obligations of the Sponsor or its Affiliates.

## ARTICLE XI

### Accounting

SECTION 11.01. Fiscal Year. The fiscal year ("Fiscal Year") of the Trust shall be the calendar year, or such other year as is required by the Code.

SECTION 11.02. Certain Accounting Matters. (a) At all times during the existence of the Trust, the Administrative Trustees shall keep, or cause to be kept, full books of account, records and supporting documents, which shall reflect in reasonable detail, each transaction of the Trust. The books of account shall be maintained on the accrual method of accounting, in accordance with generally accepted accounting principles, consistently applied. The Trust shall use the accrual method of accounting for United States federal income tax purposes. The books of account and the records of the Trust shall be examined by and reported upon as of the end of each Fiscal Year by a firm of independent certified public accountants selected by the Administrative Trustees.

(b) The Administrative Trustees shall cause to be prepared and delivered to each of the Holders of Securities, within 90 days after the end of each Fiscal Year of the Trust, annual financial statements of the Trust, including a balance

sheet of the Trust as of the end of such Fiscal Year, and the related statements of income or loss;

(c) The Administrative Trustees shall cause to be duly prepared and delivered to each of the Holders of Securities, any annual United States federal income tax information statement, required by the Code, containing such information with regard to the Securities held by each Holder as is required by the Code and the Treasury Regulations. Notwithstanding any right under the Code to deliver any such statement at a later date, the Administrative Trustees shall endeavor to deliver all such statements within 30 days after the end of each Fiscal Year of the Trust.

(d) The Administrative Trustees shall cause to be duly prepared and filed with the appropriate taxing authority, an annual United States federal income tax return, on a Form 1041 or such other form required by United States federal income tax law, and any other annual income tax returns required to be filed by the Administrative Trustees on behalf of the Trust with any state or local taxing authority.

SECTION 11.03. Banking. The Trust shall maintain one or more bank accounts in the name and for the sole benefit of the Trust; provided, however, that all payments of funds in respect of the Debentures held by the Property Trustee shall be made directly to the Property Trustee Account and no other funds of the Trust shall be deposited in the Property Trustee Account. The sole signatories for such accounts shall be designated by the Administrative Trustees; provided, however, that the Property Trustee shall designate the signatories for the Property Trustee Account.

SECTION 11.04. Withholding. The Trust and the Administrative Trustees shall comply with all withholding requirements under United States federal, state and local law. The Trust shall request, and the Holders shall provide to the Trust, such forms or certificates as are necessary to establish an exemption from withholding with respect to each Holder, and any representations and forms as shall reasonably be requested by the Trust to assist it in determining the extent of, and in fulfilling, its withholding obligations. The Administrative Trustee shall file required forms with applicable jurisdictions and, unless an exemption from withholding is properly established by a Holder, shall remit amounts withheld with respect to the Holder to applicable jurisdictions. To the extent that the Trust is required to withhold and pay over any amounts to any authority with respect to distributions or allocations to any Holder, the amount withheld shall be deemed to be a distribution in the amount of the withholding to the Holder. In the event of any

claimed overwithholding, Holders shall be limited to an action against the applicable jurisdiction. If the amount required to be withheld was not withheld from actual Distributions made, the Trust may reduce subsequent Distributions by the amount of such withholding.

## ARTICLE XII

### Amendments and Meetings

SECTION 12.01. Amendments. (a) This Declaration may be amended from time to time by the Sponsor, the Property Trustee and the Administrative Trustees, without the consent of the Holders of the Securities, (i) to cure any ambiguity, correct or supplement any provision in the Declaration that may be inconsistent with any other provision, or to make any other provisions with respect to ministerial matters or questions arising under the Declaration, which shall not be inconsistent with the other provisions of the Declaration, or (ii) to modify, eliminate or add to any provisions of the Declaration to such extent as shall be necessary to ensure that the Trust will not be taxable as a corporation or will be classified for United States federal income tax purposes as a grantor trust at all times that any Securities are outstanding or to ensure that the Trust will not be required to register as an "investment company" under the Investment Company Act; provided, however, that in the case of clause (i), such action shall not adversely affect in any material respect the interests of any Holder of Securities, and any amendments of the Declaration shall become effective when notice thereof is given to the Holders of the Securities.

(b) Except as provided in (c) below, this Declaration may be amended by the Trustees and the Company with (i) the consent of Holders representing not less than a Majority in liquidation amount of the outstanding Preferred Securities, and (ii) receipt by the Trustees of an opinion of counsel to the effect that such amendment or the exercise of any power granted to the Trustees in accordance with such amendment will not affect the Trust's status as a grantor trust for United States federal income tax purposes or the Trust's exemption from status as an "investment company" under the Investment Company Act.

(c) Without the consent of each holder of Securities, the Declaration may not be amended to (i) change the amount or timing of any Distribution on the Securities or otherwise adversely affect the amount of any Distribution required to be made in respect of the Securities of a specified date or (ii) restrict the right of a Holder of



Securities to institute suit for the enforcement of any such payment on or after such date.

SECTION 12.02. Meetings of the Holders of Securities; Action by Written Consent. (a) Meetings of the Holders of any class of Securities may be called at any time by the Administrative Trustees (or as provided in the terms of the Securities) to consider and act on any matter on which Holders of such class of Securities are entitled to act under the terms of this Declaration, the terms of the Securities or the rules of any stock exchange on which the Preferred Securities are listed or admitted for trading. The Administrative Trustees shall call a meeting of the Holders of such class if directed to do so by the Holders of at least 25% in liquidation amount of such class of Securities. Such direction shall be given by delivering to the Administrative Trustees one or more requests in a writing stating that the signing Holders of Securities wish to call a meeting and indicating the general or specific purpose for which the meeting is to be called. Any Holders of Securities calling a meeting shall specify in writing the Certificates held by the Holders of Securities exercising the right to call a meeting and only those Securities represented by the Certificates so specified shall be counted for purposes of determining whether the required percentage set forth in the second sentence of this paragraph has been met.

(b) Except to the extent otherwise provided in the terms of the Securities, the following provisions shall apply to meetings of Holders of Securities:

(i) notice of any such meeting shall be given to all the Holders of Securities having a right to vote thereat at least 7 days and not more than 60 days before the date of such meeting. Whenever a vote, consent or approval of the Holders of Securities is permitted or required under this Declaration or the rules of any stock exchange on which the Preferred Securities are listed or admitted for trading, such vote, consent or approval may be given at a meeting of the Holders of Securities. Any action that may be taken at a meeting of the Holders of Securities may be taken without a meeting if a consent in writing setting forth the action so taken is signed by the Holders of Securities owning not less than the minimum aggregate liquidation amount of Securities that would be necessary to authorize or take such action at a meeting at which all Holders of Securities having a right to vote thereon were present and voting. Prompt notice of the taking of action without a meeting shall be given to the Holders of Securities entitled to vote who have not consented in writing. The Administrative Trustees may

specify that any written ballot submitted to the Holders for the purpose of taking any action without a meeting shall be returned to the Trust within the time specified by the Administrative Trustees;

(ii) each Holder of a Security may authorize any Person to act for it by proxy on all matters in which a Holder of Securities is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Holder of Securities executing it. Except as otherwise provided herein, all matters relating to the giving, voting or validity of proxies shall be governed by the General Corporation Law of the State of Delaware relating to proxies, and judicial interpretations thereunder, as if the Trust were a Delaware corporation and the Holders of the Securities were stockholders of a Delaware corporation;

(iii) each meeting of the Holders of the Securities shall be conducted by the Administrative Trustees or by such other Person that the Administrative Trustees may designate; and

(iv) unless the Business Trust Act, this Declaration, the terms of the Securities, the Trust Indenture Act or the listing rules of any stock exchange on which the Preferred Securities are then listed or trading, provide otherwise, the Administrative Trustees, in their sole discretion, shall establish all other provisions relating to meetings of Holders of Securities, including notice of the time, place or purpose of any meeting at which any matter is to be voted on by any Holders of Securities, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy or any other matter with respect to the exercise of any such right to vote.

#### ARTICLE XIII

##### Representations of Property Trustee and Delaware Trustee

###### SECTION 13.01. Representations and Warranties of Property Trustee.

The Trustee that acts as initial Property Trustee represents and warrants to the Trust and to the Sponsor at the date of this Declaration, at the Closing Date,

if any, and each Successor Property Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Property Trustee's acceptance of its appointment as Property Trustee that:

(a) The Property Trustee is a banking corporation with trust powers, duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, with corporate power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, the Declaration.

(b) The execution, delivery and performance by the Property Trustee of the Declaration has been duly authorized by all necessary corporate action on the part of the Property Trustee. The Declaration has been duly executed and delivered by the Property Trustee, and constitutes a legal, valid and binding obligation of the Property Trustee, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency, and other similar laws affecting creditors' rights generally and to general principles of equity and the discretion of the court (regardless of whether the enforcement of such remedies is considered in a proceeding in equity or at law).

(c) The execution, delivery and performance of the Declaration by the Property Trustee does not conflict with or constitute a breach of the certificate of incorporation or by-laws of the Property Trustee.

(d) No consent, approval or authorization of, or registration with or notice to, any New York or Federal banking authority is required for the execution, delivery or performance by the Property Trustee, of the Declaration.

SECTION 13.02. Representations and Warranties of Delaware Trustee. The Trustee that acts as initial Delaware Trustee represents and warrants to the Trust and to the Sponsor at the date of this Declaration, at the Closing Date, if any, and each Successor Delaware Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Property Trustee's acceptance of its appointment as Delaware Trustee that:

(a) The Delaware Trustee is a banking corporation with trust powers, duly organized, validly existing and in good standing under the laws of the United States with its principal place of business in the State of Delaware, with corporate power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, the Declaration.

(b) The execution, delivery and performance by the Delaware Trustee of the Declaration has been duly authorized by all necessary corporate action on the part of the Delaware Trustee. The Declaration has been duly executed and delivered by the Delaware Trustee, and constitutes a legal, valid and binding obligation of the Delaware Trustee, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency, and other similar laws affecting creditors' rights generally and to general principles of equity and the discretion of the court (regardless of whether the enforcement of such remedies is considered in a proceeding in equity or at law).

(c) The execution, delivery and performance of the Declaration by the Delaware Trustee does not conflict with or constitute a breach of the articles of association or by-laws of the Delaware Trustee.

(d) No consent, approval or authorization of, or registration with or notice to, any Delaware or Federal banking authority is required for the execution, delivery or performance by the Delaware Trustee, of the Declaration, other than the filing of the Certificate of Trust.

(e) The Delaware Trustee is an entity which has its principal place of business in the State of Delaware.

(f) The Delaware Trustee has been authorized to perform its obligations under the Certificate of Trust and the Declaration.

#### ARTICLE XIV

##### Miscellaneous

SECTION 14.01. Notices. All notices provided for in this Declaration shall be in writing, duly signed by the party giving such notice, and shall be delivered, telecopied or mailed by registered or certified mail, as follows:

(a) if given to the Trust, in care of the Administrative Trustees at the Trust's mailing address set forth below (or such other address as the Trust may give notice of to the Holders of the Securities):

c/o Chemed Corporation  
2600 Chemed Center  
255 East Fifth Street  
Cincinnati, Ohio 45202-4726  
Attention: Chief Financial Officer

(b) if given to the Property Trustee, at the mailing address set forth below (or such other address as the Property Trustee may give notice of to the Holders of the Securities):

Firststar Bank, National Association  
 Corporate Trust Services  
 Sixth Floor (for overnight or hand delivery)  
 Mail Location CN-WN06CT  
 425 Walnut Street  
 Cincinnati, Ohio 45202  
 Attention: Keith A. Maurmeier

(c) if given to the Delaware Trustee, at the mailing address set forth below (or such other address as the Delaware Trustee may give notice of to the Holders of the Securities):

First Union Trust Company, National Association  
 One Rodney Square  
 920 King Street, 1st Floor  
 Wilmington, Delaware 19801  
 Attention: Corporate Trust Administration

(d) if given to the Holder of the Common Securities, at the mailing address of the Sponsor set forth below (or such other address as the Holder of the Common Securities may give notice to the Trust):

c/o Chemed Corporation  
 2600 Chemed Center  
 255 East Fifth Street  
 Cincinnati, Ohio 45202-4726  
 Attention: Chief Financial Officer

(e) if given to any other Holder, at the address set forth on the books and records of the Trust or the Registrar, as applicable.

All such notices shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

SECTION 14.02. Governing Law. This Declaration and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Delaware and all rights and remedies shall be governed by such laws without regard to principles of conflict of laws. The

parties hereto hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of the State of Delaware and of the United States District Courts located in Delaware for any lawsuits, claims or other proceedings arising out of or relating to this Agreement and agree not to commence any such lawsuit, claim or other proceeding except in such courts. The parties hereto hereby irrevocably and unconditionally waive any object to the laying of venue of any lawsuit, claim, or other proceeding arising out of or relating to this Agreement in the courts of the State of Delaware or the United States District Courts Located in the City of Wilmington, and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such lawsuit, claim or other proceeding brought in any such court has been brought in an inconvenient forum. Sections 3540 and 3561 of Title 12 of the Delaware Code shall not apply to the Trust.

SECTION 14.03. Intention of the Parties. It is the intention of the parties hereto that the Trust be classified for United States federal income tax purposes as a grantor trust. The provisions of this Declaration shall be interpreted to further this intention of the parties.

SECTION 14.04. Headings. Headings contained in this Declaration are inserted for convenience of reference only and do not affect the interpretation of this Declaration or any provision hereof.

SECTION 14.05. Successors and Assigns. Whenever in this Declaration any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included, and all covenants and agreements in this Declaration by the Sponsor and the Trustees shall bind and inure to the benefit of their respective successors and assigns, whether so expressed.

SECTION 14.06. Partial Enforceability. If any provision of this Declaration, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this Declaration, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

SECTION 14.07. Counterparts. This Declaration may contain more than one counterpart of the signature page and this Declaration may be executed by the affixing of the signature of each of the Trustees to one of such counterpart

signature pages. All of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed as of the day and year first above written.

KEVIN J. MCNAMARA, as Trustee

by \_\_\_\_\_

Name:  
Title:

TIMOTHY S. O'TOOLE, as Trustee

by \_\_\_\_\_

Name:  
Title:

SANDRA LANEY, as Trustee

by \_\_\_\_\_

Name:  
Title:

FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION, as Delaware Trustee

by \_\_\_\_\_

Name:  
Title:

FIRSTAR BANK, NATIONAL ASSOCIATION, as Property Trustee

by \_\_\_\_\_

Name:  
Title:

CHEMED CORPORATION, as Sponsor

by \_\_\_\_\_

Name:  
Title:



TERMS OF  
CONVERTIBLE PREFERRED TRUST SECURITIES  
CONVERTIBLE COMMON SECURITIES

Pursuant to Section 7.01 of the Amended and Restated Declaration of Trust, dated as of January -, 2000 (as amended from time to time, the "Declaration"), the designation, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Securities and the Common Securities are set out below (each capitalized term used but not defined herein has the meaning set forth in the Declaration or the Indenture (as defined in the Declaration) or, if not defined in the Declaration or Indenture, as defined in the Offering Circular (as defined in the Declaration)):

1. Designation and Number.

- (a) "Preferred Securities." up to 2,000,000 Preferred Securities of the Trust with an aggregate liquidation preference with respect to the assets of the Trust of up to Fifty-four million Dollars (\$54,000,000), and a liquidation amount with respect to the assets of the Trust of \$27 per Preferred Security, are hereby designated for the purposes of identification only as "Convertible Preferred Trust Securities" (the "Preferred Securities"). The Preferred Security Certificates evidencing the Preferred Securities shall be substantially in the form attached hereto as Exhibit A-1, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice or to conform to the rules of any stock exchange or other organization on which the Preferred Securities are listed.
- (b) "Common Securities." up to 61,856 Common Securities of the Trust with an aggregate liquidation amount with respect to the assets of the Trust of up to one million six hundred seventy thousand one hundred twelve Dollars (\$1,670,112) and a liquidation amount with respect to the assets of the Trust of \$27 per Common Security, are hereby designated for the purposes of identification only as "Convertible Common Securities" (the "Common Securities"). The Common Security Certificates evidencing the Common Securities shall be substantially in the form attached hereto as Exhibit A-2, with such changes

and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice.

2. Distributions.

- (a) Distributions payable on each Security will be fixed at a rate per annum of \$2.00 for each Preferred Security (the "Coupon Rate"), such rate being the rate of interest payable on the Debentures to be held by the Property Trustee. Distributions in arrears for more than one quarter will bear interest thereon compounded quarterly at the Coupon Rate (to the extent permitted by applicable law). The term "Distributions" as used herein includes such quarterly distributions, additional distributions on quarterly distributions not paid on the applicable Distribution Date, Special Distributions and Additional Sums, as applicable. A Distribution is payable only to the extent that payments are made in respect of the Debentures held by the Property Trustee and to the extent the Property Trustee has funds available therefor. Except for the interest payable on March 15, 2000, the amount of Distributions payable for any period will be computed for any full quarterly Distribution period on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full quarterly Distribution period for which Distributions are computed, Distributions will be computed on the basis of the actual number of days elapsed per 30-day month.
- (b) Distributions on the Securities will be cumulative, will accrue from the date of their original issuance and will be payable quarterly in arrears, on the following dates, which dates correspond to the interest payment dates on the Debentures: March 15, June 15, September 15 and December 15 of each year, commencing on March 15, 2000, except as otherwise described below. The Sponsor has the right under the Indenture to defer payments of interest after March 15, 2000, by extending the interest payment period from time to time on the Debentures for a period not exceeding 20 consecutive quarters (each a "Deferral Period") and, as a consequence of such deferral, Distributions will also be deferred after March 15, 2000. Despite such deferral, quarterly Distributions will continue to accrue with interest thereon (to the extent permitted by applicable law) at the Coupon Rate compounded quarterly during any such Deferral Period. Prior to three Business Days before a Regular Record Date fixed for a Payment

Resumption Date (as defined in the Indenture), the Sponsor may further extend such Deferral Period; provided that such Deferral Period together with all such previous and further extensions thereof may not exceed 20 consecutive quarters or extend beyond the maturity (whether at the stated maturity or by declaration of acceleration, call for redemption or otherwise) of the Debentures under the Indenture. Payments of accrued Distributions will be payable to Holders as they appear on the books and records of the Trust on the Regular Record Date for the relevant Payment Resumption Date. Upon the termination of any Deferral Period and the payment of all amounts then due, the Sponsor may commence a new Deferral Period, subject to the above requirements.

- (c) Distributions on the Securities will be payable to the Holders thereof as they appear on the books and records of the Trust at the close of business on the relevant record dates. The relevant record dates shall be on the first day of the month of the relevant payment dates, except as otherwise described in this Annex I to the Declaration. Subject to any applicable laws and regulations and the provisions of the Declaration, each such payment in respect of Preferred Securities being held in book-entry form through The Depository Trust Company (the "Depository") will be made as described under the heading "Description of the Preferred Securities -- Form, Book-Entry Procedures and Transfer" in the Offering Circular. The relevant record dates for the Common Securities shall be the same record dates as for the Preferred Securities. Distributions payable on any Securities that are not punctually paid on any Distribution payment date, as a result of the Sponsor having failed to make a payment under the Debentures, will cease to be payable to the Person in whose name such Securities are registered on the relevant record date, and such defaulted Distribution will instead be payable to the Person in whose name such Securities are registered on the special record date or other specified date determined in accordance with the Indenture. If any date on which Distributions are payable on the Securities is not a Business Day, then payment of the Distribution payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, with respect to any Redemption Date, if such Business Day is in the next succeeding calendar year, such Redemption Date shall be the

immediately preceding Business Day, in each case with the same force and effect as if made on such date.

- (d) In the event of an election by the Holder to convert its Securities through the Conversion Agent into Capital Stock pursuant to the terms of the Securities as forth in this Annex I to the Declaration, no payment, allowance or adjustment shall be made with respect to accumulated and unpaid Distributions on such Securities, or be required to be made; provided that Holders of Securities at the close of business on any record date for the payment of Distributions will be entitled to receive the Distributions payable on such Securities on the corresponding payment date notwithstanding the conversion of such Securities into Capital Stock following such record date.
- (e) In the event that there is any money or other property held by or for the Trust that is not accounted for hereunder, such property shall be distributed Pro Rata (as defined herein) among the Holders of the Securities.

### 3. Liquidation Distribution Upon Dissolution.

In the event of any voluntary or involuntary dissolution, winding-up or termination of the Trust, the Trust shall be liquidated by the Trustees as expeditiously as the Trustees determine to be possible by distributing, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, to the Holders of the Securities a Like Amount of Debentures, unless such distribution would not be practical, in which event such Holders will be entitled to receive out of the assets of the Trust available for distribution to holders, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, an amount equal to, in the case of holders of Preferred Securities, the aggregate liquidation amount thereof plus accrued and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"). If such Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then the amounts payable directly by the Trust on the Preferred Securities shall be paid on a Pro Rata (as defined below) basis in accordance with paragraph 9. The Holder of the Common Securities will be entitled to receive distributions upon any such liquidation Pro Rata with the holders of the Preferred Securities, except as provided in paragraph 10.

## 4. Redemption and Distribution.

- (a) Upon the repayment or payment of the Debentures in whole or in part, whether at maturity or upon redemption or otherwise (other than following any distribution of the Debentures to the Holders), the proceeds from such repayment or redemption shall be simultaneously applied to redeem, on a Pro Rata basis, a Like Amount of Securities, on the redemption date, in an amount per Security equal to the applicable redemption price, which redemption price will be equal to (i) the liquidation amount of each of the Securities plus any accrued and unpaid Distributions thereon (A) in the case of the repayment of the Debentures at stated maturity, or (B) in the case of a redemption of the Debentures in certain limited circumstances set forth in the Indenture upon the occurrence of a Tax Event or (ii) in the case of an Optional Redemption on or after March 15, 2030, the Optional Redemption Price (as defined in the Indenture), payable in cash (as applicable, the "Redemption Price"). Holders will be given not less than 30 (or, in the case of a redemption pursuant to subparagraph (d) below, 20) nor more than 60 days' notice of such redemption. Upon the repayment of the Debentures at maturity or upon any acceleration, earlier redemption or otherwise, the proceeds from such repayment will be applied to redeem the Securities, in whole, upon not less than 30 nor more than 60 days' notice.
- (b) If fewer than all the outstanding Securities are to be so redeemed, the Common Securities and the Preferred Securities will be redeemed Pro Rata and the Preferred Securities to be redeemed will be as described in Paragraph 4(f)(ii) below.
- (c) The Sponsor, as the Holder of the outstanding Common Securities, shall have the right at any time (including, without limitation, upon the occurrence of a Tax Event or Investment Company Act Event) to terminate the Trust and, after satisfaction of the creditors of the Trust, cause a Like Amount of the Debentures to be distributed to the holders of the Securities upon liquidation of the Trust, provided that the Administrative Trustees shall have received a No Recognition Opinion (as defined below) prior to the liquidation of the Trust; and provided further that, following such distribution of the Debentures, the Sponsor shall use its best efforts to maintain a rating of such Debentures by any nationally

recognized rating agency for so long as any such Debentures are outstanding.

- (d) If, at any time, a Tax Event shall occur and be continuing the Sponsor shall cause the Administrative Trustees to liquidate the Trust and, after satisfaction of creditors of the Trust, cause Debentures to be distributed to the Holders of the Securities in liquidation of the Trust within 90 days following the occurrence of such Tax Event (the "90 Day Period"); provided, however, that such liquidation and distribution shall be conditioned on (i) the Trustees' receipt of an opinion of a nationally recognized independent tax counsel (reasonably acceptable to the Trustees) experienced in such matters (a "No Recognition Opinion"), which opinion may rely on published revenue rulings of the Internal Revenue Service, to the effect that the Holders of the Securities will not recognize any income, gain or loss for United States federal income tax purposes as a result of such liquidation and distribution of Debentures, and (ii) the Sponsor being unable to avoid such Tax Event within the 90 Day Period by taking some ministerial action or pursuing some other reasonable measure that, in the sole judgment of the Sponsor, will have no adverse effect on the Trust, the Sponsor or the Holders of the Securities and will involve no material cost ("Ministerial Action").

If (i) the Sponsor has received an opinion (a "Redemption Tax Opinion") of a nationally recognized independent tax counsel (reasonably acceptable to the Trustees) experienced in such matters that, as a result of a Tax Event, there is more than an insubstantial risk that the Sponsor would be precluded from deducting the interest on the Debentures for United States federal income tax purposes, even after the Debentures were distributed to the Holders of Securities upon liquidation of the Trust as described in this paragraph 4(d), or (ii) the Trustees shall have been informed by such tax counsel that it cannot deliver a No Recognition Opinion, the Sponsor shall have the right, upon not less than 20 nor more than 60 days' notice, and within 90 days following the occurrence of such Tax Event, to redeem the Debentures in whole (but not in part) for cash, for the principal amount plus accrued and unpaid interest thereon and, following such redemption, all the Securities will be redeemed by the Trust at the liquidation amount of \$27 per Security

plus accrued and unpaid Distributions thereon; provided, however, that, if at the time there is available to the Sponsor or the Trust the opportunity to eliminate, within the 90 Day Period, the Tax Event by taking some Ministerial Action, the Trust or the Sponsor will pursue such Ministerial Action in lieu of redemption.

In lieu of the foregoing options, the Sponsor shall also have the option of causing the Securities to remain outstanding and pay Additional Sums on the Debentures.

"Tax Event" means that the Property Trustee shall have received an opinion of a nationally recognized independent tax counsel to the Sponsor (reasonably acceptable to the Trustees) experienced in such matters (a "Dissolution Tax Opinion") to the effect that, as a result of (a) any amendment to, or change (including any announced prospective change (which shall not include a proposed change), provided that a Tax Event shall not occur more than 90 days before the effective date of any such prospective change) in the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority therefor or therein, (ii) any judicial decision or official administrative pronouncement, ruling, regulatory procedure, notice or announcement, including any notice or announcement of intent to adopt such procedures or regulations (an "Administrative Action") or (iii) any amendment to or change in the administrative position or interpretation of any Administrative Action or judicial decision that differs from the theretofore generally accepted position, in each case, by any legislative body, court, governmental agency or regulatory body, irrespective of the manner in which such amendment or change is made known, which amendment or change is effective or such Administrative Action or decision is announced, in each case, on or after the date of original issuance of the Debentures or the issue date of the Preferred Securities issued by the Trust, there is more than an insubstantial risk that (a) if the Debentures are held by the Property Trustee, (I) the Trust is, or will be within 90 days of the date of such opinion, subject to United States federal income tax with respect to interest accrued or received on the Debentures or subject to more than a de minimis amount of other taxes, duties or other governmental

charges as determined by such counsel, or (II) any portion of interest payable by the Sponsor to the Trust on the Debentures is not, or within 90 days of the date of such opinion will not be, deductible by the Sponsor in whole or in part for United States federal income tax purposes or (b) with respect to Debentures which are no longer held by the Property Trustee, any portion of interest payable by the Sponsor on the Debentures is not, or within 90 days of the date of such opinion will not be, deductible by the Sponsor in whole or in part for United States federal income tax purposes.

If an Investment Company Event (as hereinafter defined) shall occur and be continuing, the Sponsor shall cause the Trustees to liquidate the Trust and cause the Debentures to be distributed to the Holders of the Securities in liquidation of the Trust within 90 days following the occurrence of such Investment Company Event.

"Investment Company Event" means the occurrence of a change in law or regulation or a written change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority (a "Change in 1940 Act Law"), to the effect that the Trust is or will be considered an Investment Company which is required to be registered under the Investment Company Act, which Change in 1940 Act Law becomes effective on or after the date of the Offering Circular.

After the date fixed for any distribution of Debentures: (i) the Securities will no longer be deemed to be outstanding, (ii) the Depositary or its nominee (or any successor Depositary or its nominee), as record Holder of Preferred Securities represented by global certificates, will receive a registered global certificate or certificates representing the Debentures to be delivered upon such distribution and (iii) any certificates representing Securities, except for certificates representing Preferred Securities held by the Depositary or its nominee (or any successor Depositary or its nominee), will be deemed to represent Debentures having an aggregate principal amount equal to the aggregate stated liquidation amount of such Securities, with accrued and unpaid interest equal to accrued and unpaid Distributions on such Securities until such



certificates are presented to the Sponsor or its agent for transfer or reissuance.

- (e) The Securities will not be redeemed unless all accrued and unpaid Distributions have been paid on all Securities for all quarterly Distribution periods terminating on or before the date of redemption.
- (f) Redemption or Distribution Procedures.
  - (i) Notice of any redemption of, or notice of distribution of Debentures in exchange for the Securities (a "Redemption/Distribution Notice") will be given by the Trust by mail to each Holder of Securities to be redeemed or exchanged not fewer than 30 (or 20, in the case of redemption or distribution upon the occurrence of a Tax Event) nor more than 60 days before the date fixed for redemption or exchange thereof which, in the case of a redemption, will be the date fixed for redemption of the Debentures. For purposes of the calculation of the date of redemption or exchange and the dates on which notices are given pursuant to this paragraph 4(f)(i), a Redemption/Distribution Notice shall be deemed to be given on the day such notice is first mailed by first-class mail, postage prepaid, to Holders of Securities. Each Redemption/Distribution Notice shall be addressed to the Holders of Securities at the address of each such Holder appearing in the books and records of the Trust. No defect in the Redemption/Distribution Notice or in the mailing of either thereof with respect to any Holder shall affect the validity of the redemption or exchange proceedings with respect to any other Holder.
  - (ii) In the event that fewer than all the outstanding Securities are to be redeemed, the Securities to be redeemed shall be redeemed Pro Rata from each Holder of Preferred Securities, it being understood that, in respect of Preferred Securities registered in the name of and held of record by the Depositary (or any successor Depositary) or any nominee, the distribution of the proceeds of such redemption will be made to each Participant (or Person on whose behalf such nominee holds such

securities) in accordance with the procedures applied by such agency or nominee.

- (iii) If Securities are to be redeemed and the Trust gives a Redemption/Distribution Notice, which notice may only be issued if the Debentures are redeemed as set out in this paragraph 4 (which notice will be irrevocable), then (A) with respect to Preferred Securities held in book-entry form, by 12:00 noon, New York City time, on the redemption date, to the extent funds are available, with respect to Preferred Securities held in global form, the Property Trustee will deposit irrevocably with the Depositary (or successor Depositary) funds sufficient to pay the amount payable on redemption with respect to such Preferred Securities and will give the Depositary irrevocable instructions and authority to pay the amount payable on redemption to the Holders of such Preferred Securities, and (B) with respect to Preferred Securities issued in certificated form and Common Securities, to the extent funds are available, the Property Trustee will irrevocably deposit with the Paying Agent funds sufficient to pay the amount payable on redemption to the Holders of such Securities and will give the Paying Agent irrevocable instructions and authority to pay the amount payable on redemption to the Holders thereof upon surrender of their certificates. If a Redemption/Distribution Notice shall have been given and funds deposited as required, then on the date of such deposit, all rights of Holders of such Securities so called for redemption will cease, except the right of the Holders of such Securities to receive the redemption price, but without interest on such redemption price, and such Securities will cease to be outstanding. Neither the Administrative Trustees nor the Trust shall be required to register or cause to be registered the transfer of any Securities that have been so called for redemption. If any date fixed for redemption of Securities is not a Business Day, then payment of the amount payable on such date will be made on the next succeeding day that is a Business Day (without any interest or other payment in respect of any such delay) except that, if such Business Day falls in the next calendar year, such payment will be made on the

immediately preceding Business Day, in each case with the same force and effect as if made on such date fixed for redemption. If payment of the redemption price in respect of any Securities is improperly withheld or refused and not paid either by the Trust or by the Sponsor as guarantor pursuant to the relevant Securities Guarantee, Distributions on such Securities will continue to accrue at the then applicable rate, from the original redemption date to the date of payment, in which case the actual payment date will be considered the date fixed for redemption for purposes of calculating the amount payable upon redemption (other than for purposes of calculating any premium).

- (iv) Redemption/Distribution Notices shall be sent by the Administrative Trustees on behalf of the Trust to (A) in the case of Preferred Securities held in book-entry form, the Depositary and, in the case of Securities held in certificated form, the Holders of such certificates and (B) in respect of the Common Securities, the Holder thereof.
- (v) Subject to the foregoing and applicable law (including, without limitation, United States federal securities laws), the Sponsor or any of its subsidiaries may at any time and from time to time purchase outstanding Preferred Securities by tender, in the open market or by private agreement.

5. Conversion Rights.

The Holders of Securities shall have the right at any time, at their option, to cause the Conversion Agent to convert Securities, on behalf of the converting Holders, into shares of Capital Stock, par value \$1.00 per share, of the Sponsor (the "Capital Stock") in the manner described herein on and subject to the following terms and conditions:

- (a) The Securities will be convertible at the office of the Conversion Agent into fully paid and nonassessable shares of Capital Stock pursuant to the Holder's direction to the Conversion Agent to exchange such Securities for a portion of the Debentures theretofore held by the Trust on the basis of one Security per \$27 principal amount of

Debentures, and immediately convert such amount of Debentures into fully paid and nonassessable shares of Capital Stock at an initial rate of 0.73 shares of Capital Stock per \$27 principal amount of Debentures (which is equivalent to a conversion price of \$37 per share of Capital Stock, subject to certain adjustments set forth in the Indenture (as so adjusted, "Conversion Price")).

- (b) In order to convert Securities into Capital Stock the Holder shall submit to the Conversion Agent at the office referred to above an irrevocable request to convert Securities on behalf of such Holder (the "Conversion Request"), together, if the Securities are in certificated form, with such certificates. The Conversion Request shall (i) set forth the number of Securities to be converted and the name or names, if other than the Holder, in which the shares of Capital Stock should be issued and (ii) direct the Conversion Agent (a) to exchange such Securities for a portion of the Debentures held by the Trust (at the rate of exchange specified in the preceding paragraph) and (b) to immediately convert such Debentures on behalf of such Holder, into Capital Stock (at the conversion rate specified in the preceding paragraph). The Conversion Agent shall notify the Trust of the Holder's election to exchange Securities for a portion of the Debentures held by the Trust and the Trust shall, upon receipt of such notice, deliver to the Conversion Agent the appropriate principal amount of Debentures for exchange in accordance with this Section. The Conversion Agent shall thereupon notify the Sponsor of the Holder's election to convert such Debentures into shares of Capital Stock. Holders of Securities at the close of business on a Distribution record date will be entitled to receive the Distribution payable on such Securities on the corresponding Distribution payment date notwithstanding the conversion of such Securities following such record date but prior to such distribution payment date. Except as provided above, neither the Trust nor the Sponsor will make, or be required to make, any payment, allowance or adjustment upon any conversion on account of any accumulated and unpaid Distributions accrued on the Securities, whether or not in arrears, (including any Additional Amounts accrued thereon) surrendered for conversion, or on account of any accumulated and unpaid dividends on the shares of Capital Stock issued upon such conversion, except to the extent that such shares are held of

record on the record date for any such distributions. Securities shall be deemed to have been converted immediately prior to the close of business on the day on which a Notice of Conversion relating to such Securities is received by the Trust in accordance with the foregoing provision (the "Conversion Date"). The Person or Persons entitled to receive the Capital Stock issuable upon conversion of the Debentures shall be treated for all purposes as the record holder or holders of such Capital Stock at such time. As promptly as practicable on or after the Conversion Date, the Sponsor shall issue and deliver at the office of the Conversion Agent a certificate or certificates for the number of full shares of Capital Stock issuable upon such conversion, together with the cash payment, if any, in lieu of any fraction of any share to the Person or Persons entitled to receive the same, unless otherwise directed by the Holder in the notice of conversion and the Conversion Agent shall distribute such certificate or certificates to such Person or Persons.

- (c) Each Holder of a Security by his acceptance thereof appoints Firststar Bank, National Association N.A. "Conversion Agent" for the purpose of effecting the conversion of Securities in accordance with this Section. In effecting the conversion and transactions described in this Section, the Conversion Agent shall be acting as agent of the Holders of Securities directing it to effect such conversion transactions. The Conversion Agent is hereby authorized (i) to exchange Securities from time to time for Debentures held by the Trust in connection with the conversion of such Securities in accordance with this Section and (ii) to convert all or a portion of the Debentures into Capital Stock and thereupon to deliver such shares of Capital Stock in accordance with the provisions of this Section and to deliver to the Trust a new Debenture or Debentures for any resulting unconverted principal amount.
- (d) No fractional shares of Capital Stock will be issued as a result of conversion, but in lieu thereof, such fractional interest will be paid in cash by the Sponsor to the Trust, which in turn will make such payment to the Holder or Holders of Securities so converted.

- (e) The Sponsor shall at all times reserve and keep available out of its authorized and unissued Capital Stock, solely for issuance upon the conversion of the Debentures, free from any preemptive or other similar rights, such number of shares of Capital Stock as shall from time to time be issuable upon the conversion of all the Debentures then outstanding. Notwithstanding the foregoing, the Sponsor shall be entitled to deliver upon conversion of Debentures, shares of Capital Stock reacquired and held in the treasury of the Sponsor (in lieu of the issuance of authorized and unissued shares of Capital Stock), so long as any such treasury shares are free and clear of all liens, charges, security interests or encumbrances. Any shares of Capital Stock issued upon conversion of the Debentures shall be duly authorized, validly issued and fully paid and nonassessable. The Trust shall deliver the shares of Capital Stock received upon conversion of the Debentures to the converting Holder free and clear of all liens, charges, security interests and encumbrances, except for United States withholding taxes. Each of the Sponsor and the Trust shall prepare and shall use its best efforts to obtain and keep in force such governmental or regulatory permits or other authorizations as may be required by law, and shall comply with all applicable requirements as to registration or qualification of the Capital Stock (and all requirements to list the Capital Stock issuable upon conversion of Debentures that are at the time applicable), in order to enable the Sponsor to lawfully issue Capital Stock to the Trust upon conversion of the Debentures and the Trust to lawfully deliver the Capital Stock to each Holder upon conversion of the Securities.
- (f) The Sponsor will pay any and all taxes that may be payable in respect of the issue or delivery of shares of Capital Stock on conversion of Debentures and the delivery of the shares of Capital Stock by the Trust upon conversion of the Securities. The Sponsor shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares of Capital Stock in a name other than that in which the Securities so converted were registered, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the Trust the amount of any such tax, or has established to the satisfaction of the Trust that such tax has been paid.

- (g) Nothing in the preceding Paragraph (f) shall limit the requirement of the Trust to withhold taxes pursuant to the terms of the Securities set forth in this Annex I to the Declaration or in the Declaration itself or otherwise require the Property Trustee or the Trust to pay any amounts on account of such withholdings.

6. Voting Rights - Preferred Securities.

- (a) Except as provided under paragraphs 6(b) and 8, in the Business Trust Act and as otherwise required by law, the Declaration and the Indenture, the Holders of the Preferred Securities will have no voting rights.
- (b) In addition to the rights of the Holders of the Preferred Securities with respect to the enforcement of payment of principal and interest on the Debentures set forth herein, in the Declaration or in the Indenture, if (i) a Debenture Event of Default occurs and is continuing or (ii) the Company defaults under the Guarantee (each of (i) and (ii) being an "Appointment Event"), then the Holders of the Preferred Securities, acting as a single class, will be entitled by the vote of a Majority in liquidation amount of the Preferred Securities to appoint a Special Trustee in accordance with Section 5.06(a)(ii)(B) of the Declaration. Any Holder of Preferred Securities (other than the Sponsor, or any entity directly or indirectly controlling or controlled by or under direct or indirect common control with the Sponsor) will be entitled to nominate any person to be appointed as Special Trustee. Not later than 30 days after such right to appoint a Special Trustee arises, the Trustees will convene a meeting for the purpose of appointing a Special Trustee. If the Trustees fail to convene such meeting within such 30-day period, the Holders of not less than 10% in aggregate liquidation amount of the Preferred Securities will be entitled to convene such meeting in accordance with Section 12.02 of the Declaration. The record date for such meeting will be the close of business on the Business Day that is one Business Day before the day on which notice of the meeting is sent to the Holders. The provisions of the Declaration relating to the convening and conduct of the meetings of the Holders will apply with respect to any such meeting.

Any Special Trustee so appointed shall cease to be a Special Trustee if the Appointment Event pursuant to which the Special Trustee was appointed and all other Appointment Events cease to be continuing. A Special Trustee may be removed without cause at any time by vote of the Holders of a Majority in liquidation amount of the Preferred Securities at a meeting of the Holders of the Preferred Securities in accordance with Section 5.06(a)(ii)(B) of the Declaration. The Holders of 10% in liquidation amount of the Preferred Securities will be entitled to convene such a meeting in accordance with Section 12.02 of the Declaration. The record date for such meeting will be the close of business on the Business Day which is one Business Day before the day on which the notice of meeting is sent to Holders. Notwithstanding the appointment of a Special Trustee, the Sponsor shall retain all rights under the Indenture, including the right to defer payments of interest by extending the interest payment period on the Debentures.

Subject to the requirements set forth in this paragraph, the Holders of a majority in liquidation amount of the Preferred Securities, voting separately as a class may, and the Trustees shall not, without obtaining the prior approval of the Holders of a Majority in aggregate liquidation amount of all outstanding Preferred Securities (i) direct the time, method, and place of conducting any proceeding for any remedy available to the Property Trustee under the Indenture, or executing any trust or power conferred upon the Property Trustee with respect to the Debentures, (ii) waive any past default and its consequences that is waivable under Section 5.13 of the Indenture or otherwise, (iii) exercise any right to rescind or annul a declaration that the principal of all the Debentures shall be due and payable or (iv) consent to any amendment, modification or termination of the Indenture or the Debentures, where such consent shall be required, provided, however, that, where a consent under the Indenture would require the consent or act of the Holders of greater than a majority of the Holders in principal amount of Debentures affected thereby (a "Super Majority"), the Property Trustee may only give such consent or take such action at the direction of the Holders of at least the proportion in liquidation preference of the Preferred Securities which the relevant Super Majority represents of the aggregate principal



amount of the Debentures outstanding. The Property Trustee shall not, and none of the other Trustees shall in any event, revoke any action previously authorized or approved by a vote of the Holders of the Preferred Securities, except by a subsequent vote of the Holders of the Preferred Securities. Other than with respect to directing the time, method and place of conducting any remedy available to the Property Trustee or the Debenture Trustee as set forth above, the Property Trustee shall not take any action in accordance with the directions of the Holders of the Preferred Securities under this paragraph unless the Property Trustee has obtained an opinion of tax counsel to the effect that, as a result of such action, the Trust will not fail to be classified as a grantor trust for United States federal income tax purposes.

If a Declaration Event of Default has occurred and is continuing and such event is attributable to the failure of the Debenture Issuer to pay interest or principal on the Debentures on the date such interest or principal is otherwise payable (or in the case of redemption on the redemption date), then a Holder of Preferred Securities may directly institute a proceeding for enforcement of payment to such Holder (a "Direct Action") of the principal of or interest on the Debentures having a principal amount equal to the aggregate liquidation amount of the Preferred Securities of such Holder on or after the respective due date specified in the Debentures. Except as provided in the preceding sentence, the Holders of Preferred Securities will not be able to exercise directly any other remedy available to the Holders of the Debentures. In connection with any Direct Action, the Debenture Issuer will be subrogated to the rights of such Holder of Preferred Securities under the Declaration to the extent of any payment made by the Debenture Issuer to such Holder of Preferred Securities in such Direct Action. In addition, the Holders of at least 25% in aggregate liquidation preference of Preferred Securities outstanding shall have the right to institute suit on behalf of the Trust for the enforcement of the right to receive payment of the principal of and interest on the Debentures on or after the Stated Maturity (as defined in the Indenture) of such Debentures or, in the case of redemption, on the Redemption Date (as defined in the Indenture), in the event the Debenture Trustee

or the Property Trustee fails to do so in accordance with the terms of the Indenture.

Any approval or direction of Holders of Preferred Securities may be given at a separate meeting of Holders of Preferred Securities convened for such purpose, at a meeting of all of the Holders of Securities in the Trust or pursuant to written consent. The Administrative Trustees will cause a notice of any meeting at which Holders of Preferred Securities are entitled to vote, or of any matter upon which action by written consent of such Holders is to be taken, to be mailed to each Holder of record of Preferred Securities. Each such notice will include a statement setting forth the following information (i) the date of such meeting or the date by which such action is to be taken, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote or of such matter upon which written consent is sought and (iii) instructions for the delivery of proxies or consents.

No vote or consent of the Holders of the Preferred Securities will be required for the Trust to redeem and cancel Preferred Securities or to distribute the Debentures in accordance with the Declaration and the terms of the Securities.

Notwithstanding that Holders of Preferred Securities are entitled to vote or consent under any of the circumstances described above, any of the Preferred Securities that are owned by the Sponsor or any Affiliate of the Sponsor shall not be entitled to vote or consent and shall, for purposes of such vote or consent, be treated as if they were not outstanding.

7. Voting Rights - Common Securities.

- (a) Except as provided under paragraphs 7(b), (c) and 8, in the Business Trust Act and as otherwise required by law and the Declaration, the Holders of the Common Securities will have no voting rights.
- (b) The Holders of the Common Securities are entitled, in accordance with Article V of the Declaration, to vote to appoint, remove or replace any Trustee, subject to the exclusive right of the Holders of the Preferred Securities to appoint, remove or replace a Special Trustee.

- (c) Subject to Section 2.06 of the Declaration and only after the Event of Default with respect to the Preferred Securities has been cured, waived, or otherwise eliminated and subject to the requirements of the second to last sentence of this paragraph, the Holders of a Majority in liquidation amount of the Common Securities, voting separately as a class, may direct the time, method, and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon the Property Trustee under the Declaration, including (i) directing the time, method, place of conducting any proceeding for any remedy available to the Debenture Trustee, or exercising any trust or power conferred on the Debenture Trustee with respect to the Debentures, (ii) waive any past default and its consequences that is waivable under Section 5.13 of the Indenture, or (iii) exercise any right to rescind or annul a declaration that the principal of all the Debentures shall be due and payable, provided that, where a consent or action under the Indenture would require a Super Majority, the Property Trustee may only give such consent or take such action at the direction of the Holders of at least the proportion in liquidation amount of the Common Securities which the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding. Pursuant to this paragraph 7(c), the Property Trustee shall not revoke any action previously authorized or approved by a vote of the Holders of the Preferred Securities, except by a subsequent vote of the Holders of the Preferred Securities. Other than with respect to directing the time, method and place of conducting any remedy available to the Property Trustee or the Debenture Trustee as set forth above, the Property Trustee shall not take any action in accordance with the directions of the Holders of the Common Securities under this paragraph unless the Property Trustee has obtained an opinion of tax counsel to the effect that, as a result of such action the Trust will not fail to be classified as a grantor trust for United States federal income tax purposes. If the Property Trustee fails to enforce its rights, as holder of the Debentures, under the Indenture, any Holder of Common Securities may, after a period of 30 days has elapsed from such Holder's written request to the Property Trustee to enforce such rights, institute a legal proceeding directly against the Sponsor, to enforce the Property Trustee's rights, as holder of

the Debentures, under the Indenture, without first instituting any legal proceeding against the Property Trustee or any other Person.

Any approval or direction of Holders of Common Securities may be given at a separate meeting of Holders of Common Securities convened for such purpose, at a meeting of all of the Holders of Securities in the Trust or pursuant to written consent. The Administrative Trustees will cause a notice of any meeting at which Holders of Common Securities are entitled to vote, or of any matter upon which action by written consent of such Holders is to be taken, to be mailed to each Holder of record of Common Securities. Each such notice will include a statement setting forth (i) the date of such meeting or the date by which such action is to be taken, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote or of such matter upon which written consent is sought and (iii) instructions for the delivery of proxies or consents.

No vote or consent of the Holders of the Common Securities will be required for the Trust to redeem and cancel Common Securities or to distribute the Debentures in accordance with the Declaration and the terms of the Securities.

8. Amendments to Declaration and Indenture.

- (a) In addition to any requirements under Section 12.01 of the Declaration, if any proposed amendment to the Declaration provides for, or the Administrative Trustees otherwise propose to effect, (i) any action that would adversely affect the powers, preferences or rights of the Securities, whether by way of amendment to the Declaration or otherwise, or (ii) the dissolution, winding-up or termination of the Trust, other than as described in Section 8.01 of the Declaration, then the Holders of outstanding Securities will be entitled to vote on such amendment or proposal (but not on any other amendment or proposal) and such amendment or proposal shall not be effective except with the approval of the Holders of at least a Majority in liquidation amount of the Securities, voting together as a single class, provided, however, that, the rights of Holders of Preferred Securities under Article V of the Declaration to appoint, remove or replace a Special

Trustee shall not be amended without the consent of each Holder of Preferred Securities; and provided further that if any amendment or proposal referred to in clause (i) above would adversely affect only the Preferred Securities or only the Common Securities, then only the affected class will be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of at least a Majority in liquidation amount of such class of Securities.

- (b) In the event the consent of the Property Trustee as the holder of the Debentures is required under the Indenture with respect to any amendment, modification or termination of the Indenture or the Debentures, the Property Trustee shall request the direction of the Holders of the Securities with respect to such amendment, modification or termination and shall vote with respect to such amendment, modification or termination as directed by at least the same proportion in aggregate stated liquidation preference of the Securities; provided, however, that the Property Trustee shall not take any action in accordance with the directions of the Holders of the Securities under this paragraph 8(b) unless the Property Trustee has obtained an opinion of tax counsel to the effect that for the purposes of United States federal income tax the Trust will not be classified as other than a grantor trust on account of such action.

9. Pro Rata.

A reference in these terms of the Securities to any payment, Distribution or treatment as being "Pro Rata" shall mean pro rata to each Holder of Securities according to the aggregate liquidation amount of the Securities held by the relevant Holder in relation to the aggregate liquidation amount of all Securities outstanding unless, on any Distribution Date or redemption date an Event of Default under the Declaration has occurred and is continuing, in which case no payment of any Distribution on, or amount payable upon redemption of, any Common Security, and no other payment on account of the redemption, liquidation or other acquisition of Common Securities, shall be made unless payment in full in cash of all accumulated and unpaid Distributions on all outstanding Preferred Securities for all Distribution periods terminating on or prior thereto, or in the case of payment of the amount payable upon redemption of the Preferred Securities, the full amount of such amount in respect of all outstanding Preferred Securities shall have been made or

provided for, and all funds available to the Property Trustee shall first be applied to the payment in full in cash of all Distributions on, or the amount payable upon redemption of Preferred Securities then due and payable.

10. Ranking.

The Preferred Securities rank *pari passu* and payment thereon shall be made Pro Rata with the Common Securities except that, where an Event of Default occurs and is continuing under the Indenture in respect of the Debentures held by the Property Trustee, the rights of Holders of the Common Securities to payment in respect of Distributions and payments upon liquidation, redemption and otherwise are subordinated to the rights to payment of the Holders of the Preferred Securities.

11. Acceptance of Securities Guarantees and Indenture.

Each Holder of Preferred Securities and Common Securities, by the acceptance thereof, agrees to the provisions of the Preferred Securities Guarantee and the Common Securities Guarantee, respectively, including the subordination provisions therein and to the provisions of the Indenture which are incorporated by reference herein and which include, among other things, provisions relating to certain rights of the Holders of the Preferred Securities all as set forth therein.

12. No Preemptive Rights.

The Holders of the Securities shall have no preemptive rights to subscribe for any additional securities.

13. Miscellaneous.

These terms constitute a part of the Declaration.

The Sponsor will provide a copy of the Declaration, the Preferred Securities Guarantee or the Common Securities Guarantee (as may be appropriate), and the Indenture to a Holder without charge on written request to the Sponsor at its principal place of business.

EXHIBIT A-1  
FORM OF  
PREFERRED SECURITY

[FORM OF FACE OF SECURITY]

[Include if Preferred Security is in global form and the Depository Trust Company is the Depository -- UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE COMPANY 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 IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC) ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

[Include if Preferred Security is in global form -- TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE DECLARATION REFERRED TO BELOW.]

[CUSIP NO. [ ]]  
[ISIN NO. [ ]]

Preferred Securities

of

Chemed Capital Trust

Convertible Preferred Trust Securities  
(liquidation amount \$27 per Convertible Preferred Security)

Chemed Capital Trust, a statutory business trust formed under the laws of the State of Delaware (the "Trust"), hereby certifies that

(the "Holder") is the registered owner of preferred securities of the Trust representing undivided beneficial interests in the assets of the Trust designated the Convertible Preferred Trust Securities (liquidation amount \$27 per Convertible Preferred Security) (the "Preferred Securities"). The Preferred Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Securities represented hereby are issued and shall in all respects be subject to the provisions of the Amended and Restated Declaration of Trust of the Trust dated as of January -, 2000, as the same may be amended from time to time (the "Declaration"), including the designation of the terms of the Preferred Securities as set forth in Annex I to the Declaration. Capitalized terms used herein but not defined shall have the meaning given them in the Declaration. The Holder is entitled to the benefits of the Preferred Securities Guarantee to the extent provided therein. The Sponsor will provide a copy of the Declaration, the Preferred Securities Guarantee and the Indenture to a Holder without charge upon written request to the Trust at its principal place of business.

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

Upon receipt of this certificate, the Holder is bound by the Declaration and is entitled to the benefits thereunder.

By acceptance, the Holder agrees to treat, for United States federal income tax purposes, the Debentures as indebtedness and the Preferred Securities as evidence of indirect beneficial ownership in the Debentures.

Unless the Property Trustee's Certificate of Authentication hereon has been properly executed, these Preferred Securities shall not be entitled to any benefit under the Declaration or be valid or obligatory for any purpose.



IN WITNESS WHEREOF, the Trust has executed this certificate  
this -, 20[ ].

Chemed Capital Trust

By:  
Name:  
Title:

PROPERTY TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Preferred Securities referred to in the  
within-mentioned Declaration.

Dated: ,

Firststar Bank, National Association,  
as Property Trustee

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

Distributions payable on each Preferred Security will be fixed at a rate per annum of \$2.00 for each Preferred Security (the "Coupon Rate"), such rate being the rate of interest payable on the Debentures to be held by the Property Trustee. Distributions in arrears for more than one quarter will bear interest thereon compounded quarterly at the Coupon Rate (to the extent permitted by applicable law). The term "Distributions" as used herein includes such quarterly distributions, additional distributions on quarterly distributions not paid on the applicable Distribution Date, Special Distributions and Additional Sums, as applicable. A Distribution is payable only to the extent that payments are made in respect of the Debentures held by the Property Trustee and to the extent the Property Trustee has funds available therefor. The amount of Distributions payable for any period will be computed for any full quarterly Distribution period on the basis of a 360-day year of twelve 30-day months, except that the Distribution payable on 15, 2000, will be \$0.50 for each Preferred Security, and for any period shorter than a full quarterly Distribution period for which Distributions are computed, Distributions will be computed on the basis of the actual number of days elapsed per 30-day month.

Except as otherwise described below, Distributions on the Preferred Securities will be cumulative, will accrue from the date of their original issuance and will be payable quarterly in arrears, on March 15, June 15, September 15 and December 15 of each year, commencing on March 15, 2000, to Holders of record at the close of business on the first day of the month next preceding the applicable payment date, which payment dates shall correspond to the interest payment dates (each an "Interest Payment Date") on the Debentures. The Debenture Issuer has the right under the Indenture to defer payments of interest after March 15, 2000, by extending the interest payment period from time to time on the Debentures for a period not exceeding 20 consecutive quarters (each a "Deferral Period") and, as a consequence of such deferral, Distributions will also be deferred after March 15, 2000. Despite such deferral, quarterly Distributions will continue to accrue with interest thereon (to the extent permitted by applicable law) at the Coupon Rate compounded quarterly during any such Deferral Period. Prior to the termination of any such Deferral Period, the Debenture Issuer may further extend such Deferral Period; provided that such Deferral Period together with all such previous and further deferrals thereof may not exceed 20 consecutive quarters or extend beyond the maturity (whether at the stated maturity or by declaration of acceleration, call for redemption or otherwise) of the Debentures under the Indenture. Payments of accrued Distributions will be payable on an Interest Payment Date elected by the Company to Holders as they appear on the books and records of the Trust on the record date fixed for such Interest Payment Date. Upon the termination of any Deferral Period and the payment of all amounts then due, the Debenture Issuer may commence a new Deferral Period, subject to the above requirements.

The Preferred Securities shall be redeemable as provided in the Declaration.

The Preferred Securities shall be convertible into shares of Capital Stock, through (i) the exchange of Preferred Securities for a portion of the Debentures and (ii) the immediate conversion of such Debentures into Capital Stock, in the manner and according to the terms set forth in the Declaration.

## CONVERSION REQUEST

To: Firststar Bank, National Association  
as Property Trustee of  
Chemed Capital Trust

The undersigned owner of these Preferred Securities hereby irrevocably exercises the option to convert these Preferred Securities, or the portion below designated, into Capital Stock of CHEMED CORPORATION (the "Capital Stock") in accordance with the terms of the Amended and Restated Declaration of Trust (the "Declaration"), dated as of January -, 2000, by Kevin McNamara, Timothy O'Toole and Sandra Laney as Administrative Trustees, First Union Trust Company, National Association, as Delaware Trustee, Firststar Bank, National Association, as Property Trustee, Chemed Corporation, as Sponsor, and by the Holders, from time to time, of individual beneficial interests in the Trust to be issued pursuant to the Declaration. Pursuant to the aforementioned exercise of the option to convert these Preferred Securities, the undersigned hereby directs the Conversion Agent (as that term is defined in the Declaration) to (i) exchange such Preferred Securities for a portion of the Debentures (as that term is defined in the Declaration) held by the Trust (at the rate of exchange specified in the terms of the Preferred Securities set forth as Annex I to the Declaration) and (ii) immediately convert such Debentures on behalf of the undersigned, into Capital Stock (at the conversion rate specified in the terms of the Preferred Securities set forth as Annex I to the Declaration).

The undersigned does also hereby direct the Conversion Agent that the shares issuable and deliverable upon conversion, together with any check in payment for fractional shares, be issued in the name of and delivered to the undersigned, unless a different name has been indicated in the assignment below. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto.

Date: \_\_\_\_\_, \_\_\_\_

in whole \_\_\_

in part \_\_\_\_  
Number of Preferred Securities to be  
converted: \_\_\_\_\_

If a name or names other  
than the undersigned,  
please indicate in the  
spaces below the name or  
names in which the shares  
of Capital Stock are to be  
issued, along with the  
address or addresses of  
such person or persons

Signature (for conversion only)

Please Print or Typewrite Name and  
Address, Including Zip Code, and Social  
Security or Other Identifying Number

Signature Guarantee:\*

- - - - -  
\* (Signature must be guaranteed by an "eligible guarantor institution" that is,  
a bank, stockbroker, savings and loan association or credit union meeting the  
requirements of the Registrar, which requirements include membership or  
participation in the Securities Transfer Agents Medallion Program ("STAMP") or  
such other "signature guarantee program" as may be determined by the Registrar  
in addition to, or in substitution for, STAMP, all in accordance with the  
Securities Exchange Act of 1934.)

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Preferred Security to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints

agent to transfer this Preferred Security on the books of the Trust. The agent may substitute another to act for him or her.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

(Sign exactly as your name appears on the other side of this Preferred Security Certificate)

Signature Guarantee:\*\*

- - - - -  
\*\* (Signature must be guaranteed by an "eligible guarantor institution" that is, a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934.)

EXHIBIT A-2  
FORM OF  
COMMON SECURITY

[FORM OF FACE OF SECURITY]

[OTHER THAN AS PROVIDED IN THE DECLARATION (AS DEFINED HEREIN), THIS SECURITY MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT TO A RELATED PARTY (AS DEFINED IN THE DECLARATION) OF CHEMED CORPORATION.]

Certificate Number Number of Common Securities

Common Securities  
of  
Chemed Capital Trust

Convertible Common Securities  
(liquidation amount \$27 per Convertible Common Security)

Chemed Capital Trust, a statutory business trust formed under the laws of the State of Delaware (the "Trust"), hereby certifies that

(the "Holder") is the registered owner of common securities of the Trust representing undivided beneficial interests in the assets of the Trust designated the Convertible Common Securities (liquidation amount \$27 per Convertible Common Security) (the "Common Securities"). The Common Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Common Securities represented hereby are issued and shall in all respects be subject to the provisions of the Amended and Restated Declaration of Trust of the Trust dated as of January -, 2000, as the same may be amended from time to time (the "Declaration"), including the designation of the terms of the Common Securities as set forth in Annex I to the Declaration. Capitalized terms used herein but not defined shall have the meaning given them in the Declaration. The Holder is entitled to the benefits of the Common Securities Guarantee to the extent provided therein. The Sponsor will provide a copy of the Declaration, the Common Securities Guarantee and the Indenture to a Holder without charge upon written request to the Sponsor at its principal place of business.

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

Upon receipt of this certificate, the Sponsor is bound by the Declaration and is entitled to the benefits thereunder.

By acceptance, the Holder agrees to treat for United States federal income tax purposes the Debentures as indebtedness and the Common Securities as evidence of indirect beneficial ownership in the Debentures.

IN WITNESS WHEREOF, the Trust has executed this certificate this January -, 2000.

Chemed Capital Trust

By:  
Name:  
Title:

Distributions payable on each Common Security will be fixed at a rate per annum of \$2.00 for each Common Security (the "Coupon Rate"), such rate being the rate of interest payable on the Debentures to be held by the Property Trustee. Distributions in arrears for more than one quarter will bear interest thereon compounded quarterly at the Coupon Rate (to the extent permitted by applicable law). The term "Distributions" as used herein includes quarterly distributions, additional distributions on quarterly distributions not paid on the applicable Distribution Date, Special Distributions and Additional Sums, as applicable. A Distribution is payable only to the extent that payments are made in respect of the Debentures held by the Property Trustee and to the extent the Property Trustee has funds available therefor. Except for the interest payable on March 15, 2000, the amount of Distributions payable for any period will be computed for any full quarterly Distribution period on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full quarterly Distribution period for which Distributions are computed, Distributions will be computed on the basis of the actual number of days elapsed per 30-day month.

Except as otherwise described below, Distributions on the Common Securities will be cumulative, will accrue from the date of their original issuance and will be payable quarterly in arrears, on March 15, June 15, September 15 and December 15 of each year, commencing on March 15, 2000, to Holders of record one (1) day prior to such payment dates, which payment dates shall correspond to the interest payment dates (each, an "Interest Payment Date") on the Debentures. The Debenture Issuer has the right under the Indenture to defer payments of interest after March 15, 2000, by extending the interest payment period from time to time on the Debentures for a period not exceeding 20 consecutive quarters (each a "Deferral Period") and, as a consequence of such deferral, Distributions will also be deferred after March 15, 2000. Despite such deferral, quarterly Distributions will continue to accrue with interest thereon (to the extent permitted by applicable law) at the Coupon Rate compounded quarterly during any such Deferral Period. Prior to the termination of any such Deferral Period, the Debenture Issuer may further extend such Deferral Period; provided that such Deferral Period together with all such previous and further deferrals thereof may not exceed 20 consecutive quarters or extend beyond the maturity (whether at the stated maturity or by declaration of acceleration, call for redemption or otherwise) of the Debentures under the Indenture. Payments of accrued Distributions will be payable on an Interest Payment Date elected by the Company to Holders as they appear on the books and records of the Trust on the record date fixed for such Interest Payment Date. Upon the termination of any Deferral Period and the payment of all amounts then due, the Debenture Issuer may commence a new Deferral Period, subject to the above requirements.

The Common Securities shall be redeemable as provided in the Declaration.

The Common Securities shall be convertible into shares of Capital Stock, through (i) the exchange of Common Securities for a portion of the Debentures and (ii) the immediate conversion of such Debentures into Capital Stock, in the manner and according to the terms set forth in the Declaration.



## CONVERSION REQUEST

To: Firststar Bank, National Association  
as Property Trustee of  
Chemed Capital Trust

The undersigned owner of these Common Securities hereby irrevocably exercises the option to convert these Common Securities, or the portion below designated, into Capital Stock of CHEMED CORPORATION (the "Capital Stock") in accordance with the terms of the Amended and Restated Declaration of Trust (the "Declaration"), dated as of January -, 2000, by Kevin McNamara, Timothy O'Toole and Sandra Laney as Administrative Trustees, First Union Trust Company, National Association, as Delaware Trustee, Firststar Bank, National Association, as Property Trustee, Chemed Corporation, as Sponsor, and by the Holders, from time to time, of individual beneficial interests in the Trust to be issued pursuant to the Declaration. Pursuant to the aforementioned exercise of the option to convert these Common Securities, the undersigned hereby directs the Conversion Agent (as that term is defined in the Declaration) to (i) exchange such Common Securities for a portion of the Debentures (as that term is defined in the Declaration) held by the Trust (at the rate of exchange specified in the terms of the Common Securities set forth as Annex I to the Declaration) and (ii) immediately convert such Debentures on behalf of the undersigned, into Capital Stock (at the conversion rate specified in the terms of the Common Securities set forth as Annex I to the Declaration).

The undersigned does also hereby direct the Conversion Agent that the shares issuable and deliverable upon conversion, together with any check in payment for fractional shares, be issued in the name of and delivered to the undersigned, unless a different name has been indicated in the assignment below. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto.

Date: \_\_\_\_\_, \_\_\_\_\_

in whole \_\_\_

in part \_\_\_

Number of Common Securities to be converted: \_\_\_\_\_

If a name or names other than the undersigned, please indicate in the spaces below the name or names in which the shares of Capital Stock are to be issued, along with the address or addresses of such person or persons

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-----  
Signature (for conversion only)

Please Print or Typewrite Name and Address, Including Zip Code, and Social Security or Other Identifying Number

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Signature Guarantee:\*\*\* \_\_\_\_\_

- - - - -  
\*\*\* (Signature must be guaranteed by an "eligible guarantor institution" that is, a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934.)

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Common Security Certificate to:

(Insert assignee's social security or tax identification number)

(Insert address and zip code of assignee)

and irrevocably appoints \_\_\_\_\_

\_\_\_\_\_ agent to transfer this Common Security Certificate on the books of the Trust. The agent may substitute another to act for him or her.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

(Sign exactly as your name appears on the other side of this Common Security Certificate)

Signature Guarantee\*\*\*\*: \_\_\_\_\_

- - - - -  
\*\*\*\* (Signature must be guaranteed by an "eligible guarantor institution" that is, a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934.)

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CHEMED CORPORATION  
TO  
FIRSTAR BANK,  
NATIONAL ASSOCIATION

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INDENTURE  
DATED AS OF JANUARY -, 2000

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Certain Sections of this Indenture relating to  
Sections 310 through 318 of the  
Trust Indenture Act of 1939:

Trust Indenture Act Section -----	Indenture Section -----
Section 310(a)(1).....	6.09
(a)(2).....	6.09
(a)(3).....	Not Applicable
(a)(4).....	Not Applicable
(b).....	6.08, 6.10
Section 311(a).....	6.13
(b).....	6.13
Section 312(a).....	7.01
(b).....	7.02(a)
(c).....	7.02(b)
(d).....	7.02(c)
Section 313(a).....	7.03
(a)(4).....	7.03
(b).....	7.03
(c).....	7.03
(d).....	7.03
Section 314(a).....	7.04
(b).....	Not Applicable
(c)(1).....	1.02
(c)(2).....	1.02
(c)(3).....	Not Applicable
(d).....	Not Applicable
(e).....	1.02
Section 315(a).....	6.01
(b).....	6.03
(c).....	6.02
(d).....	6.01
(e).....	6.01
Section 316(a)(1)(A).....	5.14
(a)(1)(B).....	5.02
(a)(2).....	5.12
(b).....	5.13
(c).....	Not Applicable
Section 317(a)(1).....	5.08
(a)(2).....	1.04(c)
(b).....	5.03
Section 318(a).....	5.04
	1.03
	1.07

Note: This reconciliation and tie shall not, for any purpose, be deemed to be a part of the Indenture.

INDENTURE, dated as of January -, 2000, between Chemed Corporation, a corporation duly organized and existing under the laws of the State of Delaware (herein called the "Company"), and Firststar Bank, National Association, a United States banking corporation, as Trustee (herein called the "Trustee").

RECITALS OF THE COMPANY

WHEREAS Chemed Capital Trust, a Delaware business trust (the "Trust"), formed under the Amended and Restated Declaration of Trust among the Company, as Sponsor, Firststar Bank, National Association, as property trustee (the "Property Trustee"), and First Union Trust Company, National Association, as Delaware trustee (the "Delaware Trustee"), and Kevin J. McNamara, Timothy S. O'Toole, and Sandra Laney, as trustees (together with the Property Trustee and the Delaware Trustee, the "Issuer Trustees"), dated as of January -, 2000, (the "Declaration"), pursuant to the exchange offer dated December 23, 1999, of the Company, will offer for exchange up to 2,000,000 of its Convertible Preferred Trust Securities ("Preferred Securities") with a liquidation amount of \$27 per Preferred Security, having an aggregate liquidation amount with respect to the assets of the Trust of up to \$54,000,000 for outstanding shares of Capital Stock, par value \$1 per share, of the Company ("Capital Stock");

WHEREAS the Trust will use the Capital Stock acquired in the exchange offer in exchange for the Preferred Securities to acquire from the Company the Convertible Junior Subordinated Debentures Due 2030 (the "Securities") in an aggregate principal amount of up to \$54,000,000 on the basis of one share of Capital Stock for each \$27 principal amount of the Securities;

WHEREAS the trustees of the Trust, on behalf of the Trust, will execute and deliver to the Company Common Securities evidencing an ownership interest in the Trust, registered in the name of the Company, in an aggregate amount equal to three percent of the capitalization of the Trust, equivalent to up to 61,856 Common Securities (the "Common Securities" and, together with the Preferred Securities, the "Trust Securities"), with a liquidation amount of \$27 per Common Security, having an aggregate liquidation amount with respect to the assets of the Trust of up to \$1,670,112, in exchange for Securities on the basis

of one Common Security for each \$27 principal amount of the Securities;

WHEREAS the Company is guaranteeing the payment of distributions on the Trust Securities and payment of the Redemption Price (as defined herein) and payments on liquidation with respect to the Trust Securities, to the extent provided in the Common Securities Guarantee Agreement, dated January -, 2000, between the Company and the Trust, and the Guarantee Agreement, dated January -, 2000, between the Company and Firststar Bank, National Association, as Guarantee Trustee, for the benefit of the holders of the Trust Securities from time to time (together, the "Guarantee");

WHEREAS the Company has duly authorized the creation of an issue of the Securities of substantially the tenor and amount hereinafter set forth and to provide therefor the Company has duly authorized the execution and delivery of this Indenture;

WHEREAS, so long as the Trust is a Holder of Securities and any Preferred Securities are outstanding, the Declaration provides that the holders of Preferred Securities may cause the Conversion Agent (as defined herein) to (i) exchange such Preferred Securities for Securities held by the Trust and (ii) immediately convert such Securities into Capital Stock (as defined herein); and

WHEREAS all things necessary to make the Securities, when executed by the Company and authenticated and delivered hereunder and duly issued by the Company, the valid obligations of the Company and to make this Indenture a valid agreement of the Company, in accordance with their and its terms, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders (as defined

herein) thereof, it is mutually agreed, for the equal and proportionate benefit of all Holders of the Securities, as follows:

#### ARTICLE I

##### Definitions and Other Provisions of General Application

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

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

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

(3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles; and

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

"Act", when used with respect to any Holder, has the meaning specified in Section 1.04.

"Additional Payments" means Compounded Interest and Additional Sums, if any.

"Additional Sums" has the meaning specified in Section 3.01.

"Adjusted Reference Market Price" has the meaning specified in Section 13.07(a)(i).

"Adjusted Relevant Price" has the meaning specified in Section 13.07(a)(i).

"Administrative Action" has the meaning specified in the definition of Tax Event in this Section 1.01.

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

"Agent" means any Registrar, Paying Agent, Conversion Agent or co-registrar.

"Agent Member" means any member of, or participant in, the Depository.

"Applicable Conversion Price" has the meaning specified in Section 13.01.

"Applicable Conversion Ratio" has the meaning specified in Section 13.01.

"Applicable Rate" is equivalent to the rate of \$2.00 per year for each \$27 principal amount.

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

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

"Business Day" means any day other than a Saturday or a Sunday, or a day on which banking institutions in The City of New York or Wilmington Delaware are authorized or required by law or executive order to remain closed, or a day on which the corporate trust office of the Property Trustee or the Trustee is closed for business.

"Closing Price" has the meaning specified in Section 13.07(b).

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

Indenture Act, then the body performing such duties at such time.

"Common Securities" has the meaning specified in the Third Recital to this instrument.

"Capital Stock" includes any stock of any class of the Company which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which is not subject to redemption by the Company. However, subject to the provisions of Article XIII, shares issuable on conversion of Securities shall include only shares of the class designated as Capital Stock of the Company at the date of this instrument or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which are not subject to redemption by the Company; provided, that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable on conversion shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

"Capital Stock Fundamental Change" has the meaning specified in Section 13.07(b).

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

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

"Company Transaction" has the meaning specified in Section 13.04.

"Compounded Interest" has the meaning specified in Section 3.13.

"Conversion Agent" means the Person appointed to act on behalf of the holders of Preferred Securities in

effecting the conversion of Preferred Securities as and in the manner set forth in the Declaration and Section 13.02 hereof.

"Conversion Date" has the meaning specified in Section 13.02.

"Corporate Trust Office" means the principal office of the Trustee in Cincinnati, Ohio, at which at any particular time its corporate trust business shall be administered and which at the date of this Indenture is 425 Walnut Street, 6th Floor, Cincinnati, Ohio 45202.

"Declaration" has the meaning specified in the Recitals to this instrument.

"Debt" means (i) the principal of and premium and interest, if any, 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.

"Defaulted Interest" has the meaning specified in Section 3.08.

"Deferral Period" has the meaning specified in Section 3.13.

"Deferral Notice" has the meaning specified in Section 3.13.

"Delaware Trustee" has the meaning given it in the first recital of this instrument.

"Depository" means The Depository Trust Company, or any successor thereto.

"Dissolution Tax Opinion" has the meaning specified in the definition of Tax Event in this Section 1.01.

"Entitlement Date" has the meaning specified in Section 13.07(b).



"Event of Default" has the meaning specified in Section 5.01.

"Exchange Act" means the Securities Exchange Act of 1934.

1.04(d).

"Expiration Date" has the meaning specified in Section

13.03(vi).

"Expiration Time" has the meaning specified in Section

13.07(b).

"Fundamental Change" has the meaning specified in Section

"Global Security" means a Security issued in the form prescribed in Section 2.03, issued to the Depositary or its nominee, and registered in the name of the Depositary or its nominee.

"Guarantee" has the meaning specified in the Fourth Recital to this instrument.

"Holder" means a Person in whose name a Security is registered in the Security Register.

"Indenture" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this instrument and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this instrument and any such supplemental indenture, respectively.

"Initial Conversion Price" has the meaning specified in Section 13.01.

"Initial Reference Market Rate" has the meaning specified in Section 13.07(b).

"Initial Conversion Ratio" has the meaning specified in Section 13.01.

"Interest Payment Date" has the meaning specified in Section 3.01.

"Issuer Trustees" has the meaning specified in the First Recital of this Indenture.

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

"90 Day Period" has the meaning specified in Section 11.02.

"NNM" means the National Market System of the National Association of Securities Dealers, Inc., or any successor national automated interdealer quotation system.

"Non-Stock Fundamental Change" has the meaning specified in Section 13.07(b).

"No Recognition Opinion" means an opinion of a nationally recognized independent tax counsel (reasonably acceptable to the Issuer Trustees) experienced in such matters, which opinion may rely on published revenue rulings of the Internal Revenue Service, to the effect that the Holders of the Securities will not recognize any income, gain or loss for United States Federal income tax purposes as a result of the liquidation of the Trust and the distribution of the Securities to the holders of the Preferred Securities.

"Notice of Conversion" means the notice to be given by a Holder of Preferred Securities to the Conversion Agent directing the Conversion Agent to exchange such Preferred Securities for Securities and to convert such Securities into Capital Stock on behalf of such holder.

"Notice of Default" has the meaning specified in Section 5.01.

"Officers' Certificate" means a certificate signed by the Chairman of the Board, the Vice Chairman of the Board, the President or a Vice President, and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company, and delivered to the Trustee. One of the officers signing an Officers' Certificate given pursuant to Section 10.04 shall be the principal executive, financial or accounting officer of the Company.

"Opinion of Counsel" means a written opinion of counsel, who may be counsel for the Company, and who shall be reasonably acceptable to the Trustee.

"Optional Redemption" has the meaning specified in Section 11.01.

"Optional Redemption Ratio" has the meaning specified in Section 13.07(b).

"Outstanding", when used with respect to Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except: (i) Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation; (ii) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities; provided, that if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and (iii) Securities which have been paid pursuant to Section 3.08, converted into Capital Stock pursuant to Section 13.01, or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a bona fide purchaser in whose hands such Securities are valid obligations of the Company.

"Paying Agent" means any Person authorized by the Company to pay the principal of or interest on any Securities on behalf of the Company.

"Payment Resumption Date" has the meaning set forth in Section 3.13.

"Person" means any individual, corporation, company, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency 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 3.07 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.

"Preferred Securities" has the meaning specified in the first recital to this instrument.

"Property Trustee" has the meaning specified in the Recitals to this instrument.

"Purchased Shares" has the meaning specified in Section 13.03(vi).

"Purchaser Stock Price" has the meaning specified in Section 13.07(b).

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

"Redemption Price", when used with respect to any Security to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

"Redemption Tax Opinion" means an opinion of a nationally recognized independent tax counsel (reasonably acceptable to the Issuer Trustees) experienced in such matters that, as a result of a Tax Event, there is more than an insubstantial risk that the Company would be precluded from deducting the interest on the Securities for United States Federal income tax purposes, even after the Trust was liquidated and the Securities were distributed to the holders of the Preferred Securities.

"Reference Date" has the meaning specified in Section 13.03(iv).

"Reference Market Price" has the meaning specified in Section 13.07(b).

"Regular Record Date" has the meaning specified in Section 3.01.

"Relevant Price" has the meaning specified in Section 13.07(b).

"Responsible Officer", when used with respect to the Trustee, means the chairman or any vice-chairman of the board of directors, the chairman or any vice-chairman of the executive committee of the board of directors, the chairman of the trust committee, the president, any vice president, any assistant vice president, the treasurer, any assistant treasurer, any trust officer or assistant trust officer, the controller or any assistant controller or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred

because of his knowledge of and familiarity with the particular subject.

"Securities" has the meaning specified in the Fifth Recital to this instrument.

"Securities Act" means the Securities Act of 1933.

"Security Register" and "Security Registrar" have the respective meanings specified in Section 3.06.

"Senior Debt" means (i) the principal of, and premium and interest, if any, on all indebtedness of the Company for money borrowed, whether outstanding on the date of execution of the Indenture or thereafter created, assumed or incurred, (ii) all obligations to make payment pursuant to the terms of financial instruments, such as (a) securities contracts and foreign currency exchange contracts, (b) derivative instruments, such as swap agreements (including interest rate and foreign exchange rate swap agreements), cap agreements, floor agreements, collar agreements, interest rate agreements, foreign exchange agreements, options, commodity futures contracts and commodity options contracts and (c) similar financial instruments; except, in the case of both (i) and (ii) above, such indebtedness and obligations that are expressly stated to rank junior in right of payment to, or pari passu in right of payment with, the Securities, (iii) indebtedness or obligations of others of the kind described in both (i) and (ii) above for the payment of which the Company is responsible or liable as guarantor or otherwise, and (iv) deferrals, renewals or extensions of any such Senior Debt; provided, however, that Senior Debt shall not be deemed to include (a) any Debt of the Company which, when incurred and without respect to any election under Section 1111(b) of the United States Bankruptcy Code of 1978, was without recourse to the Company, (b) trade accounts payable and accrued liabilities arising in the ordinary course of business, (c) any Debt of the Company to any of its subsidiaries, (d) Debt to any employee of the Company and (e) Debt which by its terms is subordinated to trade accounts payable or accrued liabilities arising in the ordinary course of business to the extent that payments made to the holders of such Debt by the Holders of the Securities as a result of the subordination provisions of the Indenture would be greater than such payments otherwise would have been as a result of any obligation of such holders of such Debt to pay amounts over to the obligees on such trade accounts payable or accrued liabilities arising in the ordinary course of business as a result of subordination provisions to which such Debt is subject.

"Special Record Date" for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 3.08.

"Stated Maturity", when used with respect to any Security or any installment of principal thereof or interest thereon, means the date specified in such Security as the fixed date on which the principal, together with any accrued and unpaid interest (including Compounded Interest), of such Security or such installment of interest is due and payable.

"Subsidiary" of any Person means (i) a corporation more than 50% of the outstanding Voting Stock of which is owned, directly or indirectly, by such Person or by one or more other Subsidiaries of such Person or by such Person and one or more Subsidiaries thereof or (ii) any other Person (other than a corporation) in which such Person, or one or more other Subsidiaries of such Person or such Person and one or more other Subsidiaries thereof, directly or indirectly, has at least a majority ownership and power to direct the policies, management and affairs thereof.

"Tax Event" means the receipt by the Property Trustee of an opinion of a nationally recognized independent tax counsel to the Company experienced in such matters (a "Dissolution Tax Opinion") to the effect that, as a result of (a) any amendment to or change (including any announced prospective change (which shall not include a proposed change), provided that a Tax Event shall not occur more than 90 days before the effective date of any such prospective change) in the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein, (b) any judicial decision or official administrative pronouncement, ruling, regulatory procedure, notice or announcement, including any notice or announcement of intent to adopt such procedures or regulations (an "Administrative Action"), (c) any amendment to or change in the administrative position or interpretation of any Administrative Action or judicial decision that differs from the theretofore generally accepted position, in each case, by any legislative body, court, governmental agency or regulatory body, irrespective of the manner in which such amendment or change is made known, which amendment or change is effective or such Administrative Action or decision is announced or (d) any current or future audit examination or proceeding, in each case, on or after the date of original issuance of the Securities or the issue date of the Preferred Securities issued by the Trust, there is more than an insubstantial risk that (x) if the Securities are held by the Property Trustee, (i) the Trust is, or will be within 90 days of the date of such opinion, subject to United States Federal income tax with respect to interest

accrued or received on the Securities or subject to more than a de minimis amount of other taxes, duties or other governmental charges as determined by such counsel, or (ii) any portion of interest payable by the Company to the Trust on the Securities is not, or within 90 days of the date of such opinion will not be, deductible by the Company in whole or in part for United States Federal income tax purposes or (y) with respect to Securities which are no longer held by the Property Trustee, any portion of interest payable by the Company on the Securities is not, or within 90 days of the date of such opinion will not be, deductible by the Company in whole or in part for United States Federal income tax purposes.

"Trading Day" has the meaning specified in Section 13.07(b).

"Trust" has the meaning specified in the first recital to this instrument.

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

"Trust Indenture Act" means the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed; provided, however, that in the event the Trust Indenture Act of 1939 is amended after such date, "Trust Indenture Act" means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

"Trust Securities" means Common Securities and Preferred Securities.

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

"Voting Stock" of any Person means capital stock of such Person which ordinarily has voting power for the election of directors (or Persons performing similar functions) of such Person, whether at all times or only so long as no senior class of securities has such voting power by reason of any contingency.

SECTION 1.02. Compliance Certificates and Opinions. Upon any application or request by the Company to the Trustee to take any action under any provision of this

Indenture, the Company shall furnish to the Trustee such certificates and opinions as may be required under the Trust Indenture Act or reasonably requested by the Trustee in connection with such application or request. Each such certificate or opinion shall be given in the form of an Officers' Certificate, if to be given by an officer of the Company, or an Opinion of Counsel, if to be given by counsel, and shall comply with the applicable requirements of the Trust Indenture Act and any other applicable requirement set forth in this Indenture.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than the certificate required by Section 10.04) shall include:

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

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

(3) a statement that, in the opinion of each such individual, he or she has made or caused to be made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and

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

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

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



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

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

SECTION 1.04. Acts of Holders; Record Dates. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given to or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments is or are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 6.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

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

(c) The Company may, except in the circumstances set forth in clause (d) below, fix any day as the record date for the purpose of determining the Holders of Outstanding Securities entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action, or to vote on any action, authorized or permitted to be given or taken by Holders. If not set by the Company prior to the first solicitation of a Holder made by any Person in respect of any such action, or, in the case of any such vote, prior to such vote, the record date for any such action or vote shall be the 30th day (or, if later, the date of the most recent list of Holders required to be provided pursuant to Section 7.01) prior to such first solicitation or vote, as the case may be. With regard to any record date, only the Holders on such date (or their duly designated proxies) shall be entitled to give or take, or vote on, the relevant action. Provided, that unless such consent shall have become effective by virtue of the requisite percentage having been obtained prior to the date which is 90 days after such record date, any such consent previously given shall automatically and without further action by any Holder be canceled and of no further effect.

(d) The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Securities entitled to join in the giving or making of (i) any notice of default, (ii) any declaration of acceleration referred to in Section 5.02, (iii) any request to institute proceedings referred to in Section 5.07(2) or (iv) any direction referred to in Section 5.12. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities on such record date, and no other Holders, shall be entitled to join in such notice, declaration, request or direction, whether or not such Holders remain Holders after such record date; provided that no such action shall be effective hereunder unless taken on or prior to the date set by the Trustee by which any such determination shall be made (the "Expiration Date") by Holders of the requisite principal amount of Outstanding Securities on such record date. Nothing in this paragraph shall be construed to prevent the Trustee from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite principal amount of Outstanding Securities on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Company's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to

the Company in writing and to each Holder of Securities in the manner set forth in Section 1.06.

(e) The ownership of Securities shall be proved by the Security Register.

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

(g) Without limiting the foregoing, a Holder entitled hereunder to give or take any such action with regard to any particular Security may do so with regard to all or any part of the principal amount of such Security or by one or more duly appointed agents each of which who may do so pursuant to such appointment with regard to all or any different part of such principal amount.

SECTION 1.05. Notices, Etc., to Trustee and the Company. Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to:

Firststar Bank, National Association  
Corporate Trust Services  
425 Walnut Street  
Sixth Floor  
Cincinnati, Ohio 45202

Attention of: Keith A. Maurmeier

(2) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and

mailed, first-class postage prepaid, to the Company addressed to:

Chemed Corporation  
2600 Chemed Center  
255 E. Fifth Street  
Cincinnati, Ohio 45202-4726

Attention of: Chief Financial Officer

SECTION 1.06. Notice to Holders; Waiver. Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at such Holder's address as it appears in the Security Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Any notice when mailed to a Holder in the aforesaid manner shall be conclusively deemed to have been received by such Holder whether or not actually received by such Holder. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case, by reason of the suspension of regular mail service or by reason of any other cause, it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

SECTION 1.07. Conflict with Trust Indenture Act. If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required under such Act to be a part of and govern this Indenture, the latter provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

SECTION 1.08. Effect of Headings and Table of Contents. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

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

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

SECTION 1.11. Benefits of Indenture. Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, the holders of Senior Debt, the holders of Preferred Securities (to the extent provided herein) and the Holders of Securities, any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 1.12. GOVERNING LAW; JURISDICTION. THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY CONSENT TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF DELAWARE AND OF THE UNITED STATES DISTRICT COURTS LOCATED IN THE STATE OF DELAWARE FOR ANY LAWSUITS, CLAIMS OR OTHER PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT AND AGREE NOT TO COMMENCE ANY SUCH LAWSUIT, CLAIM OR OTHER PROCEEDING EXCEPT IN SUCH COURTS. THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY LAWSUIT, CLAIM, OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN THE COURTS OF THE STATE OF DELAWARE OR THE UNITED STATES DISTRICT COURTS LOCATED IN THE STATE OF DELAWARE, AND HEREBY FURTHER IRREVOCABLY AND UNCONDITIONALLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH LAWSUIT, CLAIM OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

SECTION 1.13. Legal Holidays. In any case where any Interest Payment Date, Redemption Date or Stated Maturity of any Security or the last date on which a Holder has the right to convert his Securities shall not be a

Business Day, then (notwithstanding any other provision of this Indenture or of the Securities) payment of interest or principal or conversion of the Securities need not be made on such date, but may be made on the next succeeding Business Day (except that, with respect to any Redemption Date, if such Business Day is in the next succeeding calendar year, such Redemption Date shall be the immediately preceding Business Day) with the same force and effect as if made on the Interest Payment Date or Redemption Date, or at the Stated Maturity or on such last day for conversion, provided that no interest shall accrue for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be.

## ARTICLE II

### Security Forms

SECTION 2.01. Forms Generally. The Securities and the Trustee's certificates of authentication shall be substantially in the form of Exhibit A which is hereby incorporated in and expressly made a part of this Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange rule, agreements to which the Company is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Company). The Company shall furnish any such legend not contained in Exhibit A to the Trustee in writing. Each Security shall be dated the date of its authentication. The terms and provisions of the Securities set forth in Exhibit A are part of the terms of this Indenture and to the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

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

SECTION 2.02. Initial Issuance to Property Trustee. The Securities initially issued to the Property Trustee of the Trust shall be in the form of one or more individual certificates in definitive, fully registered form without distribution coupons.

SECTION 2.03. Provisions Required in Global Security. Any Global Security issued hereunder shall bear a legend in substantially the following form:

"THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY (THE "DEPOSITORY") OR A NOMINEE OF THE DEPOSITORY. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITORY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY AS A WHOLE BY THE DEPOSITORY TO A NOMINEE OF THE DEPOSITORY OR BY A NOMINEE OF THE DEPOSITORY TO THE DEPOSITORY OR ANOTHER NOMINEE OF THE DEPOSITORY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) TO CHEMED CORPORATION OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SECURITY 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 HEREON IS MADE TO CEDE & CO., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY A PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN."

SECTION 2.04. Issuance of Global Securities to Holders. The Securities may be represented by one or more Global Securities registered in the name of the Depository or its nominee if, and only if, the Securities are distributed to the Holders of the Trust Securities. Until such time, the Securities shall be registered in the name of, and held by, the Property Trustee. Securities distributed to Holders of book-entry Trust Securities shall be distributed in the form of one or more Global Securities registered in the name of the Depository or its nominee, and deposited with the Security Registrar, as custodian for such Depository, or held by such Depository for credit by the Depository to the respective accounts of the beneficial owners of the Securities represented thereby (or such other accounts as they may direct). Securities distributed to Holders of Trust Securities other than book-entry Trust Securities shall not be issued in the form of a Global Security or any other form intended to facilitate book-entry trading in beneficial interests in such Securities.

## ARTICLE III

## The Securities

SECTION 3.01. Title and Terms. The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is limited to the sum of \$- except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities pursuant to Section 3.04, 3.05, 3.06, 3.07, 9.06, 11.08 or 13.02.

The Securities shall be known and designated as the "Convertible Junior Subordinated Debentures Due 2030" of the Company. Their Stated Maturity shall be March 15, 2030, and they shall bear interest equal to \$0.50 per each \$27 principal amount, during the period from issuance of the Securities to March 15, 2000, and they shall bear interest at the Applicable Rate, from March 15, 2000 or from the most recent Interest Payment Date (as defined below) to which interest has been paid or duly provided for, as the case may be, payable quarterly (subject to deferral as set forth herein), in arrears, on March 15, June 15, September 15 and December 15 (each an "Interest Payment Date") of each year, commencing March 15, 2000, until the principal thereof is paid or made available for payment, and interest payable on an Interest Payment Date shall be paid to the Person in whose name the Security is registered at the close of business on the regular record date for such interest installment, which shall be the close of business on the first of the month in which the applicable Interest Payment Date occurs (the "Regular Record Date"). Interest will compound quarterly and will accrue at the Applicable Rate on any interest installment in arrears for more than one quarter or during an extension of an interest payment period as set forth in Section 3.13 hereof.

Except for the interest payable on March 15, 2000, the amount of interest payable for any period will be computed on the basis of a 360-day year of twelve 30-day months and except as provided in the following sentence, the amount of interest payable for any period shorter than a full quarterly period for which interest is computed, will be computed on the basis of the actual number of days elapsed in such a 30-day month. In the event that any date on which interest is payable on the Securities is not a Business Day, then payment of interest payable on such date will be made on the next succeeding day which is a Business Day (and without any interest or other payment in respect of any such delay), with the same force and effect as if made on such date.



If at any time (including upon the occurrence of a Tax Event) while the Property Trustee is the Holder of all the Securities, the Trust or the Property Trustee is required to pay any taxes, duties, assessments or governmental charges of whatever nature (other than withholding taxes) imposed by the United States, or any other taxing authority, then, in any case, the Company will pay as additional amounts ("Additional Sums") on the Securities held by the Property Trustee, such additional amounts as shall be required so that the net amounts received and retained by the Trust and the Property Trustee after paying such taxes, duties, assessments or other governmental charges will be equal to the amounts the Trust and the Property Trustee would have received had no such taxes, duties, assessments or other governmental charges been imposed.

The principal of and interest on the Securities shall be payable at the office or agency of the Company in New York, New York maintained for such purpose and at any other office or agency maintained by the Company for such purpose 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 any time that the Property Trustee is not the sole holder of the Securities, payment of interest may, at the option of the Company, be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register or by wire transfer.

The Securities shall be redeemable as provided in Article XI hereof.

The Securities shall be subordinated in right of payment to Senior Debt as provided in Article XII hereof.

The Securities shall be convertible as provided in Article XIII hereof.

SECTION 3.02. Denominations. The Securities shall be issuable only in registered form without coupons and only in denominations of \$1,000 and integral multiples thereof.

SECTION 3.03. Execution, Authentication, Delivery and Dating. The Securities shall be executed on behalf of the Company by its Chairman of the Board, its Vice Chairman of the Board, its President or one of its Vice Presidents, under its corporate seal reproduced thereon attested by its Secretary or one of its Assistant Secretaries. The signature of any of these officers on the Securities may be manual or facsimile.

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

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities; and the Trustee in accordance with such Company Order shall manually authenticate and make available for delivery such Securities as in this Indenture provided and not otherwise.

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

SECTION 3.04. Temporary Securities. Pending the preparation of definitive Securities, the Company may execute, and upon Company Order the Trustee shall authenticate and make available for delivery, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

If temporary Securities are issued, the Company will cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for definitive Securities upon surrender of the temporary Securities at any office or agency of the Company designated pursuant to Section 10.02, without charge to the Holder. Upon surrender for cancelation of any one or more temporary Securities, the Company shall execute and the Trustee shall authenticate and make available for delivery in exchange therefor a like principal amount of definitive Securities of authorized denominations. Until so exchanged the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

SECTION 3.05. Global Securities. (a) Each Global Security issued under this Indenture shall be registered in the name of the Depositary designated by the Company for such Global Security or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.

(b) Notwithstanding any other provision in this Indenture, no Global Security may be exchanged in whole or in part for Securities registered, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depositary for such Global Security or a nominee thereof unless (i) such Depositary advises the Trustee in writing that such Depositary is no longer willing or able to continue as a Depositary with respect to such Global Security, and no successor depositary shall have been appointed, or if at any time the Depositary ceases to be a "clearing agency" registered under the Exchange Act, at a time when the Depositary is required to be so registered to act as such depositary, (ii) the Company in its sole discretion determines that such Global Security shall be so exchangeable or (iii) there shall have occurred and be continuing an Event of Default.

(c) If any Global Security is to be exchanged for other Securities or canceled in whole, it shall be surrendered by or on behalf of the Depositary or its nominee to the Security Registrar for exchange or cancellation as provided in this Article III. If any Global Security is to be exchanged for other Securities or canceled in part, or if another Security is to be exchanged in whole or in part for a beneficial interest in any Global Security, then either (i) such Global Security shall be so surrendered for exchange or cancellation as provided in this Article III or (ii) the principal amount thereof shall be reduced or increased by an amount equal to the portion thereof to be so exchanged or canceled, or equal to the principal amount of such other Security to be so exchanged for a beneficial interest therein, as the case may be, by means of an appropriate adjustment made on the records of the Security Registrar, whereupon the Trustee shall instruct the Depositary or its authorized representative to make a corresponding adjustment to its records. Upon any such surrender or adjustment of a Global Security by the Depositary, accompanied by registration instructions, the Trustee shall, subject to Section 3.05(b) and as otherwise provided in this Article III, authenticate and make available for delivery any Securities issuable in exchange for such Global Security (or any portion thereof) in

accordance with the instructions of the Depositary. The Trustee shall not be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be fully protected in relying on, such instructions.

(d) The Depositary or its nominee, as registered owner of a Global Security, shall be the Holder of such Global Security for all purposes under this Indenture and the Securities, and owners of beneficial interests in a Global Security shall hold such interest pursuant to the rules and procedures of the Depositary. Accordingly, any such owner's beneficial interests in a Global Security shall be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depositary or its nominee or its Agent Members. Neither the Trustee nor the Security Registrar shall have any liability in respect of any transfers effected by the Depositary.

(e) The rights of the beneficial interests in a Global Security shall be exercised only through the Depositary and shall be limited to those established by law and agreements between such owners and the Depositary and/or its Agent Members.

SECTION 3.06. Registration, Transfer and Exchange Generally; Certain Transfers and Exchanges. (a) The Company shall cause to be kept at the Corporate Trust Office of the Trustee a register (the register maintained in such office and in any other office or agency designated pursuant to Section 10.02 being herein sometimes collectively referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities and of transfers of Securities. The Trustee is hereby appointed "Security Registrar" for the purpose of registering Securities and transfers of Securities as herein provided.

Upon surrender for registration of transfer of any Security at an office or agency of the Company designated pursuant to Section 10.02 for such purpose, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

At the option of the Holder, Securities may be exchanged for other Securities of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture, upon surrender of the Securities to be exchanged

at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and make available for delivery, the Securities which the Holder making the exchange is entitled to receive.

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

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

No service charge shall be made for any registration of transfer or exchange 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 connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 3.04, 3.05, 9.06, 11.09 or 13.01 not involving any transfer.

Neither the Company nor the Trustee shall be required (i) in the case of a partial redemption of the Securities, to issue, register the transfer of or exchange any Security during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Securities selected for redemption under Section 11.04 and ending at the close of business on the day of such mailing or (ii) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part.

SECTION 3.07. Mutilated, Destroyed, Lost and Stolen Securities. If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and make available for delivery in exchange therefor a new Security of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security and (ii) such security

or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and principal amount and bearing a number not contemporaneously outstanding.

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

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

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

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

SECTION 3.08. Payment of Interest; Interest Rights Preserved. Interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date.

Any interest on any Security which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder,

and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date (as defined below) 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, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a special record date (the "Special Record Date") for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed 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 at his address as it appears in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (2).

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

manner of payment shall be deemed practicable by the Trustee provided that any such payment will be made in coin or currency of the United States of America which at the time of payment is a legal tender for payment of public and private debt.

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

In the case of any Security which is converted after any Regular Record Date and on or prior to the next succeeding Interest Payment Date (other than any Security whose Maturity is prior to such Interest Payment Date), interest whose Stated Maturity is on such Interest Payment Date shall be payable on such Interest Payment Date notwithstanding such conversion, and such interest (whether or not punctually paid or duly provided for) shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on such Regular Record Date. Except as otherwise expressly provided in the immediately preceding sentence, in the case of any Security that is converted prior to any Regular Record Date, interest whose Stated Maturity is after the date of conversion of such Security shall not be payable, and the Company shall not make nor be required to make any other payment, adjustment or allowance with respect to accrued but unpaid interest (including Additional Payments) on the Securities being converted, which shall be deemed to be paid in full.

SECTION 3.09. Persons Deemed Owners. The Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payment of principal of and (subject to Section 3.08) interest on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary. No holder of any beneficial interest in any Global Security held on its behalf by a Depositary shall have any rights under this Indenture with respect to such Global Security, and such Depositary 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 prevent the Company or the Trustee from giving



effect to any written certification, proxy, or other authorization furnished by a Depositary or impair, as between the Depositary and such holders of beneficial interests, the operation of customary practices governing the exercise of the rights of the Depositary (or its nominee) as Holder of any Security.

SECTION 3.10. Cancellation. All Securities surrendered for payment, redemption, registration of transfer or exchange or conversion shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly canceled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly canceled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section, except as expressly permitted by this Indenture. All canceled Securities held by the Trustee shall be disposed of as directed by a Company Order; provided, however, that the Trustee shall not be required to destroy the certificates representing such canceled Securities.

SECTION 3.11. Right of Set Off. Notwithstanding anything to the contrary in this Indenture, the Company shall have the right to set off any payment it is otherwise required to make hereunder to the extent the Company has theretofore made, or is concurrently on the date of such payment making, a payment under the Guarantee.

SECTION 3.12. CUSIP Numbers. The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; provided, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers.

SECTION 3.13. Extension of Interest Payment Period; Notice of Extension. (a) So long as no Event of Default has occurred and is continuing, the Company shall have the right, at any time during the term of this Security after March 15, 2000, from time to time to defer payments of interest by extending for successive periods not exceeding 20 consecutive quarters for each such period (a "Deferral Period"); provided that no Deferral Period may extend beyond

March 15, 2030. To the extent permitted by applicable law, interest, the payment of which has been deferred because of the extension of the interest payment period pursuant to this Section 3.13, will bear interest thereon at the Applicable Rate compounded quarterly for each quarter of the Deferral Period ("Compounded Interest"). On the applicable Payment Resumption Date, the Company shall pay all interest then accrued and unpaid on the Securities, including any Compounded Interest that shall be payable to the Holders of the Securities in whose names the Securities are registered in the Security Register on the Regular Record Date fixed for such Payment Resumption Date. A Deferral Period shall terminate upon the payment by the Company of all interest then accrued and unpaid on the Securities (together with interest thereon accrued at an annual rate equal to the Applicable Rate, compounded quarterly, to the extent permitted by applicable law). Before the termination of any Deferral Period, the Company may further extend such period as provided in paragraph (b) of this Section 3.13, provided that such period together with all such further extensions thereof shall not exceed 20 consecutive quarters or extend beyond the Stated Maturity of the Securities. Upon the termination of any Deferral Period, and subject to the foregoing requirements, the Company may elect to begin a new Deferral Period. No interest shall be due and payable during a Deferral Period except on the Payment Resumption Date as determined pursuant to paragraph (b) of this Section 3.13. There is no limitation on the number of times that the Company may elect to begin a Deferral Period.

(b) The Company shall give the Holder of the Security and the Trustee written notice (a "Deferral Notice") of its selection of a Deferral Period at least ten days prior to the record date for any distributions that would have been payable on the Trust Securities except for the decision to begin or extend a Deferral Period. On or prior to the Regular Record Date immediately preceding the Interest Payment Date on which the Company elects to pay all interest then accrued and unpaid on the Securities, including Compound Interest, (the "Payment Resumption Date") the Company shall give the Holder of the Security and the Trustee written notice that the Deferral Period will end on such Payment Resumption Date. Notwithstanding the provision of such notice, the Company may elect to further extend the Deferral Period, subject to the limitations set forth in Section 3.13(a), by providing the Holder of the Security and the Trustee with a new Deferral Notice not less than three Business Days prior to the Regular Record Date immediately preceding the previously scheduled Payment Resumption Date. The Company may elect to pay all interest then accrued and unpaid on the Securities, including Compound Interest, on an Interest Payment Date prior to its most recently established

Payment Resumption Date provided that the Company gives the Holder of the Security and the Trustee a new Deferral Notice setting forth the revised Payment Resumption Date at least three Business Days prior to the Regular Record Date for such revised Payment Resumption Date.

(c) The quarter in which any Deferral Notice is given pursuant to paragraph (b) hereof shall be counted as one of the 20 quarters permitted in the maximum Deferral Period permitted under paragraph (a) hereof.

SECTION 3.14. Paying Agent, Security Registrar and Conversion Agent. The Trustee will initially act as Paying Agent, Security Registrar and Conversion Agent. The Company may change any Paying Agent, Security Registrar, co-registrar or Conversion Agent without prior notice. The Company or any of its Affiliates may act in any such capacity.

#### ARTICLE IV

##### Satisfaction and Discharge

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

(1) either

(A) all Securities theretofore authenticated and delivered (other than (i) Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.06 and (ii) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 10.03) have been delivered to the Trustee for cancellation; or

(B) all such Securities not theretofore delivered to the Trustee for cancellation

(i) have become due and payable, or

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

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

and the Company, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose an amount sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and interest (including Compounded Interest) to the date of such deposit (in the case of Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

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

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

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 6.07 and, if money shall have been deposited with the Trustee pursuant to subclause (B) of clause (1) of this Section, the obligations of the Trustee under Section 4.02 and the last paragraph of Section 10.03 shall survive.

SECTION 4.02. Application of Trust Money. Subject to the provisions of the last paragraph of Section 10.03, all money deposited with the Trustee pursuant to Section 4.01 shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal and interest for whose payment such money has been deposited with the Trustee. All moneys deposited with the Trustee pursuant to Section 4.01 (and held by it or any Paying Agent) for the payment of

Securities subsequently converted shall be returned to the Company upon Company Request.

## ARTICLE V

### Remedies

SECTION 5.01. Events of Default. "Event of Default," wherever used herein, means any one of the following events that has occurred and is continuing (whatever the reason for such Event of Default and whether it shall be occasioned by the provisions of Article XI or be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(1) default in the payment of any interest upon any Security, including any Additional Payments, when it becomes due and payable, and continuance of such default for a period of 30 days (subject to the deferral of any due date in the case of a Deferral Period); or

(2) default in the payment of the principal of any Security when due, whether at its Maturity, upon redemption, by declaration of acceleration or otherwise; or

(3) default in the observation or performance, in any material respect, of any covenant of the Company in this Indenture (other than a covenant a default in the performance of which or the breach of which is elsewhere in this Section specifically dealt with), and continuance of such default for a period of 90 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate outstanding principal amount of the Securities a written notice specifying such default and requiring it to be remedied; or

(4) failure by the Company to issue and deliver Capital Stock upon an election to convert the Securities into Capital Stock; or

(5) the entry or a decree or order by a court having jurisdiction in the premises adjudging the Company as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the

Company under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or

(6) the institution by the Company of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due and its willingness to be adjudicated a bankrupt, or the taking of corporate action by the Company in furtherance of any such action; or

(7) the voluntary or involuntary dissolution, winding up or termination of the Trust, except in connection with (i) the distribution of Securities to holders of Preferred Securities in liquidation or redemption of their interests in the Trust, (ii) the redemption of all of the outstanding Preferred Securities of the Trust or (iii) certain mergers, consolidations or amalgamations, each as permitted by the Declaration.

SECTION 5.02. Acceleration of Maturity; Rescission and

Annulment. If an Event of Default occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities may declare the principal of all the Outstanding Securities and any other amounts payable hereunder (including any Additional Payments) to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders); provided that, if the Property Trustee is the sole Holder of the Securities and if upon an Event of Default, the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities fail to declare the principal of all the

Securities to be immediately due and payable, the holders of at least 25% in aggregate liquidation amount of Preferred Securities then outstanding shall have such right by a notice in writing to the Company and the Trustee; and upon any such declaration such principal and all accrued interest shall become immediately due and payable. Upon any such declaration such principal amount (or specified amount) of and the accrued interest (including any Additional Payments) on all the Securities of such series shall then become immediately due and payable; provided that the payment of principal and interest on such Securities (including Additional Payments) shall remain subordinated to the extent provided in Article XII.

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

(1) the Company has paid or deposited with the Trustee a sum sufficient to pay

(A) all overdue interest (including any Compounded Interest) on all Securities,

(B) the principal of any Securities which have become due otherwise than by such declaration of acceleration and interest thereon at the rate borne by the Securities, and

(C) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel;

and

(2) all Events of Default, other than the non-payment of the principal of Securities which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 5.13.

The Company is required to file annually with the Trustee a certificate as to whether or not the Company is in compliance with all the conditions and covenants applicable to it under this Indenture.

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

SECTION 5.03. Collection of Indebtedness and Suits for Enforcement by Trustee. The Company covenants that if

(1) default is made in the payment of any interest (including any Compounded Interest) on any Security when such interest becomes due and payable and such default continues for a period of 30 days, or

(2) default is made in the payment of the principal of any Security at the Stated Maturity thereof,

the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and interest (including any Additional Payments) and, to the extent that payment thereof shall be legally enforceable, interest on any overdue principal and on any overdue interest (including any Additional Sums), at the rate borne by the Securities, and, in addition thereto, all amounts owing to the Trustee under Section 6.07.

If an Event of Default occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

SECTION 5.04. Trustee May File Proofs of Claim. In case of any judicial proceeding relative to the Company (or any other obligor upon the Securities), its property or its creditors, the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized under the Trust Indenture Act in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee shall be authorized 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 and any predecessor Trustee under Section 6.07.

No provision of this Indenture 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 5.05. 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 without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of all the amounts owing to the Trustee and any predecessor Trustee under Section 6.07, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

SECTION 5.06. Application of Money Collected. Subject to Article XII, any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal or interest (including any Additional Payments), upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee and any predecessor Trustee under Section 6.07;

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

THIRD: The balance, if any, to the Company.

SECTION 5.07. Limitation on Suits. Subject to Section 5.08, no Holder of any Security shall have any right to institute any proceeding, judicial or otherwise, with

respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

- (1) such Holder has previously given written notice to the Trustee of a continuing Event of Default;
- (2) the Holders of not less than 25% in aggregate principal amount of the Outstanding Securities shall have made written request to the Trustee to institute proceedings in respect of such Event of Default, in its own name as Trustee hereunder;
- (3) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;
- (4) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and
- (5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities;

it being understood and intended that no one or more Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all Holders.

SECTION 5.08. Unconditional Right of Holders to Receive Principal and Interest and to Convert. Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and (subject to Section 3.08) interest (including any Additional Payments) on such Security on the respective Stated Maturities expressed in such Security (or, in the case of redemption, on the Redemption Date) and to convert such Security in accordance with Article XIII and to institute suit for the enforcement of any such payment and right to convert, and such rights shall not be impaired without the consent of such Holder. If the Property Trustee is the sole Holder of the Securities, any holder of the Preferred Securities shall have the right to institute suit on behalf

of the Trust for the enforcement of any such payment and right to convert.

SECTION 5.09. Restoration of Rights and Remedies. If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

SECTION 5.10. Rights and Remedies Cumulative. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 3.07, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 5.11. Delay or Omission Not Waiver. No delay or omission of the Trustee or of any Holder of any Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the 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 5.12. Control by Holders. The Holders of a majority in principal amount of the Outstanding Securities 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, that

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

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

SECTION 5.13. Waiver of Past Defaults. Subject to Section 9.02 hereof, the Holders of not less than a majority in principal amount of the Outstanding Securities may on behalf of the Holders of all the Securities waive any past default hereunder and its consequences, except a default

(1) in the payment of the principal of, premium, if any, or interest (including any Additional Payments) on any Security (unless such default has been cured and a sum sufficient to pay all matured installments of interest and principal due otherwise than by acceleration has been deposited with the Trustee); or

(2) in respect of a covenant or provision hereof which under Article IX cannot be modified or amended without the consent of the Holder of each Outstanding Security affected.

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

SECTION 5.14. Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, a court may require any party litigant in such suit to file an undertaking to pay the costs of such suit, and may assess costs against any such party litigant, in the manner and to the extent provided in the Trust Indenture Act; provided, that neither this Section nor the Trust Indenture Act shall be deemed to authorize any court to require such an undertaking or to make such an assessment in any suit instituted by the Company or the Trustee or in any suit for the enforcement of the right to receive the principal of and interest (including any Additional Payments) on any Security or to convert any Security in accordance with Article XIII.

SECTION 5.15. Waiver of Stay or Extension Laws. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the

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

SECTION 5.16. Enforcement by Holders of Preferred Securities.

Notwithstanding anything to the contrary contained herein, if an Event of Default has occurred and is continuing and such event is attributable to the failure of the Company to pay interest or principal on the Securities on the date such interest or principal is otherwise payable, the Company acknowledges that, in such event, a holder of Preferred Securities may institute a legal proceeding directly for enforcement of payment to such Holder of the principal of or interest on the Debentures having a principal amount equal to the aggregate liquidation amount of the Preferred Securities of such Holder (a "Direct Action") on or after the respective due date specified in the Securities. The Company may not amend this Indenture to remove the foregoing right to bring a Direct Action without the prior written consent of all the holders of Preferred Securities. Notwithstanding any payment made to such holder of Preferred Securities by the Company in connection with a Direct Action, the Company shall remain obligated to pay the principal of and interest on the Securities (including Additional Payments, if any) held by the Trust or the Property Trustee and the Company shall be subrogated to the rights of the holder of such Preferred Securities with respect to payments on the Preferred Securities to the extent of any payments made by the Company to such holder in any Direct Action. The holders of Preferred Securities will not be able to exercise directly any other remedy available to the Holders of the Securities.

ARTICLE VI

The Trustee

SECTION 6.01. Certain Duties and Responsibilities. (a) Except during the continuance of an Event of Default, the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee.

(b) In case an Event of Default has occurred and is continuing, 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 own affairs.

(c) Notwithstanding the foregoing, (i) the duties and responsibilities of the Trustee shall be as provided by the Trust Indenture Act and (ii) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

SECTION 6.02. Notice of Defaults. The Trustee shall give the Holders notice of any default hereunder as and to the extent provided by the Trust Indenture Act; provided, however, that in the case of any default of the character specified in Section 5.01(3), no such notice to Holders shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

SECTION 6.03. Certain Rights of Trustee. Subject to the provisions of Section 6.01:

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

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

(c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically

prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;

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

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

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

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

(h) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith, without negligence or willful misconduct, and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

SECTION 6.04. Not Responsible for Recitals or Issuance of Securities. The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their

correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. The Trustee shall not be accountable for the use or application by the Company of the Securities or the proceeds thereof.

SECTION 6.05. May Hold Securities. The Trustee, any Paying Agent, any Security Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 6.08 and 6.13, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Paying Agent, Security Registrar, or such other agent.

SECTION 6.06. Money Held in Trust. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

SECTION 6.07. Compensation and Reimbursement. The Company agrees:

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

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

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



SECTION 6.08. Disqualification; Conflicting Interests. If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

SECTION 6.09. Corporate Trustee Required; Eligibility. There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least \$50,000,000 and has its Corporate Trust Office in Cincinnati, Ohio. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. Neither the Company nor any Person directly or indirectly controlling, controlled by or under common control with the Company shall serve as Trustee hereunder. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

SECTION 6.10. Resignation and Removal; Appointment of Successor. (a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee under Section 6.11.

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

(c) The Trustee may be removed at any time by Act of the Holders of a majority in principal amount of the Outstanding Securities, delivered to the Trustee and to the Company.

(d) If at any time:

(1) the Trustee shall fail to comply with Section 6.08 after written request therefor by the

Company or by any Holder who has been a bona fide Holder of a Security for at least six months; or

(2) the Trustee shall cease to be eligible under Section 6.09 and shall fail to resign after written request therefor by the Company or by any such Holder; or

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

then, in any such case, (i) the Company may remove the Trustee, or (ii) subject to Section 5.14, any Holder who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, the Company, by a Board Resolution, shall promptly appoint a successor Trustee. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede the successor Trustee appointed by the Company. If no successor Trustee shall have been so appointed by the Company or the Holders and accepted appointment in the manner hereinafter provided, any Holder who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Company shall give written notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee to all Holders in the manner provided in Section 1.06. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

SECTION 6.11. Acceptance of Appointment by Successor. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; provided, that on request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder. Upon request of any such successor Trustee, the Company shall execute any and all instruments required to more fully and certainly vest in and confirm to such successor Trustee all such rights, powers and trusts.

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

SECTION 6.12. Merger, Conversion, Consolidation or Succession to Business. Any Person into which the Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Person succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder; provided such Person shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

SECTION 6.13. 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).

## ARTICLE VII

## Holders' Lists and Reports by Trustee and Company

SECTION 7.01. Company to Furnish Trustee Names and Addresses of Holders. The Company will furnish or cause to be furnished to the Trustee

(a) semiannually, not later than January 15 and July 15 in each year, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of a date not more than 15 days prior to the delivery thereof; and

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

excluding from any such list names and addresses received by the Trustee in its capacity as Security Registrar.

SECTION 7.02. Preservation of Information; Communications to Holders. (a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 7.01 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 7.01 upon receipt of a new list so furnished.

(b) The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Securities, and the corresponding rights and duties of the Trustee, shall be as provided by the Trust Indenture Act.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of any disclosure of information as to names and addresses of Holders made pursuant to the Trust Indenture Act.

SECTION 7.03. Reports by Trustee. (a) Within 60 days after March 15 of each year, commencing March 15, 2000, the Trustee shall transmit by first-class mail to Holders such reports concerning the Trustee and its actions under this Indenture as may be required by Section 313(a) of the Trust Indenture Act in the manner provided pursuant

thereto. The Trustee shall also comply with the other requirements of Section 313 of the Trust Indenture Act.

(b) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which the Securities are listed, with the Commission and with the Company. The Company will notify the Trustee when the Securities are listed on any stock exchange.

SECTION 7.04. Reports by Company. The Company shall file with the Trustee and the Commission, and transmit to Holders, such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant to such Act; provided, that any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act shall be filed with the Trustee within 15 days after the same is so required to be filed with the Commission.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

SECTION 7.05. Tax Reporting. The Company shall provide to the Trustee on a timely basis such information as the Trustee requires to enable the Trustee to prepare and file any form required to be submitted by the Company with the Internal Revenue Service and the Holders relating to original issue discount, including, without limitation, Form 1099-0ID or any successor form.

#### ARTICLE VIII

##### Consolidation, Merger, Conveyance, Transfer or Lease

SECTION 8.01. Company May Consolidate, Etc., Only on Certain Terms. The Company shall not consolidate with or merge with or into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, and no Person shall consolidate with or merge with or into the Company or convey, transfer

or lease its properties and assets substantially as an entirety to the Company, unless:

(1) in case the Company shall consolidate with or merge with or into another Person or convey, transfer or lease all or substantially all of its properties and assets on a consolidated basis to any Person, the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance, transfer or lease, all or substantially all of the properties and assets of the Company on a consolidated basis shall be a corporation, limited liability company, partnership or trust, shall be organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, the due and punctual payment of the principal of and interest (including any Additional Payments) on all the Securities and the performance or observance of every covenant of this Indenture on the part of the Company to be performed or observed and shall have provided for conversion rights in accordance with Article XIII;

(2) immediately after giving effect to such transaction and treating any indebtedness which becomes an obligation of the Company or a Subsidiary as a result of such transaction as having been incurred by the Company or such Subsidiary at the time of such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing;

(3) if at the time any Preferred Securities are outstanding, such consolidation or merger or conveyance, transfer or lease of assets of the Company is permitted under, and does not give rise to any breach or violation of, the Declaration or the Guarantee; and

(4) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

SECTION 8.02. Successor Substituted. Upon any consolidation of the Company with, or merger of the Company into, any other Person or any conveyance, transfer or lease of all or substantially all the properties and assets of the Company on a consolidated basis in accordance with Section 8.01, the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Securities.

#### ARTICLE IX

##### Supplemental Indentures

###### SECTION 9.01. Supplemental Indentures Without Consent of Holders.

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

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

(2) to add to the covenants of the Company for the benefit of the Holders, or to surrender any right or power herein conferred upon the Company; or

(3) to make provision with respect to the conversion rights of Holders pursuant to the requirements of Article XIII; or

(4) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture which shall not be inconsistent with the provisions of this Indenture; provided, that such action pursuant to this clause (4) shall not adversely affect the interests of the Holders of the Securities or, so long as any of the Preferred Securities shall remain outstanding, the holders of the Preferred Securities; or

(5) to comply with the requirements of the Commission in order to effect or maintain the qualification of this Indenture under the Trust Indenture Act.

SECTION 9.02. Supplemental Indentures with Consent of Holders. With the consent of the Holders of not less than a majority in principal amount of the Outstanding Securities, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby,

(1) extend the Stated Maturity of the principal of, or any installment of interest (including any Additional Payments) on, any Security, or reduce the principal amount thereof, or reduce the rate or extend the time for payment of interest thereon, or reduce any premium payable upon the redemption thereof, or change the place of payment where, or the coin or currency in which, any Security 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 Redemption Date), or adversely affect the right to convert any Security as provided in Article XIII (except as permitted by Section 9.01(3)), or modify the provisions of this Indenture with respect to the subordination of the Securities in a manner adverse to the Holders,

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

(3) modify any of the provisions of this Section or Section 5.13, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby.



Notwithstanding anything to the contrary in this Indenture or the Declaration, if the Property Trustee is the sole holder of the Securities, so long as any of the Preferred Securities remains outstanding, no amendment shall be made that adversely affects the holders of such Preferred Securities, and no termination of this Indenture shall occur, and no waiver of any Event of Default or compliance with any covenant under this Indenture shall be effective, without the prior consent of the holders of the percentage of the aggregate liquidation amount of such Preferred Securities then outstanding which is at least equal to the percentage of aggregate stated liquidation amount of the Outstanding Securities as shall be required under this Indenture to effect any such amendment, termination or waiver.

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

SECTION 9.03. Execution of Supplemental Indentures. In executing or accepting the additional trusts created by any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 6.01) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

SECTION 9.04. Effect of Supplemental Indentures. Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby. No such supplemental indenture shall directly or indirectly modify the provisions of Article XII in any manner which might terminate or impair the rights of the Senior Debt pursuant to such subordination provisions.

SECTION 9.05. Conformity with Trust Indenture Act. Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act.

SECTION 9.06. Reference in Securities to Supplemental Indentures. Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture, may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities.

#### ARTICLE X

##### Covenants; Representations and Warranties

SECTION 10.01. Payment of Principal and Interest. The Company will duly and punctually pay the principal of and interest on the Securities in accordance with the terms of the Securities and this Indenture.

SECTION 10.02. Maintenance of Office or Agency. The Company will maintain in the United States an office or agency where Securities may be presented or surrendered for payment, where Securities may be surrendered for registration of transfer, exchange or conversion, and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies (in the United States) where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the United States for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

SECTION 10.03. Money for Security Payments to Be Held in Trust. If the Company shall at any time act as its own Paying Agent, it will, on or before each due date of the principal of or interest on any of the Securities, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal or interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents, it will, prior to each due date of the principal of or interest on any Securities, deposit with a Paying Agent a sum sufficient to pay the principal or interest so becoming due, such sum to be held as provided by the Trust Indenture Act, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

The Company will cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will (i) comply with the provisions of the Trust Indenture Act applicable to it as a Paying Agent and (ii) during the continuance of any default by the Company (or any other obligor upon the Securities) in the making of any payment in respect of the Securities, upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent as such.

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

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of or interest on any Security and remaining unclaimed for two years after such principal or interest has become due and payable, shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of any such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all lia-

bility of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease.

SECTION 10.04. Statement by Officers as to Default. The Company will 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, stating whether or not to the best knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions, covenants and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

SECTION 10.05. Limitation on Dividends; Transactions with Affiliates; Covenants as to the Trust. (a) If at such time (x) there shall have occurred an Event of Default, (y) the Company shall be in default with respect to its payment of any obligations under the Guarantee or (z) the Company shall have given notice of its election to begin a Deferral Period as provided herein and shall not have rescinded such notice, or such Deferral Period shall be continuing, the Company covenants that the Company shall not (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Company's capital stock (which includes common and preferred stock) other than stock dividends which consist of stock of the same class as that on which the dividends are being paid, (ii) make any payment of principal, interest or premium, on or repay or repurchase or redeem any debt securities of the Company that rank pari passu with or junior in interest to the Securities or (iii) make any guarantee payments with respect to any guarantee by the Company of the debt securities of any subsidiary of the Company if such guarantee ranks pari passu with or junior in interest to the Securities (in each case, other than (A) dividends or distributions in Capital Stock, (B) any declaration of a dividend in connection with the implementation of a stockholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto, (C) payments under the Guarantee, (D) purchases or acquisitions of shares of the Capital Stock in connection with the satisfaction by the Company of its obligations under any employee benefit plan or any other contractual obligation of the Company (other than a contractual obligation ranking pari passu with or junior in interest to the Securities), (E) as a result of a reclassification of the Company's capital stock or the exchange or conversion of

one class or series of the Company's capital stock for another class or series of the Company's capital stock or (F) the purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged).

(b) The Company also covenants and agrees (i) that it shall directly or indirectly maintain 100% ownership of the Common Securities of the Trust; provided, however, that any permitted successor of the Company hereunder may succeed to the Company's ownership of such Common Securities and (ii) that it shall use its reasonable efforts, consistent with the terms and provisions of the Declaration, to cause the Trust (x) to remain a statutory business trust, except in connection with the distribution of the Securities to the holders of Trust Securities in liquidation of the Trust, the redemption of all of the Trust Securities of the Trust, or certain mergers, consolidations or amalgamations, each as permitted by the Declaration, and (y) to otherwise continue to be classified as a grantor trust for United States Federal income tax purposes.

SECTION 10.06. Payment of Expenses of the Trust. In connection with the offering, sale and issuance of the Securities to the Property Trustee in connection with the sale of the Trust Securities by the Trust, the Company shall:

(a) pay for all costs, fees and expenses relating to the exchange and issuance of the Securities, including compensation of the Trustee under the Indenture in accordance with the provisions of Section 6.07 of the Indenture;

(b) be responsible for and pay for all debts and obligations (other than with respect to the Trust Securities) of the Trust, pay for all costs and expenses of the Trust (including, but not limited to, costs and expenses relating to the organization of the Trust, the offering, sale and issuance of the Trust Securities (including commissions to the underwriters in connection therewith), the fees and expenses of the Property Trustee and the Delaware Trustee, the costs and expenses relating to the operation of the Trust, including without limitation, costs and expenses of accountants, attorneys, statistical or bookkeeping services, expenses for printing and engraving and computing or accounting equipment, paying agent(s), registrar(s), transfer agent(s), duplicating, travel and telephone and other telecommunications expenses and costs and expenses incurred in connection with the

acquisition, financing, and disposition of Trust assets); and

(c) pay any and all taxes (other than United States withholding taxes attributable to the Trust or its assets) and all liabilities, costs and expenses with respect to such taxes of the Trust.

## ARTICLE XI

### Redemption of Securities

SECTION 11.01. Optional Redemption. The Company shall have the right to redeem the Securities (an "Optional Redemption") in whole or in part, at any time or from time to time on or after March 15, 2003, at a Redemption Price equal to \$27.27 per \$27 principal amount of the Securities to be redeemed plus any accrued and unpaid interest, including Additional Payments, if any, to the Redemption Date, if redeemed on or before March 15, 2004, and thereafter at \$27 per \$27 principal amount of the Securities plus, in each case, any accrued and unpaid interest, including Additional Payments, if any, to the Redemption Date.

SECTION 11.02. Tax Event Redemption. (a) If a Tax Event has occurred and is continuing and:

(1) the Company has received a Redemption Tax Opinion; or

(2) the Issuer Trustees shall have been informed by nationally recognized independent tax counsel (reasonably acceptable to the Issuer Trustees) experienced in such matters that a No Recognition Opinion cannot be delivered,

then the Company shall have the right upon not less than 20 days, nor more than 60 days, notice to the Holders of the Securities to redeem the Securities in whole, but not in part, for cash at \$27.27 per \$27 principal amount of the Securities plus accrued and unpaid interest, including Additional Payments, if any, to the Redemption Date, within 90 days following the occurrence of such Tax Event (the "90 Day Period"); provided, however, that if, at the time there is available to the Company or the Trust the opportunity to eliminate, within the 90 Day Period, the Tax Event by taking some ministerial action, including, but not limited to, filing a form or making an election, or pursuing some other similar reasonable measure which, in the sole judgment of the Company, will have no adverse effect on the

Company, the Trust or the Holders of the Preferred Securities and will involve no material cost, then the Company or the Trust shall pursue such ministerial action or other measure in lieu of redemption; and provided further that the Company shall have no right to redeem the Securities while the Trust is pursuing any ministerial action or other similar measure pursuant to its obligations under the Declaration.

(b) If the Company opts not to redeem the Securities pursuant to this Section 11.02, the Company shall be required to pay Additional Sums in respect of the Securities pursuant to Section 3.01 for so long as (i) a Tax Event has occurred and is continuing and (ii) the Property Trustee is the sole Holder of the Securities.

SECTION 11.03. Selection by Trustee of Securities to Be Redeemed. If less than all the Securities are to be redeemed (unless such redemption affects only a single Security), the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee by such method as the Trustee shall deem fair and appropriate, from the Outstanding Securities not previously called for redemption. Such selection method may provide for the selection for redemption of portions (equal to \$27 or any integral multiple thereof) of the principal amount of the Securities.

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

The provisions of the two preceding paragraphs shall not apply with respect to any redemption affecting only a single Security, whether such Security is to be redeemed in whole or in part. In the case of any such redemption in part, the unredeemed portion of the principal amount of the Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

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

SECTION 11.04. Notice of Redemption. Notice of redemption shall be given by first-class mail, postage

prepaid, mailed not less than 30 (or, in the case of a redemption pursuant to Section 11.02 hereof, 20) nor more than 60 days prior to the Redemption Date, to each Holder of Securities to be redeemed, at such Holder's address appearing in the Security Register.

All notices of redemption given pursuant to this Article XI shall identify the Securities to be redeemed (including, if relevant, CUSIP or ISIN number) and shall state:

(1) the Redemption Date,

(2) the Redemption Price,

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

(4) the place or places where such Securities are to be surrendered for payment of the Redemption Price, and

(5) the date on which the right to convert the Securities to be redeemed will terminate and the places where such Securities may be surrendered for conversion.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company.

SECTION 11.05. Deposit of Redemption Price. Prior to 12:00 noon on any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 10.03) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on, all the Securities which are to be redeemed on that date.

If any Security called for redemption is converted, any money deposited with the Trustee or with any Paying Agent or so segregated and held in trust for the redemption of such Security shall (subject to any right of the Holder of such Security or any Predecessor Security to receive interest as provided in the last paragraph of Section 3.08) be paid to the Company upon Company Request



or, if then held by the Company, shall be discharged from such trust.

SECTION 11.06. Securities Payable on Redemption Date. Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Company at the Redemption Price; provided, however, that installments of interest whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to the terms and the provisions of Section 3.08.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid, bear interest from the Redemption Date at the rate borne by the Security.

SECTION 11.07. Securities Redeemed in Part. (a) In the event of any redemption in part, the Company shall not be required (i) to issue, register the transfer of or exchange any Security during a period beginning at the opening of business 15 days before the date of the mailing of a notice of redemption of Securities selected for redemption and ending at the close of business on the day of such mailing and (ii) to register the transfer of or exchange any Securities so selected for redemption, in whole or in part, except for the unredeemed portion of any Securities being redeemed in part.

(b) If a partial redemption of the Securities would result in the delisting of the Preferred Securities issued by the Trust from any national securities exchange or other organization on which the Preferred Securities are listed, the Company shall not be permitted to effect such partial redemption and may only redeem the Securities in whole.

(c) Any Security which is to be redeemed only in part shall be surrendered at a place of payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee

shall authenticate and make available for delivery to the Holder of such Security without service charge, a new Security or Securities, of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered. If a Global Security is surrendered, such new Security will (subject to Section 3.06) also be a new Global Security.

## ARTICLE XII

### Subordination of Securities

SECTION 12.01. Agreement to Subordinate. The Company covenants and agrees, and each Holder of Securities by such Holder's acceptance thereof likewise covenants and agrees, that all Securities shall be issued subject to the provisions of this Article XII; and each Holder of a Security, whether upon original issue or upon transfer or assignment thereof, accepts and agrees to be bound by such provisions. The payment by the Company of the principal of, premium, if any, and interest (including Additional Payments) on all Securities issued hereunder shall, to the extent and in the manner hereinafter set forth, be subordinated and junior in right of payment to the prior payment in full of all Senior Debt, whether outstanding at the date of this Indenture or thereafter incurred; provided, however, that no provision of this Article XII shall prevent the occurrence of any default or Event of Default hereunder.

SECTION 12.02. Default on Senior Debt. In the event and during the continuation of any default by the Company in the payment of principal, premium, interest or any other payment due on any Senior Debt continuing beyond the period of grace, if any, specified in the instrument evidencing such Senior Debt, unless and until such default shall have been cured or waived or shall have ceased to exist, and in the event that the maturity of any Senior Debt has been accelerated because of a default, then no payment shall be made by the Company with respect to the principal of (including redemption payments), premium, if any, or interest on the Securities.

In the event that, notwithstanding the foregoing, any payment shall be received by the Trustee when such payment is prohibited by the preceding paragraph of this Section 12.02, such payment shall be held in trust for the benefit of, and shall be paid over or delivered to, the holders of Senior Debt or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any of such Senior Debt may have been issued, as

their respective interests may appear, but only to the extent that the holders of the Senior Debt (or their representative or representatives or a trustee) notify the Trustee in writing within 90 days of such payment of the amounts then due and owing on the Senior Debt and only the amounts specified in such notice to the Trustee shall be paid to the holders of Senior Debt.

SECTION 12.03. Liquidation; Dissolution; Bankruptcy. Upon any payment by the Company or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to creditors upon any dissolution or winding up or liquidation or reorganization of the Company, whether voluntary or involuntary, or in bankruptcy, insolvency, receivership or other proceedings, all amounts (including principal, premium, if any, and interest) due or to become due upon all Senior Debt shall first be paid in full, or payment thereof provided for in money in accordance with its terms, before any payment is made on account of the principal (and premium, if any) or interest on the Securities; and upon any such dissolution or winding up or liquidation or reorganization, any payment by the Company, or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the Holders of the Securities or the Trustee would be entitled, except for the provisions of this Article XII, shall be paid by the Company or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, or by the Holders of the Securities or by the Trustee under this Indenture if received by them or it, directly to the holders of Senior Debt (pro rata to such holders on the basis of the respective amounts of Senior Debt held by such holders, as calculated by the Company) or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Debt may have been issued, as their respective interests may appear, to the extent necessary to pay such Senior Debt in full, in money or money's worth, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Debt, before any payment or distribution is made to the Holders of Securities or to the Trustee.

In the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, prohibited by the foregoing shall be received by the Trustee or the Holders of the Securities before all Senior Debt is paid in full, or provision is made for such payment in money in accordance with its terms, such payment or distribution shall be held in trust for the benefit of and shall be paid over or delivered to the holders of Senior Debt or their

representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Debt may have been issued, and their respective interests may appear, as calculated by the Company, for application to the payment of all Senior Debt remaining unpaid to the extent necessary to pay such Senior Debt in full in money in accordance with its terms, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Debt.

For purposes of this Article XII, the words, "cash, property or securities" shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment, the payment of which is subordinated at least to the extent provided in this Article XII with respect to the Securities to the payment of all Senior Debt which may at the time be outstanding; provided that (i) such Senior Debt is assumed by the new corporation, if any, resulting from any such reorganization or readjustment, and (ii) the rights of the holders of such Senior Debt are not, without the consent of such holders, altered by such reorganization or readjustment. The consolidation of the Company with, or the merger of the Company with or into, another Person or the liquidation or dissolution of the Company following the conveyance, transfer or lease of all or substantially all its properties and assets on a consolidated basis to another Person upon the terms and conditions provided for in Article VIII hereof shall not be deemed a dissolution, winding up, liquidation or reorganization for the purposes of this Section 12.03 if such other Person shall, as a part of such consolidation, merger, conveyance, transfer or lease, comply with the conditions stated in Article VIII hereof. Nothing in Section 12.02 or in this Section 12.03 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.07 hereof.

SECTION 12.04. Subrogation. Subject to the payment in full of all Senior Debt, the rights of the Holders of the Securities shall be subrogated to the rights of the holders of such Senior Debt to receive payments or distributions of cash, property or securities of the Company, as the case may be, applicable to such Senior Debt until the principal of (and premium, if any) and interest on the Securities shall be paid in full; and, for the purposes of such subrogation, no payments or distributions to the holders of such Senior Debt of any cash, property or securities to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article XII, and no payment pursuant to the provisions of this Article XII, to or for the benefit of the holders of

such Senior Debt by Holders of the Securities or the Trustee, shall, as between the Company, its creditors other than holders of Senior Debt, and the Holders of the Securities, be deemed to be a payment by the Company to or on account of such Senior Debt. It is understood that the provisions of this Article XII are and are intended solely for the purposes of defining the relative rights of the Holders of the Securities, on the one hand, and the holders of such Senior Debt on the other hand.

Nothing contained in this Article XII or elsewhere in this Indenture or in the Securities is intended to or shall impair, as between the Company, its creditors other than the holders of Senior Debt, and the Holders of the Securities, the obligation of the Company, which is absolute and unconditional, to pay to the Holders of the Securities the principal of (and premium, if any) and interest on the Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the Holders of the Securities and creditors of the Company, as the case may be, other than the holders of Senior Debt, nor shall anything herein or therein prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article XII of the holders of such Senior Debt in respect of cash, property or securities of the Company, as the case may be, received upon the exercise of any such remedy.

Upon any payment or distribution of assets of the Company referred to in this Article XII, the Trustee, subject to the provisions of Section 6.03, and the Holders of the Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which such dissolution, winding up, liquidation or reorganization proceedings are pending, or a certificate of the receiver, trustee in bankruptcy, liquidation trustee, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of the Securities, for the purposes of ascertaining the Persons entitled to participate in such distribution, the holders of the Senior Debt and other indebtedness of the Company, as the case may be, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article XII.

SECTION 12.05. Trustee to Effectuate Subordination. Each Holder of Securities by such Holder's acceptance thereof authorizes and directs the Trustee on such Holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this

Article XII and appoints the Trustee as such Holder's attorney-in-fact for any and all such purposes.

SECTION 12.06. Notice by the Company. The Company shall give prompt written notice to a Responsible Officer of the Trustee of any fact known to the Company which would prohibit the making of any payment of monies to or by the Trustee in respect of the Securities pursuant to the provisions of this Article XII. Notwithstanding the provisions of this Article XII or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment of monies to or by the Trustee in respect of the Securities pursuant to the provisions of this Article XII unless and until a Responsible Officer of the Trustee shall have received written notice thereof at the Corporate Trust Office of the Trustee from the Company or a holder or holders of Senior Debt or from any trustee therefor; and before the receipt of any such written notice, the Trustee, subject to the provisions of Section 6.03 hereof, shall be entitled in all respects to assume that no such facts exist; provided, however, that if the Trustee shall not have received the notice provided for in this Section 12.06 at least two 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 (and premium, if any) or interest on any Security), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such money and to apply the same to the purposes for which it was received, and shall not be affected by any notice to the contrary which may be received by it within two Business Days prior to such date.

The Trustee, subject to the provisions of Section 6.03, shall be entitled to rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Debt (or a trustee on behalf of such holder) to establish that such notice has been given by a holder of such Senior Debt or a trustee on behalf of any such holder or holders. In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Debt to participate in any payment or distribution pursuant to this Article XII, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Debt held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the right of such Person under this Article XII, and, if such evidence is not furnished, the Trustee may defer any payment to such Person pending

judicial determination as to the right of such Person to receive such payment.

SECTION 12.07. Rights of the Trustee; Holders of Senior Debt. The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article XII in respect of any Senior Debt at any time held by it, to the same extent as any other holder of Senior Debt, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

With respect to the holders of Senior Debt of the Company, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are set forth in this Article XII, and no implied covenants or obligations with respect to the holders of such Senior Debt shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of such Senior Debt and, subject to the provisions of Section 6.03, the Trustee shall not be liable to any holder of such Senior Debt if it shall pay over or deliver to Holders of Securities, the Company or any other Person money or assets to which any holder of such Senior Debt shall be entitled by virtue of this Article XII or otherwise.

SECTION 12.08. Subordination May Not Be Impaired. No right of any present or future holder of any Senior Debt to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof which any such holder may have or otherwise be charged with.

Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Debt may, at any time and from time to time, without the consent of or notice to the Trustee or the Holders of the Securities, without incurring responsibility to the holders of the Securities and without impairing or releasing the subordination provided in this Article XII or the obligations hereunder of the Holders of the Securities to the holders of Senior Debt, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, such Senior Debt, or otherwise amend or supplement in any manner such Senior Debt or any instrument evidencing the same or any agreement under which such Senior Debt is outstanding; (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing such Senior Debt; (iii) release any

Person liable in any manner for the collection of such Senior Debt; and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

### ARTICLE XIII

#### Conversion of Securities

SECTION 13.01. Conversion Rights. Subject to and upon compliance with the provisions of this Article, the Securities are convertible, at the option of the Holder, at any time prior to 5:00 p.m. New York City time on March 15, 2030 into fully paid and nonassessable shares of Capital Stock of the Company at an initial conversion rate of 0.73 shares of Capital Stock for each \$27 in aggregate principal amount of Securities (the "Initial Conversion Ratio") (equal to a conversion price of \$37 principal amount of Securities per share of Capital Stock (the "Initial Conversion Price")). The conversion ratio and the equivalent conversion price in effect at any given time are known as the "Applicable Conversion Ratio" and the "Applicable Conversion Price", respectively, and are subject to adjustment as described in this Article XIII. A Holder of Securities may convert any portion of the principal amount of the Securities into that number of fully paid and nonassessable shares of Capital Stock (calculated as to each conversion to the nearest 1/100th of a share) obtained by dividing the principal amount of the Securities to be converted by the Applicable Conversion Ratio. In case a Security or portion thereof is called for redemption, such conversion right in respect of the Security or portion so called shall expire at the close of the Business Day immediately preceding the corresponding Redemption Date, unless the Company defaults in making the payment due upon redemption.

SECTION 13.02. Conversion Procedures. (a) In order to convert all or a portion of the Securities, the Holder thereof shall deliver to the Conversion Agent an irrevocable Notice of Conversion setting forth the principal amount of Securities to be converted, together with the name or names, if other than the Holder, in which the shares of Capital Stock should be issued upon conversion and, if such Securities are definitive Securities, surrender to the Conversion Agent the Securities to be converted, duly endorsed or assigned to the Company or in blank. In addition, a holder of Preferred Securities may exercise its right under the Declaration to convert such Preferred Securities into Capital Stock by delivering to the Conversion Agent an irrevocable Notice of Conversion setting forth the information called for by the preceding sentence and direct-



ing the Conversion Agent (i) to exchange such Preferred Security for a portion of the Securities held by the Trust (at an exchange rate of \$27 principal amount of Securities for each Preferred Security) and (ii) to immediately convert such Securities, on behalf of such holder, into Capital Stock of the Company pursuant to this Article XIII and, if such Preferred Securities are in definitive form, surrendering such Preferred Securities, duly endorsed or assigned to the Company or in blank. So long as any Preferred Securities are outstanding, the Trust shall not convert any Securities except pursuant to a Notice of Conversion duly executed and delivered to the Conversion Agent by a holder of Preferred Securities.

If a Notice of Conversion is delivered on or after the Regular Record Date and prior to the subsequent Interest Payment Date, the Holder will be entitled to receive the interest payable on the subsequent Interest Payment Date on the portion of Securities to be converted notwithstanding the conversion thereof prior to such Interest Payment Date (unless the Maturity of such portion of such Security is prior to such Interest Payment Date). Except as otherwise provided in the immediately preceding sentence, in the case of any Security which is converted, interest whose Stated Maturity is after the date of conversion of such Security shall not be payable, and the Company shall not make nor be required to make any other payment, adjustment or allowance with respect to accrued but unpaid interest on the Securities being converted, which shall be deemed to be paid in full. Each conversion shall be deemed to have been effected immediately prior to the close of business on the day on which the Notice of Conversion was received (the "Conversion Date") by the Conversion Agent from the Holder or from a holder of the Preferred Securities effecting a conversion thereof pursuant to its conversion rights under the Declaration, as the case may be. The Person or Persons entitled to receive the Capital Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Capital Stock as of the Conversion Date. As promptly as practicable on or after the Conversion Date, the Company shall issue and deliver at the office of the Conversion Agent, unless otherwise directed by the Holder in the Notice of Conversion, a certificate or certificates for the number of full shares of Capital Stock issuable upon such conversion, together with the cash payment, if any, in lieu of any fraction of any share to the Person or Persons entitled to receive the same. The Conversion Agent shall deliver such certificate or certificates to such Person or Persons.

(b) Subject to any right of the Holder of such Security or any Predecessor Security to receive interest as

provided in the last paragraph of Section 3.08 and the second paragraph of clause (a) of Section 13.02, the Company's delivery upon conversion of the whole number of shares of Capital Stock into which the Securities are convertible (together with the cash payment, if any, in lieu of fractional shares) shall be deemed to satisfy the Company's obligation to pay the principal amount at Maturity of the portion of Securities so converted and any unpaid interest (including Compounded Interest and Additional Sums) accrued on such Securities at the time of such conversion.

(c) No fractional shares of Capital Stock will be issued as a result of conversion, but in lieu thereof, the Company shall pay to the Conversion Agent a cash adjustment in an amount equal to the same fraction of the Closing Price of such fractional interest on the date on which the Securities or Preferred Securities, as the case may be, were duly surrendered to the Conversion Agent for conversion, or, if such day is not a Trading Day, on the next Trading Day, and the Conversion Agent in turn will make such payment, if any, to the Holder of the Securities or the holder of the Preferred Securities so converted.

(d) In the event of the conversion of any Security in part only, a new Security or Securities for the unconverted portion thereof will be issued in the name of the Holder thereof upon the cancelation thereof in accordance with Section 3.06.

(e) In effecting the conversion transactions described in this Section, the Conversion Agent is acting as agent of the holders of Preferred Securities (in the exchange of Preferred Securities for Securities) and as agent of the Holders of Securities (in the conversion of Securities into Capital Stock), as the case may be, directing it to effect such conversion transactions. The Conversion Agent is hereby authorized (x) if the Trust exists, (i) to exchange Securities held by or on behalf of the Trust from time to time for Preferred Securities in connection with the conversion of such Preferred Securities in accordance with this Article XIII and (ii) to convert all or a portion of the Securities into Capital Stock and thereupon to deliver such shares of Capital Stock in accordance with the provisions of this Article XIII and to deliver to the Trust a new Security or Securities for any resulting unconverted principal amount and (y) if the Trust no longer exists (i) to exchange Securities held by the Holders in connection with the conversion of such Securities in accordance with this Article XIII and (ii) to convert all or a portion of the Securities into Capital Stock and thereupon to deliver such shares of Capital Stock in accordance with the provisions of this Article XIII and to deliver to such

Holders a new Security or Securities for any resulting unconverted principal amount.

SECTION 13.03. Conversion Price Adjustments. The Applicable Conversion Price shall be subject to adjustment (without duplication) from time to time as follows:

(i) In case the Company shall pay a dividend or make a distribution on the Capital Stock exclusively in Capital Stock, the Applicable Conversion Price in effect at the opening of business on the day following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be reduced by multiplying such Applicable Conversion Price by a fraction of which the numerator shall be the number of shares of Capital Stock outstanding at the close of business on the date fixed for such determination and the denominator shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution, such reduction to become effective immediately after the opening of business on the day following the date fixed for such determination. For the purposes of this subparagraph (i), the number of shares of Capital Stock at any time outstanding shall not include shares held in the treasury of the Company. In the event that such dividend or distribution is not so paid or made, the Applicable Conversion Price shall again be adjusted to be the Applicable Conversion Price which would then be in effect if such dividend or distribution had not occurred.

(ii) In case the Company shall pay or make a dividend or other distribution on its Capital Stock consisting exclusively of, or shall otherwise issue to all holders of its Capital Stock, rights or warrants, in each case entitling the holders thereof to subscribe for or purchase shares of Capital Stock at a price per share less than the current market price per share (determined as provided in subparagraph (vii)) of the Capital Stock on the date fixed for the determination of stockholders entitled to receive such rights or warrants, the Applicable Conversion Price in effect at the opening of business on the day following the date fixed for such determination shall be reduced by multiplying such Applicable Conversion Price by a fraction of which the numerator shall be the number of shares of Capital Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Capital Stock which the aggregate of the offering price of the total number of shares of Capital Stock so offered for subscription or

purchase would purchase at such current market price and the denominator shall be the number of shares of Capital Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Capital Stock so offered for subscription or purchase, such reduction to become effective immediately after the opening of business on the day following the date fixed for such determination. To the extent that rights are not so issued or shares of Capital Stock are not so delivered after the expiration of such rights or warrants, the Applicable Conversion Price shall be readjusted to the Applicable Conversion Price which would then be in effect if such date fixed for the determination of stockholders entitled to receive such rights or warrants had not been fixed. For the purposes of this subparagraph (ii), the number of shares of Capital Stock at any time outstanding shall not include shares held in the treasury of the Company.

(iii) In case outstanding shares of Capital Stock shall be subdivided into a greater number of shares of Capital Stock, the Applicable Conversion Price in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately reduced and, conversely, in case outstanding shares of Capital Stock shall each be combined into a smaller number of shares of Capital Stock, the Applicable Conversion Price in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately increased, such reduction or increase, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(iv) Subject to the last sentence of this subparagraph (iv), in case the Company shall, by dividend or otherwise, distribute to all holders of its Capital Stock evidences of its indebtedness, shares of any class or series of capital stock, cash or assets (including securities, but excluding any rights or warrants referred to in subparagraph (ii) of this Section 13.03, any dividend or distribution paid exclusively in cash and any dividend or distribution referred to in subparagraph (i) of this Section 13.03), the Applicable Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Applicable Conversion Price in effect immediately prior to the effectiveness of the Applicable Conversion Price reduction contemplated by

this subparagraph (iv) by a fraction of which the numerator shall be the current market price per share (determined as provided in subparagraph (vii) of this Section 13.03) of the Capital Stock on the date fixed for the determination of stockholders entitled to receive such distribution (the "Reference Date") less the fair market value (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors), on the Reference Date, of the portion of the evidences of indebtedness, shares of capital stock, cash and assets so distributed applicable to one share of Capital Stock and the denominator shall be such current market price per share of the Capital Stock, such reduction to become effective immediately prior to the opening of business on the day following the Reference Date. In the event that such dividend or distribution is not so paid or made, the Applicable Conversion Price shall again be adjusted to be the Applicable Conversion Price which would then be in effect if such dividend or distribution had not occurred. For purposes of this subparagraph (iv), any dividend or distribution that includes shares of Capital Stock or rights or warrants to subscribe for or purchase shares of Capital Stock shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, shares of capital stock, cash or assets other than such shares of Capital Stock or such rights or warrants (making any Applicable Conversion Price reduction required by this subparagraph (iv)) immediately followed by (2) a dividend or distribution of such shares of Capital Stock or such rights or warrants (making any further Applicable Conversion Price reduction required by subparagraph (i) or (ii) of this Section 13.03), except any shares of Capital Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the date fixed for such determination" within the meaning of subparagraph (i) of this Section 13.03.

(v) In case the Company shall pay or make a dividend or other distribution on its Capital Stock exclusively in cash (excluding cash dividends to the extent that the annualized per share amount thereof does not exceed 12 1/2 of the current market price per share of the Capital Stock on the Trading Day next preceding the date of declaration of such dividend), the Applicable Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Applicable Conversion Price in effect immediately prior to the effectiveness of the

Applicable Conversion Price reduction contemplated by this subparagraph (v) by a fraction of which the numerator shall be the current market price per share (determined as provided in subparagraph (vii) of this Section 13.03) of the Capital Stock on the date fixed for the payment of such distribution less the amount of cash so distributed and not excluded as provided applicable to one share of Capital Stock and the denominator shall be such current market price per share of the Capital Stock, such reduction to become effective immediately prior to the opening of business on the day following the date fixed for the payment of such distribution; provided, however, that in the event the portion of the cash so distributed applicable to one share of Capital Stock is equal to or greater than the current market price per share (as defined in subparagraph (vii) of this Section 13.03) of the Capital Stock on the record date mentioned above, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder of Securities shall have the right to receive upon conversion the amount of cash such Holder would have received had such Holder converted each Security immediately prior to the record date for the distribution of the cash. In the event that such dividend or distribution is not so paid or made, the Applicable Conversion Price shall again be adjusted to be the Applicable Conversion Price which would then be in effect if such record date had not been fixed.

(vi) In case a tender or exchange offer (other than an odd-lot offer) made by the Company or any Subsidiary of the Company for all or any portion of the Company's Capital Stock shall expire and such tender or exchange offer shall involve the payment by the Company or such Subsidiary of consideration per share of Capital Stock having a fair market value (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) at the last time (the "Expiration Time") tenders or exchanges may be made pursuant to such tender or exchange offer (as it shall have been amended) that exceeds 110% of the current market price per share (determined as provided in subparagraph (vii) of this Section 13.03) of the Capital Stock on the Trading Day next succeeding the Expiration Time, the Applicable Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Applicable Conversion Price in effect immediately prior to the effectiveness of the Applicable Conversion Price reduction contemplated by this subparagraph (vi) by a fraction of which

the numerator shall be the number of shares of Capital Stock outstanding (including any tendered or exchanged shares) at the Expiration Time multiplied by the current market price per share (determined as provided in subparagraph (vii) of this Section 13.03) of the Capital Stock on the Trading Day next succeeding the Expiration Time and the denominator shall be the sum of (x) the fair market value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the "Purchased Shares") and (y) the product of the number of shares of Capital Stock outstanding (less any Purchased Shares) at the Expiration Time and the current market price per share (determined as provided in subparagraph (vii) of this Section 13.03) of the Capital Stock on the Trading Day next succeeding the Expiration Time, such reduction to become effective immediately prior to the opening of business on the day following the Expiration Time.

(vii) For the purpose of any computation under subparagraphs (ii), (iv), (v) and (vi) of this Section 13.03, the current market price per share of Capital Stock on any date in question shall be deemed to be the average of the daily Closing Prices for the ten consecutive Trading Days prior to the earlier of the day in question and, if applicable, the day before the "ex" date with respect to the issuance or distribution requiring such computation; provided, however, that if another event occurs that would require an adjustment pursuant to subparagraphs (i) through (vi) of this Section 13.03, inclusive, the Board of Directors may make such adjustments to the Closing Prices during such five Trading Day period as it deems appropriate to effectuate the intent of the adjustments in this Section 13.03, in which case any such determination by the Board of Directors shall be set forth in a Board Resolution and shall be conclusive. For purposes of this paragraph, the term "ex" date, (1) when used with respect to any issuance or distribution, means the first date on which the Capital Stock is quoted regular way on the New York Stock Exchange Composite Tape or on such successor securities exchange on which the Capital Stock may be quoted or listed or in the relevant market from which the Closing Prices were obtained without the right to receive such issuance or distribution, and (2) when used with respect to any tender or exchange offer means the first

date on which the Capital Stock is quoted regular way on such securities exchange or in such market after the Expiration Time of such offer.

(viii) The Company may make such reductions in the Applicable Conversion Price, in addition to those required by subparagraphs (i), (ii), (iii), (iv), (v) and (vi) of this Section 13.03, as it considers to be advisable to avoid or diminish any income tax to holders of Capital Stock or rights to purchase Capital Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

(ix) There shall also be no adjustment of the Applicable Conversion Price in case of the issuance of any Capital Stock (or securities convertible into or exchangeable for Capital Stock), except as specifically described above. If any action would require adjustment of the Applicable Conversion Price, pursuant to more than one of the anti-dilution provisions set forth in this Article XIII, only one adjustment shall be made and such adjustment shall be the amount of adjustment that has the highest absolute value to Holders. Furthermore, no adjustment in the Applicable Conversion Price shall be required unless such adjustment would require an increase or decrease of at least 1% in the Applicable Conversion Price; provided, however, that any adjustments which by reason of this sentence are not required to be made shall be carried forward and taken into account in determining whether any subsequent adjustment shall be required.

SECTION 13.04. Reclassification, Consolidation, Merger or Sale of Assets. In the event that the Company shall be a party to any transaction (including without limitation (a) any recapitalization or reclassification of the Capital Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination of the Capital Stock), (b) any consolidation of the Company with, or merger of the Company into, any other Person, any merger of another Person into the Company (other than a merger which does not result in a reclassification, conversion, exchange or cancellation of outstanding shares of Capital Stock of the Company), (c) any sale or transfer of all or substantially all of the assets of the Company or (d) any compulsory share exchange) (each of the events in the preceding clauses (a) through (d) being referred to as a "Company Transaction"), in each case, as a result of which shares of Capital Stock shall be converted into the right to receive other securities, cash or other property, then



lawful provision shall be made as part of the terms of such Company Transaction whereby the Holder of each Security then outstanding shall have the right thereafter to convert such Security only into (i) in the case of any Company Transaction other than a Capital Stock Fundamental Change, the kind and amount of securities, cash and other property receivable upon the consummation of the Company Transaction by a holder of that number of shares of Capital Stock into which such Security was convertible immediately prior to such transaction, after giving effect to any adjustment in the Applicable Conversion Price required by the provision of Section 13.07(a)(i), and (ii) in the case of a Company Transaction involving a Capital Stock Fundamental Change, common stock of the kind received by holders of Capital Stock as a result of such Capital Stock Fundamental Change in an amount determined pursuant to the provisions of Section 13.07(a)(ii). Holders of the Securities shall have no voting rights with respect to any Company Transaction described in this Section 13.04.

The Company or the Person formed by such consolidation or resulting from such merger or which acquired such assets or which acquires the Company's shares, as the case may be, shall make provision in its certificate or articles of incorporation or other constituent document to establish such right. Such certificate or articles of incorporation or other constituent document shall provide for adjustments which, for events subsequent to the effective date of such certificate or articles of incorporation or other constituent document, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article XIII. The above provisions shall similarly apply to successive transactions of the foregoing type.

SECTION 13.05. Notice of Adjustments of Conversion Price. Whenever the Applicable Conversion Price is adjusted as herein provided:

(a) the Company shall compute the adjusted Applicable Conversion Price and shall prepare a certificate signed by the Chief Financial Officer or the Treasurer of the Company setting forth the adjusted Applicable Conversion Price and showing in reasonable detail the facts upon which such adjustment is based, and such certificate shall forthwith be filed with the Trustee, the Conversion Agent and the transfer agent for the Preferred Securities and the Securities; and

(b) a notice stating the Applicable Conversion Price has been adjusted and setting forth the adjusted Applicable Conversion Price shall as soon as practicable be mailed by the Company to all record holders of

Preferred Securities and the Securities at their last addresses as they appear upon the stock transfer books of the Company and the books and records of the Trust, respectively.

SECTION 13.06. Prior Notice of Certain Events. In case:

(i) the Company shall (1) declare any dividend (or any other distribution) on its Capital Stock, other than (A) a dividend payable in shares of Capital Stock or (B) a dividend payable in cash that would not require an adjustment pursuant to Section 13.03(iv) or (v) or (2) authorize a tender or exchange offer that would require an adjustment pursuant to Section 13.03(vi);

(ii) the Company shall authorize the granting to all holders of Capital Stock of rights or warrants to subscribe for or purchase any shares of stock of any class or series or of any other rights or warrants;

(iii) of any reclassification of Capital Stock (other than a subdivision or combination of the outstanding Capital Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company shall be required, or of the sale or transfer of all or substantially all of the assets of the Company or of any compulsory share exchange whereby the Capital Stock is converted into other securities, cash or other property; or

(iv) of the voluntary or involuntary dissolution, liquidation or winding up of the Company;

then the Company shall (a) if any Preferred Securities are outstanding, cause to be filed with the transfer agent for the Preferred Securities, and shall cause to be mailed to the holders of record of the Preferred Securities, at their last addresses as they shall appear upon the books and records of the Trust, or (b) shall cause to be mailed to all Holders at their last addresses as they shall appear in the Security Register, at least fifteen days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record (if any) is to be taken for the purpose of such dividend, distribution, rights or warrants or, if a record is not to be taken, the date as of which the holders of Capital Stock of record to be entitled to such dividend, distribution, rights or warrants are to be determined or (y) the date on which such

reclassification, consolidation, merger, sale, transfer, share exchange, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Capital Stock of record shall be entitled to exchange their shares of Capital Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, share exchange, dissolution, liquidation or winding up (but no failure to mail such notice or any defect therein or in the mailing thereof shall affect the validity of the corporate action required to be specified in such notice).

SECTION 13.07. Adjustments in Case of Fundamental Changes. (a) Notwithstanding any other provision in this Article XIII to the contrary, in the case of any Company Transaction involving a Fundamental Change, the Applicable Conversion Price will be adjusted immediately after such Fundamental Change as follows:

(i) in the case of a Non-Stock Fundamental Change, the Applicable Conversion Price of the Securities shall thereupon become the lower of (A) the Applicable Conversion Price in effect immediately prior to such Non-Stock Fundamental Change, but after giving effect to any other prior adjustments effected pursuant to this Article XIII, and (B) the result obtained by multiplying the greater of the Relevant Price or the then applicable Reference Market Price by the Optional Redemption Ratio (such product shall hereinafter be referred to as the "Adjusted Relevant Price" or the "Adjusted Reference Market Price", as the case may be); and

(ii) in the case of a Capital Stock Fundamental Change, the Applicable Conversion Price of the Securities in effect immediately prior to such Capital Stock Fundamental Change, but after giving effect to any other prior adjustments effected pursuant to this Article XIII, shall thereupon be adjusted by multiplying such Applicable Conversion Price by a fraction of which the numerator shall be the Purchaser Stock Price and the denominator shall be the Relevant Price; provided, however, that in the event of a Capital Stock Fundamental Change in which (A) 100% of the value of the consideration received by a holder of Capital Stock is common stock of the successor, acquiror or other third party (and cash, if any, is paid only with respect to any fractional interests in such common stock resulting from such Capital Stock Fundamental Change) and (B) all of the Capital Stock shall have been exchanged for, converted into or ac-

quired for common stock (and cash with respect to fractional interests) of the successor, acquiror or other third party, the Applicable Conversion Price of the Securities in effect immediately prior to such Capital Stock Fundamental Change shall thereupon be adjusted by multiplying such Applicable Conversion Price by a fraction of which the numerator shall be one and the denominator shall be the number of shares of common stock of the successor, acquiror, or other third party received by a stockholder for one share of Capital Stock as a result of such Capital Stock Fundamental Change.

(b) Definitions. The following definitions shall apply to terms used in this Article XIII:

(1) "Closing Price" of any security on any day shall mean on any day the last reported sale price of such security on such day, or in case no sale takes place on such day, the average of the closing bid and asked prices in each case on the principal national securities exchange on which such securities are listed or admitted to trading or, if not listed or admitted to trading on any national securities exchange, on the NNM or, if such securities are not listed or admitted to trading on any national securities exchange or quoted on the NNM, the average of the closing bid and asked prices in the over-the-counter market as furnished by any New York Stock Exchange member firm, or the national, commission-recognized trading system, selected by the Company for such purpose.

(2) "Capital Stock Fundamental Change" shall mean any Fundamental Change in which more than 50% of the value (as determined in good faith by the Board of Directors) of the consideration received by holders of Capital Stock consists of common stock that for each of the ten consecutive Trading Days immediately prior to the Entitlement Date has been admitted for listing or admitted for listing subject to notice of issuance on a national securities exchange or quoted on the NNM.

(3) "Entitlement Date" shall mean the record date for determination of the holders of Capital Stock entitled to receive securities, cash or other property in connection with a Non-Stock Fundamental Change or a Capital Stock Fundamental Change or, if there is no such record date, the date upon which holders of Capital Stock shall have the right to receive such securities, cash or other property.

(4) "Fundamental Change" shall mean the occurrence of any transaction or event in connection with a plan pursuant to which all or substantially all of the Capital Stock shall be exchanged for, converted into, acquired for or constitute solely the right to receive securities, cash or other property (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization or otherwise); provided, however, in the case of a plan involving more than one such transaction or event, for purposes of adjustment of the Applicable Conversion Price, such Fundamental Change shall be deemed to have occurred when substantially all of the Capital Stock of the Company shall be exchanged for, converted into, or acquired for or constitute solely the right to receive securities, cash or other property, but the adjustment shall be based upon the highest weighted average per share consideration that a holder of Capital Stock could have received in such transactions or events as a result of which more than 50% of the Capital Stock of the Company shall have been exchanged for, converted into, or acquired for or constitute solely the right to receive securities, cash or other property.

(5) "Non-Stock Fundamental Change" shall mean any Fundamental Change other than a Capital Stock Fundamental Change.

(6) "Optional Redemption Ratio" means a fraction of which the numerator shall be \$27 and the denominator will be the then current Optional Redemption Price or, prior to March 15, 2003, an amount per Security determined by the Company in its sole discretion, after consultation with an investment banking firm, to be the equivalent of the hypothetical redemption price that would have been applicable if the Securities had been redeemable during such period.

(7) "Purchaser Stock Price" shall mean, with respect to any Capital Stock Fundamental Change, the average of the daily Closing Prices of the common stock received in such Capital Stock Fundamental Change for the ten (10) consecutive Trading Days prior to and including the Entitlement Date, as adjusted in good faith by the Board of Directors to appropriately reflect any of the events referred to in subparagraphs (i), (ii), (iii), (iv), (v) and (vi) of Section 13.03.

(8) "Reference Market Price" shall initially mean on the date of original issuance of the Securities, \$18 (which is an amount equal to 66-2/3% of the liquidation

amount per Preferred Security), and, in the event of any adjustment to the Applicable Conversion Price, other than as a result of a Non-Stock Fundamental Change, the Reference Market Price shall also be adjusted so that the ratio of the Reference Market Price to the Applicable Conversion Price after giving effect to any such adjustment shall always be the same as the ratio of \$18 to the Initial Conversion Price.

(9) "Relevant Price" shall mean (i) in the event of a Non-Stock Fundamental Change in which the holders of the Capital Stock receive only cash, the amount of cash received by a stockholder for one share of Capital Stock and (ii) in the event of any other Non-Stock Fundamental Change or any Capital Stock Fundamental Change, the average of the daily Closing Prices of the Capital Stock for the ten (10) consecutive Trading Days prior to and including the Entitlement Date, in each case, as adjusted in good faith by the Company to appropriately reflect any of the events referred to in subparagraphs (i), (ii), (iii), (iv), (v) and (vi) of Section 13.03.

(10) "Trading Day" shall mean a Business Day on which securities are traded on the national securities exchange, trading system or quotation system used to determine the Closing Price.

SECTION 13.08. Dividend or Interest Reinvestment Plans. (a)

Notwithstanding the foregoing provisions, the issuance of any shares of Capital Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on securities of the Company and the investment of additional optional amounts in shares of Capital Stock under any such plan, and the issuance of any shares of Capital Stock or options or rights to purchase such shares pursuant to any employee benefit plan or program of the Company or pursuant to any option, warrant, right or exercisable, exchangeable or convertible security outstanding as of the date the Securities were first issued, shall not be deemed to constitute an issuance of Capital Stock or exercisable, exchangeable or convertible securities by the Company to which any of the adjustment provisions described above applies.

(b) There shall also be no adjustment of the Applicable Conversion Price in case of the issuance of any stock (or securities convertible into or exchangeable for stock) of the Company except as specifically described in this Article XIII.

SECTION 13.09. Certain Additional Rights. Notwithstanding any other provision of this Article XIII to the contrary, rights, warrants, evidences of indebtedness, other securities, cash or other assets (including, without limitation, any rights distributed pursuant to any stockholder rights plan) shall be deemed not to have been distributed for purposes of this Article XIII if the Company makes proper provision so that each Holder who converts a Security (or any portion thereof) after the date fixed for determination of stockholders entitled to receive such distribution shall be entitled to receive upon such conversion, in addition to the shares of Capital Stock issuable upon such conversion, the amount and kind of such distributions that such Holder would have been entitled to receive if such Holder had, immediately prior to such determination date, converted such Security into Capital Stock.

SECTION 13.10. Trustee Not Responsible for Determining Conversion Price or Adjustments. Neither the Trustee nor any Conversion Agent shall at any time be under any duty or responsibility to any Holder of any Security to determine whether any facts exist which may require any adjustment of the Applicable Conversion Price, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. Neither the Trustee nor any Conversion Agent shall be accountable with respect to the validity or value (or the kind or amount) of any shares of Capital Stock or of any securities or property, which may at any time be issued or delivered upon the conversion of any Security; and neither the Trustee nor any Conversion Agent makes any representation with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to make any cash payment or to issue, transfer or deliver any shares of Capital Stock or stock certificates or other securities or property upon the surrender of any Security for the purpose of conversion, or, except as expressly herein provided, to comply with any of the covenants of the Company contained in Article X or this Article XIII.

#### ARTICLE XIV

##### Immunity of Incorporators, Stockholders, Officers and Directors

SECTION 14.01. No Recourse. 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, past, present or future as such, of the Company or of any predecessor or successor corporation, either directly or through the Company or any such predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Indenture and the obligations issued hereunder are solely corporate obligations, and that no such personal liability whatever shall attach to, or is or shall be incurred by, the incorporators, stockholders, officers or directors as such, of the Company or of any predecessor or successor corporation, or any of them, 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 issuance of such Securities.



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

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

CHEMED CORPORATION,

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

FIRSTAR BANK, NATIONAL  
ASSOCIATION,

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

## EXHIBIT A

## FORM OF SECURITY

## [FORM OF FACE OF SECURITY]

[Include if a Global Security: THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITARY TRUST COMPANY (THE "DEPOSITARY") OR A NOMINEE OF THE DEPOSITARY. THIS SECURITY IS EXCHANGEABLE FOR A SECURITY REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY 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) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.]

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) TO CHEMED CORPORATION OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY AND ANY PAYMENT HEREON IS MADE TO CEDE & CO., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY A PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

CHEMED CORPORATION

Convertible Junior Subordinated  
Debenture Due 2030

No. \$ [CUSIP No. ]

CHEMED CORPORATION, a corporation duly organized and existing under the laws of the State of Delaware (herein called "the Company", which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to \_\_\_\_\_, or registered assigns, the principal sum [indicated on Schedule A hereof](1) [of Dollars](2) (\$ \_\_\_\_\_) on March 15, 2030.

Interest Payment Dates: March 15, June 15, September 15 and December 15, commencing March 15, 2000

Regular Record Dates: the close of business on the first of the month in which the applicable Interest Payment Date occurs, commencing March 1, 2000

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 executed by the Trustee referred to on the reverse hereof by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

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(1) Applicable to Global Securities only.  
(2) Applicable to certificated Securities only.

IN WITNESS WHEREOF, the Company has caused this instrument to be signed manually or by facsimile by its duly authorized officers and a facsimile of its corporate seal to be affixed hereto or imprinted hereon.

Dated: \_\_\_\_\_ ,

CHEMED CORPORATION

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

[Seal]

Attest:  
\_\_\_\_\_

TRUSTEE'S CERTIFICATE  
OF AUTHENTICATION

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

Dated: \_\_\_\_\_ Firststar Bank, National Association  
as Trustee,

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

## [FORM OF REVERSE OF SECURITY]

## CHEMED CORPORATION

Convertible Junior Subordinated  
Debenture Due 2030(3)

1. Interest. CHEMED Corporation, a Delaware corporation (the "Company"), is the issuer of this Convertible Junior Subordinated Debenture Due 2030 (the "Security") limited in aggregate principal amount to \$27, issued under the Indenture hereinafter referred to. The Company promises to pay interest on the Securities in cash from -, 2000 or from the most recent interest payment date to which interest has been paid or duly provided for, quarterly (subject to deferral for up to 20 consecutive quarters as described in Section 3 hereof) in arrears on March 15, June 15, September 15 and December 15 of each year (each such date, an "Interest Payment Date"), commencing March 15, 2000, at \$0.50 per \$27 principal amount for the period from issuance of the Securities to March 15, 2000, and from March 15, 2000, at the Applicable Rate, plus Additional Sums, if any, until the principal hereof shall have become due and payable.

Except for the interest payable on March 15, 2000, the amount of interest payable for any period will be computed on the basis of twelve 30-day months and a 360-day year. To the extent lawful, the Company shall pay interest on overdue installments of interest (without regard to any applicable grace period) at the rate borne by the Securities, compounded quarterly. Any interest paid on this Security shall be increased to the extent necessary to pay Additional Sums as set forth in this Security.

2. Additional Sums. The Company shall pay to CHEMED Capital Trust (and its permitted successors or assigns under the Declaration) (the "Trust") such additional amounts as may be necessary in order that the amount of dividends or other distributions then due and payable by the Trust on the Preferred Securities that at any time remain outstanding in accordance with the terms thereof shall not be reduced as a result of any additional taxes, duties and other governmental charges of whatever nature (other than withholding taxes) imposed by the United States or any other taxing authority.

3. Extension of Interest Payment Period. So long as no Event of Default has occurred and is continuing, the Company shall have the right, at any time during the term of this Security, from time to time to defer payments of interest by extending the interest payment period of such Security for up to 20 consecutive quarters (a "Deferral Period"); provided that no Deferral Period may extend beyond March 15, 2030. To the extent permitted by applicable law, interest, the payment of which has been deferred because of the extension of the interest payment period pursuant to Section 3.13 of the Indenture, will bear interest thereon at the Applicable Rate compounded quarterly for each quarter of the Deferral Period ("Compounded Interest"). On the applicable Payment Resumption Date, the Company shall pay all interest then accrued and unpaid on the Securities, including any Compounded Interest that shall be payable to the Holders of the Securities in whose

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(3) All terms used in this Security which are defined in the Indenture or in the Declaration referred to herein shall have the meanings as signed to them in the Indenture or the Declaration, as the case may be.

names the Securities are registered in the Security Register on the record date fixed for such Payment Resumption Date. Before the termination of any Deferral Period, the Company may further extend such period as provided in the Indenture, provided that such period together with all such further extensions thereof shall not exceed 20 consecutive quarters or extend beyond the Stated Maturity of the Security. Upon the termination of any Deferral Period and upon the payment of all Compounded Interest and Additional Sums (together, "Additional Payments"), if any, then due, the Company may commence a new Deferral Period, subject to the foregoing requirements. No interest shall be due and payable during a Deferral Period except on the applicable Payment Resumption Date.

The Company shall give the Holder of the Security and the Trustee written notice (a "Deferral Notice") of its selection of a Deferral Period at least ten days prior to the record date for any distributions that would have been payable on the Trust Securities except for the decision to begin or extend such Deferral Period. The Company may elect to pay all interest then accrued and unpaid on the Securities, including Compound Interest, on an Interest Payment Date prior to its most recently established Payment Resumption Date, provided that the Company gives the Holder of the Security and the Trustee a new Deferral Notice setting forth the revised Payment Resumption Date at least three Business Days prior to the Regular Record Date for such revised Payment Resumption Date.

The quarter in which any Deferral Notice is given pursuant to the second paragraph of this Section 3 shall be counted as one of the 20 quarters permitted in the maximum Deferral Period permitted under the first paragraph of this Section 3.

4. Method of Payment. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the 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 regular record date for such interest installment, which shall be the close of business on the fifteenth day immediately preceding each Interest Payment Date (the "Regular Record Date"), commencing March 1, 2000. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name 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 not less than ten 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 may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture, provided that any such payment will be made in such coin or currency of the United States of America which at the time of payment is a legal tender for payment of public and private debts.

Payment of the principal of and interest on this Security will be made at the office or agency of the Company maintained for that purpose in Cincinnati, Ohio, in coin or currency of the United States of America which at the time of payment is legal tender for payment of public and private debts; provided, however, that at any time that the Property Trustee is not the sole holder of the Securities, payment of interest may, at the option of the Company, be made by check mailed to

the address of the Person entitled thereto as such address shall appear in the Security Register or by wire transfer.

5. Paying Agent and Security Registrar. The Trustee will act as Paying Agent, Security Registrar and Conversion Agent. The Company may change any Paying Agent, Security Registrar, co-registrar or Conversion Agent without prior notice. The Company or any of its Affiliates may act in any such capacity.

6. Indenture. The Company issued the Securities under an indenture, dated as of January -, 2000 (the "Indenture"), between the Company and Firstar Bank, National Association, 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 of rights, duties and immunities thereunder of the Trustee, the Company and the Holders of the Securities, and of the terms upon which the Securities are, and are to be, authenticated and delivered. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by the Trust Indenture Act of 1939 ("Trust Indenture Act") as in effect on the date of the Indenture. The Securities are subject to, and qualified by, all such terms, certain of which are summarized herein, and holders are referred to the Indenture and the Trust Indenture Act for a statement of such terms. The Securities are unsecured general obligations of the Company limited to up to \$- and subordinated in right of payment to all existing and future Senior Debt of the Company. 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 interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed or to convert this Security as provided in the Indenture.

7. Optional Redemption. The Securities are redeemable at the Company's option (an "Optional Redemption") in whole or in part, at any time or from time to time, on or after March 15, 2003, at a Redemption Price equal to \$27.27 per \$27 principal amount of the Securities to be redeemed plus any accrued and unpaid interest, including Additional Payments, if any, to the Redemption Date, if redeemed on or before March 15, 2004, and thereafter at \$27 per \$27 principal amount of the Securities plus, in each case, any accrued and unpaid interest, including Additional Payments, if any, to the Redemption Date.

8. Optional Redemption Upon Tax Event. Subject to the conditions set forth in the Indenture, the Securities are subject to redemption in whole, but not in part, if a Tax Event shall occur and be continuing, at any time within 90 days following the occurrence of such Tax Event, at a Redemption Price equal to \$27.27 per \$27 principal amount thereof, plus accrued but unpaid interest, including Additional Payments, if any, to the Redemption Date.

In lieu of the foregoing, the Company also shall have the option of causing the Securities to remain outstanding and pay Additional Sums on the Securities.

9. Notice of Redemption. Notice of redemption will be mailed by first-class mail, postage prepaid, at least 30 days (or 20 days, in the case of a redemption upon the occurrence of a Tax Event), but not more than 60 days before the Redemption Date to each Holder of

the Securities to be redeemed at such Holder's address appearing in the Security Register.

10. No Sinking Fund. There are no sinking fund payments with respect to the Securities.

11. Payment to Registered Holders; Cessation of Interest Accrual Upon Redemption. If this Security is redeemed subsequent to a Regular Record Date with respect to any Interest Payment Date specified above and on or prior to such Interest Payment Date, then any accrued interest will be paid to the person in whose name this Security is registered at the close of business on such record date. On or after the Redemption Date, interest will cease to accrue on the Securities, or portion thereof, called for redemption.

12. Subordination. The payment of the principal of, interest on or any other amounts due on the Securities is subordinated in right of payment to all existing and future Senior Debt (as defined below) of the Company, as described in the Indenture. Each Holder, by accepting a Security, agrees to such subordination and authorizes and directs the Trustee on its behalf to take such action as may be necessary or appropriate to effectuate the subordination so provided and appoints the Trustee as its attorney-in-fact for such purpose.

"Senior Debt" means (i) the principal of, and premium and interest, if any, on all indebtedness of the Company for money borrowed, whether outstanding on the date of execution of the Indenture or thereafter created, assumed or incurred, (ii) all obligations to make payment pursuant to the terms of financial instruments, such as (a) securities contracts and foreign currency exchange contracts, (b) derivative instruments, such as swap agreements (including interest rate and foreign exchange rate swap agreements), cap agreements, floor agreements, collar agreements, interest rate agreements, foreign exchange agreements, options, commodity futures contracts and commodity options contracts, and (c) similar financial instruments; except, in the case of both (i) and (ii) above, such indebtedness and obligations that are expressly stated to rank junior in right of payment to, or pari passu in right of payment with, the Securities, (iii) indebtedness or obligations of others of the kind described in both (i) and (ii) above for the payment of which the Company is responsible or liable as guarantor or otherwise, and (iv) deferrals, renewals or extensions of any such Senior Debt; provided, however, that Senior Debt shall not be deemed to include (a) any Debt of the Company which, when incurred and without respect to any election under Section 1111(b) of the United States Bankruptcy Code of 1978, was without recourse to the Company, (b) trade accounts payable and accrued liabilities arising in the ordinary course of business, (c) any Debt of the Company to any of its subsidiaries, (d) Debt to any employee of the Company, and (e) Debt which by its terms is subordinated to trade accounts payable or accrued liabilities arising in the ordinary course of business to the extent that payments made to the holders of such Debt by the Holders of the Securities as a result of the subordination provisions of the Indenture would be greater than such payments otherwise would have been as a result of any obligation of such holders of such Debt to pay amounts over to the obligees on such trade accounts payable or accrued liabilities arising in the ordinary course of business as a result of subordination provisions to which such Debt is subject.

13. Conversion. The Holder of any Security has the right, exercisable at any time prior to 5:00 p.m., New York City time, on March 15, 2030, to convert the principal amount thereof (or any portion



thereof that is an integral multiple of \$27) into shares of Capital Stock at the initial conversion rate of 0.73 shares of Capital Stock for each \$27 in aggregate principal amount of Securities (equivalent to a conversion price of \$37 per share of Capital Stock of the Company). The conversion ratio and equivalent conversion price in effect at any time are known as the "Applicable Conversion Price" and the "Applicable Conversion Ratio," respectively, and are subject to adjustment under certain circumstances. If a Security is called for redemption, the conversion right will terminate at the close of business on the Business Day immediately preceding the corresponding Redemption Date, unless the Company defaults in making the payment due upon redemption.

To convert a Security, a Holder must (1) complete and sign a conversion notice substantially in the form attached hereto, (2) surrender the Security to a Conversion Agent, (3) furnish appropriate endorsements or transfer documents if required by the Security Registrar or Conversion Agent and (4) pay any transfer or similar tax, if required. Upon conversion, no adjustment or payment will be made for interest or dividends, but if any Holder surrenders a Security for conversion after the close of business on the Regular Record Date for the payment of an installment of interest and prior to the opening of business on the next Interest Payment Date, then, notwithstanding such conversion, the interest payable on such Interest Payment Date will be paid to the registered Holder of such Security on such Regular Record Date. In such event, such Security, when surrendered for conversion, need not be accompanied by payment of an amount equal to the interest payable on such Interest Payment Date on the portion so converted. The number of shares issuable upon conversion of a Security is determined by dividing the principal amount of the Security converted by the Applicable Conversion Price in effect on the Conversion Date. No fractional shares will be issued upon conversion but a cash adjustment will be made for any fractional interest. The outstanding principal amount of any Security shall be reduced by the portion of the principal amount thereof converted into shares of Capital Stock.

14. Registration, Transfer, Exchange and Denominations. As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security for registration of transfer at the office or agency of the Company in Cincinnati, Ohio, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Securities are issuable only in registered form without coupons in denominations of \$1,000 and integral multiples thereof. 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. In the event of redemption or conversion of this Security in part only, a new Security or Securities for the unredeemed or unconverted portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.

15. Persons Deemed Owners. Except as provided in Section 3 hereof, the registered Holder of a Security may be treated as its owner for all purposes.

16. Unclaimed Money. If money for the payment of principal or interest remains unclaimed for two years, the Trustee and the Paying Agent shall pay the money back to the Company at its written request. After that, holders of Securities entitled to the money must look to the Company for payment unless an abandoned property law designates another Person and all liability of the Trustee and such Paying Agent with respect to such money shall cease.

17. Events of Default and Remedies. The Securities shall have the Events of Default as set forth in Section 5.01 of the Indenture. Subject to certain limitations in the Indenture, if an Event of Default occurs and is continuing, the Trustee by notice to the Company or the holders of at least 25% in aggregate principal amount of the Outstanding Securities by notice to the Company and the Trustee may declare all amounts payable on the Securities (including any Additional Payments) to be due and payable immediately; provided that, if the Property Trustee is the sole Holder of the Security and if upon an Event of Default, the Trustee or the holder of not less than 25% in aggregate principal amount of the then outstanding Securities fail to declare the principal of all the Securities to be immediately due and payable, the holders of at least 25% in aggregate liquidation amount of Preferred Securities then outstanding shall have such right by a notice in writing to the Company and the Trustee; and upon any such declaration such principal and all accrued interest shall become immediately due and payable; and provided further that the payment of principal and interest on such Securities shall remain subordinated to the extent provided in the Indenture.

In the case of an Event of Default, the holders of a majority in principal amount of the Outstanding Securities by written notice to the Trustee may rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default have been cured or waived except nonpayment of principal or interest that has become due solely because of the acceleration.

Holders may not enforce the Indenture or the Securities except as provided in the Indenture. Subject to certain limitations, holders of a majority in principal amount of the then outstanding Securities issued under the Indenture may direct the Trustee in its exercise of any trust or power. The Company must furnish annually compliance certificates to the Trustee. The above description of Events of Default and remedies is qualified by reference to, and subject in its entirety by, the more complete description thereof contained in the Indenture.

18. Amendments, Supplements and Waivers. The Indenture permits, subject to the rights of the holders of Preferred Securities set forth therein and in the Declaration and with certain other 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 under the Indenture, at any time, by the Company and the Trustee with the consent of the Holders of a majority in aggregate principal amount of the Securities at the time Outstanding. The Indenture also contains provisions permitting the Holders of specified percentages in aggregate principal amount of the Securities at the time Outstanding, on behalf of the Holders of all the Securities,

subject to the rights of the holders of the Preferred Securities set forth therein and in the Declaration, 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 therefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security. The above description of amendments, supplements and waivers is qualified by reference to, and subject in its entirety, by the more complete description thereof contained in the Indenture.

19. Trustee Dealings with the Company. The Trustee, in its individual or any other capacity may become the owner or pledgee of the Securities and may otherwise deal with the Company or an Affiliate with the same rights it would have, as if it were not a Trustee, subject to certain limitations provided for in the Indenture and in the Trust Indenture Act. Any Agent may do the same with like rights.

20. No Recourse Against Others. A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Holder of the Securities by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

21. Governing Law. THE INTERNAL LAWS OF THE STATE OF DELAWARE SHALL GOVERN THE INDENTURE AND THE SECURITIES WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF.

22. Authentication. The Securities shall not be valid until authenticated by the manual signature of an authorized officer of the Trustee or an authenticating agent.

23. Abbreviations. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

The Company will furnish to any Holder of the Securities upon written request and without charge a copy of the Indenture. Request may be made to:

Chemed Corporation  
2600 Chemed Center  
255 East Fifth Street  
Cincinnati, Ohio 45202-4726

Attention of: Chief Financial Officer

ASSIGNMENT FORM

To assign this Security, fill in the form below:

(I) or (we) assign and transfer this Security to

\_\_\_\_\_  
(Insert assignee's social security or tax I.D. number)

\_\_\_\_\_  
(Print or type assignee's name, address and zip code)

and irrevocably appoint \_\_\_\_\_  
agent to transfer this Security on the books of the Company. The agent may  
substitute another to act for him.

Your Signature: \_\_\_\_\_  
(Sign exactly as your name appears on the  
other side of this Security)

Date: \_\_\_\_\_

Signature Guarantee:(4) \_\_\_\_\_

- - - - -  
(4) (Signature must be guaranteed by an "eligible guarantor institution" that is, a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934.)

(TO BE ATTACHED TO GLOBAL SECURITIES)

## SCHEDULE A

The initial principal amount of this Global Security shall be \$ . The following increases or decreases in the principal amount of this Global Security have been made:

Date Made	Amount of increase in Principal Amount of this Global Security including increase upon exercise of over-allotment option	Amount of decrease in Principal Amount of this Global Security	Principal Amount of this Global Security following such decrease or increase	Signature of authorized officer of Trustee or Securities Custodian
-----				

ELECTION TO CONVERT

To: Chemed Corporation

The undersigned owner of this Security hereby irrevocably exercises the option to convert this Security, or the portion below designated, into Capital Stock of CHEMED CORPORATION in accordance with the terms of the Indenture referred to in this Security, and directs that the shares issuable and deliverable upon conversion, together with any check in payment for fractional shares, be issued in the name of and delivered to the undersigned, unless a different name has been indicated in the assignment below. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto.

Date: \_\_\_\_\_,

in whole \_\_\_

Portions of Security to be converted (\$- or integral multiples thereof):  
\$ \_\_\_\_\_

\_\_\_\_\_  
Signature (for conversion only)

Please Print or Typewrite Name and Address, Including Zip Code, and Social Security or Other Identifying Number

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature Guarantee: (5)

\_\_\_\_\_

- - - - -

(5) (Signature must be guaranteed by an "eligible guarantor institution" that is, a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934.)

PREFERRED SECURITIES GUARANTEE AGREEMENT

Between

CHEMED CORPORATION

and

FIRSTAR BANK, NATIONAL ASSOCIATION

Dated as of January -, 2000

## CROSS-REFERENCE TABLE \*/

Section of Trust Indenture Act of 1939 -----	Section of Guarantee Agreement -----
310(a).....	4.01(a)
310(b).....	4.01(c), 2.08
310(c).....	Inapplicable
311(a).....	2.02(b)
311(b).....	2.02(b)
311(c).....	Inapplicable
312(a).....	2.02(a)
312(b).....	2.02(b)
313.....	2.03
314(a).....	2.04
314(b).....	Inapplicable
314(c).....	2.05
314(d).....	Inapplicable
314(e).....	1.01, 2.05, 3.02
314(f).....	2.01, 3.02
315(a).....	3.01(d)
315(b).....	2.07
315(c).....	3.01
315(d).....	3.01(d)
316(a).....	1.01, 2.06, 5.04
316(b).....	5.03
316(c).....	8.02
317(a).....	Inapplicable
317(b).....	Inapplicable
318(a).....	2.01(b)
318(b).....	2.01
318(c).....	2.01(a)

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 \*/ This Cross-Reference Table does not constitute part of the Guarantee Agreement and shall not affect the interpretation of any of its terms or provisions.



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## THIS PREFERRED SECURITIES GUARANTEE

AGREEMENT ("Guarantee"), dated as of January -, 2000, is executed and delivered by CHEMED CORPORATION, a Delaware corporation (the "Guarantor"), and Firststar Bank, National Association, a United States banking corporation, as trustee (the "Guarantee Trustee"), for the benefit of the HOLDERS (as defined herein) from time to time of the Preferred Securities (as defined herein) of CHEMED CAPITAL TRUST, a Delaware statutory business trust (the "Issuer").

WHEREAS, pursuant to an Amended and Restated Declaration of Trust (the "Declaration"), dated as of , 2000, among the trustees of the Issuer named therein, the Guarantor, as sponsor, and the holders from time to time of undivided beneficial interests in the assets of the Issuer, the Issuer is issuing and offering for exchange (the "Exchange Offer") on the date hereof up to 2,000,000 shares of convertible trust preferred securities, having an aggregate stated liquidation amount of up to \$54,000,000 designated the Convertible Trust Preferred Securities (liquidation amount \$27 per Preferred Security) (the "Preferred Securities");

WHEREAS as incentive for the Holders to participate in the Exchange Offer, the Guarantor desires irrevocably and unconditionally to agree, to the extent set forth in this Guarantee, to pay on a subordinated basis to the Holders the Guarantee Payments (as defined herein) and to make certain other payments on the terms and conditions set forth herein; and

WHEREAS the Guarantor is also executing and delivering a guarantee agreement (the "Common Securities Guarantee") in substantially identical terms to this Guarantee for the benefit of the holders of the Common Securities (as defined herein) except that if a Debenture Event of Default or a Declaration Event of Default (each as defined herein) (or an event that, with passage of time, would become such a Debenture Event of Default) shall have occurred and be continuing, the rights of holders of the Common Securities to receive Guarantee Payments under the Common Securities Guarantee are subordinated to the rights of Holders to receive Guarantee Payments under this Guarantee.

NOW, THEREFORE, in consideration of the purchase by each Holder of Preferred Securities, which purchase the Guarantor hereby agrees shall benefit the Guarantor, the

Guarantor executes and delivers this Guarantee for the benefit of the Holders.

## ARTICLE I

### Definitions and Interpretation

SECTION 1.01. Definitions and Interpretation. In this Guarantee, unless the context otherwise requires:

(a) capitalized terms used in this Guarantee but not defined in the preamble above have the respective meanings assigned to them in this Section 1.01; terms defined in the Declaration as at the date of execution of this Guarantee have the same meaning when used in this Guarantee unless otherwise defined in this Guarantee;

(b) a term defined anywhere in this Guarantee has the same meaning throughout;

(c) all references to "the Guarantee" or "this Guarantee" are to this Guarantee as modified, supplemented or amended from time to time;

(d) all references in this Guarantee to Articles and Sections are to Articles and Sections of this Guarantee unless otherwise specified;

(e) a term defined in the Trust Indenture Act has the same meaning when used in this Guarantee unless otherwise defined in this Guarantee or unless the context otherwise requires; and

(f) a reference to the singular includes the plural and vice versa.

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

"Common Securities" means the convertible common securities (liquidation amount \$27 per common security)

representing common undivided beneficial interests in the assets of the Issuer.

"Covered Person" means any Holder or beneficial owner of Preferred Securities.

"Debenture Event of Default" means an Event of Default as defined in the Indenture.

"Debentures" means the series of convertible junior subordinated debt securities of the Guarantor designated the Convertible Junior Subordinated Debentures Due 2030 held by the Property Trustee (as defined in the Indenture) of the Issuer.

"Declaration Event of Default" means an Event of Default as defined in the Declaration.

"Event of Default" means a default by the Guarantor on any of its payment or other obligations under this Guarantee; provided, however, that except with respect to a default in payment of any Guarantee Payment, the Guarantor shall have received notice of default and shall not have cured such default within 60 days after receipt of such notice.

"Guarantee Payments" means the following payments or distributions, without duplication, with respect to the Preferred Securities, to the extent not paid or made by or on behalf of the Issuer: (i) any accrued and unpaid Distributions (as defined in the Declaration) that are required to be paid on the Preferred Securities, to the extent that the Issuer shall have funds on hand available therefor at such time, (ii) the applicable Redemption Price (as defined in the Indenture) with respect to Preferred Securities called for redemption by the Issuer, to the extent that the Issuer has funds on hand available therefor at such time, and (iii) upon a voluntary or involuntary dissolution, winding up or liquidation of the Issuer (other than in connection with the distribution of Debentures to the Holders or the redemption of all the Preferred Securities), the lesser of (a) the aggregate liquidation amount thereof plus accrued and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution") to the extent the Issuer has funds available therefor and (b) the amount of assets of the Issuer remaining available for distribution to Holders upon liquidation of the Issuer after satisfaction of liabilities to creditors of the Issuer as required by applicable law.

"Guarantee Trustee" means Firststar Bank, National Association until a Successor Guarantee Trustee has been appointed and has accepted such appointment pursuant to the terms of this Guarantee and thereafter means each such Successor Guarantee Trustee.

"Holder" means any holder, as registered on the books and records of the Issuer of any outstanding Preferred Securities; provided, however, that, in determining whether the holders of the requisite percentage in liquidation amount of the Preferred Securities have given any request, notice, consent or waiver hereunder, "Holder" shall not include the Guarantor or any Affiliate of the Guarantor.

"Indemnified Person" means the Guarantee Trustee, any Affiliate of the Guarantee Trustee, or any officers, directors, shareholders, members, partners, employees, representatives or agents of the Guarantee Trustee.

"Indenture" means the Indenture dated as of January -, 2000, among the Guarantor and Firststar Bank, National Association, as trustee, and any indenture supplemental thereto, pursuant to which the Debentures are to be issued to the Property Trustee of the Issuer.

"Majority in liquidation amount of the Preferred Securities" means, except as provided by the Trust Indenture Act, Holder(s), voting separately as a class, representing more than 50% of the stated aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all Preferred Securities then outstanding.

"Officers' Certificate" means, with respect to any Person, a certificate signed by the Chairman of the Board, President or a Vice President, and by the Treasurer, an Assistant Treasurer, the Controller, the Secretary or an Assistant Secretary of such Person, and delivered to the Guarantee Trustee. Any Officers' Certificate delivered with respect to compliance with a condition or covenant provided for in this Guarantee shall include:

(a) a statement that each officer signing the Officers' Certificate has read the covenant or condition and the definitions relating thereto;

(b) a brief statement of the nature and scope of the examination or investigation undertaken by each officer in rendering the Officers' Certificate;

(c) a statement that each such officer has made such examination or investigation as, in such officer's opinion, is necessary to enable such officer to express an informed opinion as to whether or not such covenant or condition has been complied with; and

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

"Person" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

"Responsible Officer" means, with respect to the Guarantee Trustee, the chairman of the board of directors, the president, any vice-president, any assistant vice-president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, any trust officer or assistant trust officer or any other officer of the Guarantee Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer's knowledge of and familiarity with the particular subject.

"Senior Debt" shall have the meaning set forth in the Indenture.

"Successor Guarantee Trustee" means a successor Guarantee Trustee possessing the qualifications to act as Guarantee Trustee under Section 4.01.

"Trust Indenture Act" means the Trust Indenture Act of 1939.

## ARTICLE II

### Trust Indenture Act

SECTION 2.01. Trust Indenture Act; Application. (a) This Guarantee is subject to the provisions of the Trust Indenture Act that are required to be part of this Guarantee, which are incorporated by reference hereto, and shall, to the extent applicable, be governed by such provisions; and



(b) If and to the extent that any provision of this Guarantee limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control.

SECTION 2.02. Lists of Holders of Securities. (a) The Guarantor shall provide the Guarantee Trustee (i) within 14 days after January 1 and June 30 of each year, commencing June 30, 2000, a list, in such form as the Guarantee Trustee may reasonably require, of the names and addresses of the Holders ("List of Holders") as of such date; provided that the Guarantor shall not be obligated to provide such List of Holders at any time the List of Holders does not differ from the most recent List of Holders given to the Guarantee Trustee by the Guarantor, and (ii) at any other time, within 30 days of receipt by the Guarantor of a written request for a List of Holders as of a date no more than 14 days before such List of Holders is given to the Guarantee Trustee. The Guarantee Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

(b) The Guarantee Trustee shall comply with its obligations under Sections 311(a), 311(b) and 312(b) of the Trust Indenture Act.

SECTION 2.03. Reports by the Guarantee Trustee. Within 60 days after March 15 of each year, commencing March 15, 2000, the Guarantee Trustee shall provide to the Holders of the Securities such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form and in the manner provided by Section 313 of the Trust Indenture Act. The Guarantee Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

SECTION 2.04. Periodic Reports to Guarantee Trustee. The Guarantor shall provide to the Guarantee Trustee, the Securities and Exchange Commission and the Holders such documents, reports and information as required by Section 314 (if any) and the compliance certificate required by Section 314 of the Trust Indenture Act in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act.

SECTION 2.05. Evidence of Compliance with Conditions Precedent. The Guarantor shall provide to the Guarantee Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Guarantee which relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate

or opinion required to be given by an officer pursuant to Section 314(c)(1) may be given in the form of an Officers' Certificate.

SECTION 2.06. Events of Default; Waiver. The Holders of a Majority in liquidation amount of the Preferred Securities may, by vote, on behalf of the Holders of all of the Preferred Securities, waive any past Event of Default and its consequences. Upon such waiver, any such Event of Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Guarantee, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent therefrom.

SECTION 2.07. Event of Default; Notice. (a) The Guarantee Trustee shall, within 90 days after the occurrence of an Event of Default actually known to the Guarantee Trustee, transmit by mail, first-class postage prepaid, to the Holders, notices of all Events of Default known to the Guarantee Trustee, unless such defaults have been cured before the giving of such notice; provided that, except in the case of a default in the payment of a Guarantee Payment, the Guarantee Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or Responsible Officers of the Guarantee Trustee in good faith determines that the withholding of such notice is in the interests of the Holders.

(b) The Guarantee Trustee shall not be deemed to have knowledge of any Event of Default except any Event of Default as to which the Guarantee Trustee shall have received written notice or a Responsible Officer charged with the administration of the Declaration shall have obtained written notice.

SECTION 2.08. Conflicting Interests. The Declaration shall be deemed to be specifically described in this Guarantee for the purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

### ARTICLE III

#### Powers, Duties and Rights of Guarantee Trustee

SECTION 3.01. Powers and Duties of the Guarantee Trustee. (a) This Guarantee shall be held by the Guarantee Trustee for the benefit of the Holders, and the Guarantee

Trustee shall not transfer this Guarantee to any Person except a Holder exercising his or her rights pursuant to Section 5.05(d) or to a Successor Guarantee Trustee on acceptance by such Successor Guarantee Trustee of its appointment to act as Successor Guarantee Trustee. The right, title and interest of the Guarantee Trustee shall automatically vest in any Successor Guarantee Trustee, and such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered pursuant to the appointment of such Successor Guarantee Trustee.

(b) If an Event of Default has occurred and is continuing, the Guarantee Trustee shall enforce this Guarantee for the benefit of the Holders.

(c) The Guarantee Trustee, before the occurrence of any Event of Default and after the curing of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Guarantee, and no implied covenants shall be read into this Guarantee against the Guarantee Trustee. In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.06), the Guarantee Trustee shall exercise such of the rights and powers vested in it by this Guarantee, and use the same degree of care and skill in its exercise thereof, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(d) No provision of this Guarantee shall be construed to relieve the Guarantee Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) prior to the occurrence of any Event of Default and after the curing or waiving of all such Events of Default that may have occurred:

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

(B) in the absence of bad faith on the part of the Guarantee Trustee, the Guarantee Trustee

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

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

(iii) the Guarantee Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a Majority in liquidation amount of the Preferred Securities, relating to the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee, or exercising any trust or power conferred upon the Guarantee Trustee under this Guarantee; and

(iv) no provision of this Guarantee shall require the Guarantee Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

SECTION 3.02. Certain Rights of Guarantee Trustee. (a) Subject to the provisions of Section 3.01:

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

(ii) any direction or act of the Guarantor contemplated by this Guarantee shall be sufficiently evidenced by an Officers' Certificate;

(iii) whenever, in the administration of this Guarantee, the Guarantee Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Guarantee Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and rely upon an Officers' Certificate which, upon receipt of such request, shall be promptly delivered by the Guarantor;

(iv) the Guarantee Trustee shall have no duty to see to any recording, filing or registration of any instrument (or any rerecording, refileing or reregistration thereof);

(v) the Guarantee Trustee may consult with legal counsel of its selection, and the written advice or opinion of such legal counsel with respect to legal matters shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be taken by it hereunder in good faith and in accordance with such advice or opinion. Such legal counsel may be legal counsel to the Guarantor or any of its Affiliates and may include any of the Guarantor's employees. The Guarantee Trustee shall have the right at any time to seek instructions concerning the administration of this Guarantee from any court of competent jurisdiction.

(vi) the Guarantee Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Guarantee at the request or direction of any Holder, unless such Holder shall have provided to the Guarantee Trustee security and indemnity satisfactory to the Guarantee Trustee against the costs, expenses (including attorneys' fees and expenses) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Guarantee Trustee; provided that nothing contained in this Section 3.02(a)(vi) shall be taken to relieve the Guarantee Trustee, upon the occurrence of an Event of Default, of its obligation to exercise the rights and powers vested in it by this Guarantee;

(vii) the Guarantee Trustee shall not be bound to make any investigation into the facts or matters stated

in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Guarantee Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit;

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

(ix) any action taken by the Guarantee Trustee or its agents hereunder shall bind the Holders, and the signature of the Guarantee Trustee or its agents alone shall be sufficient and effective to perform any such action; it being understood that no third party shall be required to inquire as to the authority of the Guarantee Trustee to so act or as to its compliance with any of the terms and provisions of this Guarantee, both of which shall be conclusively evidenced by the Guarantee Trustee's or its agent's taking such action; and

(x) whenever in the administration of this Guarantee the Guarantee Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Guarantee Trustee (i) may request written instructions from the Holders or, other than with respect to enforcing any remedy or right or taking any action related thereto, the Guarantor, (ii) may refrain from enforcing such remedy or right or taking such other action until such written instructions are received, and (iii) shall be protected in acting in accordance with such written instructions.

(b) No provision of this Guarantee shall be deemed to impose any duty or obligation on the Guarantee Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it, in any jurisdiction in which it shall be illegal, or in which the Guarantee Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts or to exercise any such right, power, duty or obligation. No permissive power or authority available to the Guarantee Trustee shall be construed to be a duty.

SECTION 3.03. Not Responsible for Recitals or Issuance of Guarantee. The recitals contained in this Guarantee shall be taken as the statements of the Guarantor, and the Guarantee Trustee does not assume any responsibility for their correctness. The Guarantee Trustee makes no representations as to the validity or sufficiency of this Guarantee.

#### ARTICLE IV

##### Guarantee Trustee

SECTION 4.01. Guarantee Trustee; Eligibility. (a) There shall at all times be a Guarantee Trustee which shall:

(i) not be an Affiliate of the Guarantor; and

(ii) be a corporation organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or Person permitted by the Securities and Exchange Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least 50 million U.S. dollars (\$50,000,000), and subject to supervision or examination by Federal, State, Territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then, for the purposes of this Section 4.01(a)(ii), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) If at any time the Guarantee Trustee shall cease to be eligible to so act under Section 4.01(a), the Guarantee Trustee shall immediately resign in the manner and with the effect set out in Section 4.02(c).

(c) If the Guarantee Trustee has or shall acquire any "conflicting interest" within the meaning of Section 3.10(b) of the Trust Indenture Act, the Guarantee Trustee and Guarantor shall in all respects comply with the provisions of Section 3.10(b) of the Trust Indenture Act.

SECTION 4.02. Appointment, Removal and Resignation of Guarantee Trustee. (a) Subject to Section 4.02(b), the Guarantee Trustee may be appointed or removed without cause at any time by the Guarantor.

(b) The Guarantee Trustee shall not be removed in accordance with Section 4.02(a) until a Successor Guarantee Trustee has been appointed and has accepted such appointment by written instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor.

(c) The Guarantee Trustee appointed to office shall hold office until a Successor Guarantee Trustee shall have been appointed or until its removal or resignation. The Guarantee Trustee may resign from office (without need for prior or subsequent accounting) by an instrument in writing executed by the Guarantee Trustee and delivered to the Guarantor, which resignation shall not take effect until a Successor Guarantee Trustee has been appointed and has accepted such appointment by instrument in writing executed by such Successor Guarantee Trustee and delivered to the Guarantor and the resigning Guarantee Trustee.

(d) If no Successor Guarantee Trustee shall have been appointed and accepted appointment as provided in this Section 4.02 within 60 days after delivery to the Guarantor of an instrument of removal or resignation, the Guarantee Trustee resigning or being removed may petition any court of competent jurisdiction for appointment of a Successor Guarantee Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Guarantee Trustee.

(e) No Guarantee Trustee shall be liable for the acts or omissions to act of any Successor Guarantee Trustee.

(f) Upon termination of this Guarantee or removal or resignation of the Guarantee Trustee pursuant to this Section 4.02, the Guarantor shall pay to the Guarantee Trustee all amounts accrued to the date of such termination, removal or resignation.

#### ARTICLE V

#### Guarantee

SECTION 5.01. Guarantee. The Guarantor irrevocably and unconditionally agrees to pay in full on a subordinated basis to the Holders the Guarantee Payments (without duplication of amounts theretofore paid by or on behalf of the Issuer), as and when due, in coin or currency



of the United States of America which at the time of payment is legal tender for payment of public and private debt regardless of any defense, right of setoff or counterclaim that the Issuer may have or assert other than the defense of payment. The Guarantor's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Issuer to pay such amounts to the Holders.

SECTION 5.02. Subordination. If a Debenture Event of Default or a Declaration Event of Default (or an event that, with passage of time, would become a Debenture Event of Default) shall have occurred and be continuing, the rights of holders of the Common Securities to receive Guarantee Payments under the Common Securities Guarantee are subordinated to the rights of Holders to receive Guarantee Payments under this Guarantee.

SECTION 5.03. Waiver of Notice and Demand. The Guarantor hereby waives notice of acceptance of this Guarantee and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Issuer or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

SECTION 5.04. Obligations Not Affected. The obligations, covenants, agreements and duties of the Guarantor under this Guarantee shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

(a) the release or waiver, by operation of law or otherwise, of the performance or observance by the Issuer of any express or implied agreement, covenant, term or condition relating to the Preferred Securities to be performed or observed by the Issuer;

(b) the extension of time for the payment by the Issuer of all or any portion of the Distributions, the amount payable upon redemption or the amount payable upon liquidation or any other sums payable under the terms of the Preferred Securities or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the Preferred Securities (other than an extension of time for payment of Distributions that results from the extension of any interest payment period on the Debentures permitted by the Indenture);

(c) any failure, omission, delay or lack of diligence on the part of the Holders to enforce, assert or exercise any right, privilege, power or remedy conferred on the Holders pursuant to the terms of the Preferred Securities, or any action on the part of the Issuer granting indulgence or extension of any kind;

(d) the voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Issuer or any of the assets of the Issuer;

(e) any invalidity of, or defect or deficiency in the Preferred Securities;

(f) the settlement or compromise of any obligation guaranteed hereby or hereby incurred; or

(g) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 5.04 that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances.

There shall be no obligation of the Holders or any other Person to give notice to, or obtain consent of, the Guarantor with respect to the happening of any of the foregoing.

SECTION 5.05. Rights of Holders. The Guarantor expressly acknowledges that:

(a) This Guarantee will be deposited with the Guarantee Trustee to be held for the benefit of the Holders.

(b) The Guarantee Trustee has the right to enforce this Guarantee on behalf of the Holders.

(c) The Holders of a Majority in liquidation amount of the Preferred Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee in respect of this Guarantee or exercising any trust or power conferred upon the Guarantee Trustee under this Guarantee.

(d) Any Holder may institute a legal proceeding directly against the Guarantor to enforce its rights under this Guarantee, without first instituting a legal proceeding against the Issuer, the Guarantee Trustee or any other Person.

SECTION 5.06. Guarantee of Payment. This Guarantee creates a guarantee of payment and not of collection. This Guarantee will not be discharged except by payment of the Guarantee Payments in full (without duplication of amounts theretofore paid by the Issuer) or upon distribution of Debentures to Holders as provided in the Declaration.

SECTION 5.07. Subrogation. The Guarantor shall be subrogated to all (if any) rights of the Holders against the Issuer in respect of any amounts paid to such Holders by the Guarantor under this Guarantee and shall have the right to waive payment by the Issuer pursuant to Section 5.01; provided, however, that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any right that it may acquire by way of subrogation or any indemnity, reimbursement or other agreement, in all cases as a result of payment under this Guarantee, if, at the time of any such payment, any amounts are due and unpaid under this Guarantee. If any amount shall be paid to the Guarantor in violation of the preceding sentence, the Guarantor agrees to hold such amount in trust for the Holders and to pay over such amount to the Holders.

SECTION 5.08. Independent Obligations. The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Issuer with respect to the Preferred Securities, and that the Guarantor shall be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this Guarantee notwithstanding the occurrence of any event referred to in subsections (a) through (g), inclusive, of Section 5.04 hereof.

SECTION 5.09. Conversion. The Guarantor acknowledges its obligation to issue and deliver common stock upon the conversion of the Preferred Securities.

## ARTICLE VI

## Limitation of Transactions; Subordination

SECTION 6.01. Limitation of Transactions. So long as any Preferred Securities remain outstanding, if there shall have occurred and be continuing a Debenture Event of Default, a Declaration Event of Default or an event that, with the giving of notice or the lapse of time or both, would constitute a Debenture Event of Default or a Declaration Event of Default, or a selection by the Guarantor of a Deferral Period as provided in the Indenture and such period, or any extension thereof, shall be continuing, then (a) the Guarantor shall not declare or pay any dividend on, or make any distribution with respect to, or redeem, purchase, acquire or make a liquidation payment with respect to, any of its capital stock (other than stock dividends paid by the Guarantor which stock dividends consist of the stock of the same class as that on which the dividend is being paid), (b) the Guarantor shall not make any payment of interest, principal or premium, if any, on or repay, repurchase or redeem any debt securities issued by the Guarantor which rank pari passu with or junior in interest to the Debentures and (c) shall not make any guarantee payments with respect to any guarantee by the Guarantor of the debt securities of any subsidiary of the Guarantor if such guarantee ranks pari passu with or junior in interest to the Debentures (in each case, other than (A) dividends or distributions in Common Stock, (B) any declaration of a dividend in connection with the implementation of a stockholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto, (C) payments under this Guarantee, (D) purchases or acquisitions of shares of the Common Stock in connection with the satisfaction by the Guarantor of its obligations under any employee benefit plan or any other contractual obligation of the Guarantor (other than a contractual obligation ranking pari passu with or junior in interest to the Securities), (E) as a result of a reclassification of the Guarantor's capital stock or the exchange or conversion of one class or series of the Guarantor's capital stock for another class or series of the Guarantor's capital stock or (F) the purchase of fractional interests in shares of the Guarantor's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged).

SECTION 6.02. Ranking. This Guarantee will constitute an unsecured obligation of the Guarantor and will rank subordinate to all Senior Debt of the Guarantor to the same extent that the Debentures are subordinated pursuant to the Indenture.

#### ARTICLE VII

##### Termination

SECTION 7.01. Termination. This Guarantee shall terminate upon (i) full payment of the amount payable upon redemption of all Preferred Securities, (ii) the distribution of the Guarantor's common stock to the Holders in respect of the conversion of the Preferred Securities into the Guarantor's common stock or the distribution of the Debentures to the Holders of all of the Preferred Securities or (iii) full payment of the amounts payable in accordance with the Declaration upon liquidation of the Issuer. Notwithstanding the foregoing, this Guarantee will continue to be effective or will be reinstated, as the case may be, if at any time any Holder must restore payment of any sums paid under the Preferred Securities or under this Guarantee.

#### ARTICLE VIII

##### Indemnification

SECTION 8.01. Exculpation. (a) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Guarantor or any Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith in accordance with this Guarantee and in a manner that such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Guarantee or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's negligence or willful misconduct with respect to such acts or omissions.

(b) An Indemnified Person shall be fully protected in relying in good faith upon the records of the Guarantor and upon such information, opinions, reports or statements presented to the Guarantor by any Person as to matters the Indemnified Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on

behalf of the Guarantor, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits, losses, or any other facts pertinent to the existence and amount of assets from which Distributions to Holders might properly be paid.

SECTION 8.02. Indemnification. (a) The Guarantor agrees to indemnify each Indemnified Person for, and to hold each Indemnified Person harmless against, any and all loss, liability or expense including taxes (other than taxes based on the income of such Indemnified Person) incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses (including reasonable legal fees and expenses) of defending itself against or investigating any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The obligation to indemnify as set forth in this Section 8.02 shall survive the termination of this Guarantee.

(b) To the fullest extent permitted by applicable law, expenses (including legal fees and expenses) incurred by an Indemnified Person in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Guarantor prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Guarantor of an undertaking by or on behalf of the Indemnified Person to repay such amount if it shall be determined that the Indemnified Person is not entitled to be indemnified as authorized in Section 8.02(a).

(c) No Indemnified Person shall claim or exact any lien or charge on any Guarantee Payments as a result of any amount due to it under this Guarantee.

#### ARTICLE IX

##### Miscellaneous

SECTION 9.01. Successors and Assigns. All guarantees and agreements contained in this Guarantee shall bind the successors, assigns, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders.

SECTION 9.02. Amendments. Except with respect to any changes that do not adversely affect the rights of Holders (in which case no consent of Holders will be required), this Guarantee may only be amended with the prior

approval of the Holders of a majority in liquidation amount of the Preferred Securities then outstanding. The provisions of Section 12.02 of the Declaration with respect to meetings of holders of the Securities (as defined in the Declaration) apply to the giving of such approval.

SECTION 9.03. Notices. All notices provided for in this Guarantee shall be in writing, duly signed by the party giving such notice, and shall be delivered, telecopied or mailed by first-class mail, as follows:

(a) if given to the Issuer, in care of the Regular Trustees at the Issuer's mailing address set forth below (or such other address as the Issuer may give notice):

Kevin J. McNamara  
Timothy F. O'Toole  
Sandra Laney  
Chemed Capital Trust  
c/o Chemed Corporation  
2600 Chemed Center  
Cincinnati, Ohio 45202-4726  
Attention: Treasurer

(b) If given to the Guarantee Trustee, at the Guarantee Trustee's mailing address set forth below (or such other address as the Guarantee Trustee may give notice of to the Holders):

Firststar Bank, National Association  
425 Walnut Street  
6th Floor  
Cincinnati, OH 45202  
Attention: Keith A. Maurmeier

(c) If given to the Guarantor, at the Guarantor's mailing address set forth below (or such other address as the Guarantor may give notice of to the Holders):

Chemed Corporation  
2600 Chemed Center  
Cincinnati, Ohio 45202-4726  
Attention: Treasurer

(c) If given to any Holder, at the address set forth on the books and records of the Issuer.

All such notices shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid

except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

SECTION 9.04. Benefit. This Guarantee is solely for the benefit of the Holders and, subject to Section 3.01(a), is not separately transferable from the Preferred Securities.

SECTION 9.05. Governing Law. THIS PREFERRED SECURITIES GUARANTEE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY CONSENT TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF DELAWARE AND OF THE UNITED STATES DISTRICT COURTS LOCATED IN THE STATE OF DELAWARE FOR ANY LAWSUITS, CLAIMS OR OTHER PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT AND AGREE NOT TO COMMENCE ANY SUCH LAWSUIT, CLAIM OR OTHER PROCEEDING EXCEPT IN SUCH COURTS. THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY LAWSUIT, CLAIM, OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN THE COURTS OF THE STATE OF DELAWARE OR THE UNITED STATES DISTRICT COURTS LOCATED IN THE STATE OF DELAWARE, AND HEREBY FURTHER IRREVOCABLY AND UNCONDITIONALLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH LAWSUIT, CLAIM OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

CHEMED CORPORATION, as  
Guarantor,

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

FIRSTAR BANK, NATIONAL  
ASSOCIATION, as Guarantee  
Trustee,

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



OFFERING CIRCULAR

CHEMED CORPORATION  
CHEMED CAPITAL TRUST  
OFFER TO EXCHANGE  
CHEMED CAPITAL TRUST CONVERTIBLE TRUST PREFERRED SECURITIES  
(LIQUIDATION AMOUNT \$27 PER CONVERTIBLE TRUST PREFERRED SECURITY AND  
GUARANTEED TO THE EXTENT SET FORTH HEREIN BY CHEMED CORPORATION)

FOR

UP TO 2,000,000 OUTSTANDING SHARES OF  
CAPITAL STOCK OF CHEMED CORPORATION

THE EXCHANGE OFFER, THE PRORATION PERIOD AND WITHDRAWAL RIGHTS WILL EXPIRE AT 12:00 MIDNIGHT, NEW YORK CITY TIME, ON JANUARY 24, 2000, UNLESS THE EXCHANGE OFFER IS EXTENDED.

Chemed Corporation, a Delaware corporation (the "Company"), and Chemed Capital Trust, a Delaware statutory business trust (the "Trust" or the "Issuer"), hereby offer, upon the terms and subject to the conditions set forth in this Offering Circular and the accompanying Letter of Transmittal (which together constitute the "Exchange Offer"), to exchange Convertible Trust Preferred Securities representing preferred undivided beneficial interests in the assets of the Trust (the "Preferred Securities"), for up to 2,000,000 of the outstanding shares (the "Shares") of Capital Stock, par value \$1 per share (the "Capital Stock"), of the Company. Concurrently with the issuance of Preferred Securities in exchange for Shares validly tendered in the Exchange Offer, the Company will deposit in the Trust as trust assets its Convertible Junior Subordinated Debentures due 2030 (the "Junior Subordinated Debentures"), having an aggregate principal amount equal to the aggregate stated liquidation amount of the Preferred Securities to be issued by the Trust in the Exchange Offer.

Distributions (as defined herein) will accrue on the Preferred Securities at the annual rate of \$2.00 for each Preferred Security, payable quarterly in arrears. The Trust reserves the right to defer Distributions on the Preferred Securities for up to 20 consecutive quarters. Deferred Distributions will compound quarterly. Each of the Preferred Securities is convertible, at the option of the holder, into Shares at the rate of 0.73 of a Share for each Preferred Security (equivalent to a conversion price of \$37 per Share), subject to adjustment in certain circumstances.

Exchanges will be made on the basis of one Preferred Security for each Share validly tendered and accepted for exchange in the Exchange Offer. As of December 20, 1999, there were 10,398,781 Shares outstanding. Shares not accepted for exchange because of proration will be returned. For a description of the other terms of the Exchange Offer, see "The Exchange Offer -- Terms of the Exchange Offer," "-- Expiration Date; Extensions; Amendments; Termination," "-- Withdrawal of Tenders," "-- Acceptance of Shares and Proration" and "-- Odd Lots; Dividend Reinvestment Plan." Application will be made to list the Preferred Securities on the New York Stock Exchange (the "NYSE"). In order to satisfy the NYSE listing requirements, acceptance of Shares validly tendered in the Exchange Offer is subject to the condition that as of the expiration date (the "Expiration Date") there be at least 1,000,000 Shares validly tendered, and not withdrawn, by at least 400 record or beneficial holders of Shares (the "Minimum Distribution Condition"), which condition may be waived. See "The Exchange Offer -- Expiration Date; Extensions; Amendments; Termination" and "-- Conditions to the Exchange Offer."

The Company and the Trust expressly reserve the right, in their sole discretion, subject to applicable law, to (i) terminate the Exchange Offer, and not accept for exchange any Shares and promptly return all Shares upon the failure of any of the conditions specified above or in "The Exchange Offer -- Conditions to the Exchange Offer," (ii) waive any condition to the Exchange Offer and accept Shares previously tendered pursuant to the Exchange Offer and not withdrawn, (iii) extend the Expiration Date, subject, however, to all withdrawal rights of holders (see "The Exchange Offer -- Withdrawal of Tenders"), (iv) amend the terms of the Exchange Offer or

(Continued on next page)

PROSPECTIVE EXCHANGING HOLDERS OF SHARES SHOULD SEE "RISK FACTORS" STARTING ON PAGE 13 FOR A DISCUSSION OF CERTAIN FACTORS RELATING TO THE PREFERRED SECURITIES THAT SHOULD BE CONSIDERED BY INVESTORS, INCLUDING THE PERIOD AND CIRCUMSTANCES DURING AND UNDER WHICH PAYMENTS ON THE JUNIOR SUBORDINATED DEBENTURES AND THE PREFERRED SECURITIES MAY BE DEFERRED AND THE RELATED U.S. FEDERAL INCOME TAX CONSEQUENCES.

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The date of this Offering Circular is December 23, 1999.

(Continued from cover page)

(v) modify the form of the consideration to be paid pursuant to the Exchange Offer. Any amendment applicable to the Exchange Offer will apply to all Shares tendered pursuant to the Exchange Offer. The minimum period during which the Exchange Offer must remain open following material changes in the terms of the Exchange Offer or the information concerning the Exchange Offer, other than a change in the percentage of securities sought or the price, depends upon the facts and circumstances, including the relative materiality of such terms or information. See "The Exchange Offer -- Expiration Date; Extensions; Amendments; Termination."

The Company will own, directly or indirectly, all the securities representing common undivided beneficial interests in the assets of the Trust (the "Common Securities" and, together with the Preferred Securities, the "Trust Securities"). The Trust exists for the purpose of (a) issuing (i) its Preferred Securities in exchange for Shares validly tendered in the Exchange Offer and delivering such Shares to the Company in consideration for the deposit by the Company of Junior Subordinated Debentures having an aggregate stated principal amount equal to the aggregate stated liquidation amount of such Preferred Securities in the Trust as trust assets and (ii) its Common Securities to the Company in exchange for cash and investing the proceeds thereof in an equivalent amount of Junior Subordinated Debentures and (b) engaging in such other activities as are necessary and incidental thereto. The Preferred Securities and the Common Securities will rank pari passu with each other and will have equivalent terms; provided, however, that (i) if an Event of Default (as defined herein) under the Declaration (as defined herein) occurs and is continuing, the holders of Preferred Securities will have a priority over holders of the Common Securities with respect to payments in respect of distributions and payments upon liquidation, redemption or otherwise and (ii) holders of Common Securities have the exclusive right (subject to the terms of the Declaration) to appoint, replace or remove trustees of the Trust and to increase or decrease the number of trustees of the Trust, subject to the right of holders of Preferred Securities to appoint a trustee of the Trust (the "Special Trustee") upon the occurrence of certain events described herein. See "Description of Preferred Securities" and "Description of Junior Subordinated Debentures."

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 THE EXCHANGE OFFER IS SUBJECT TO CERTAIN OTHER CONDITIONS. SEE  
 "THE EXCHANGE OFFER -- CONDITIONS TO THE EXCHANGE OFFER."  
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Shares of the Capital Stock are listed and traded on the NYSE. On December 20, 1999, the reported closing sales price of the Capital Stock on the NYSE Composite Tape was \$27.94 per share. HOLDERS ARE URGED TO OBTAIN A CURRENT MARKET QUOTATION FOR THE CAPITAL STOCK.

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 NONE OF THE COMPANY, THE BOARD OF DIRECTORS OF THE COMPANY, THE TRUST NOR THE ISSUER TRUSTEES (AS DEFINED HEREIN) MAKES ANY RECOMMENDATION AS TO WHETHER ANY HOLDER OF CAPITAL STOCK SHOULD TENDER ANY OR ALL OF SUCH HOLDER'S SHARES PURSUANT TO THE EXCHANGE OFFER. EACH HOLDER OF CAPITAL STOCK MUST MAKE SUCH HOLDER'S OWN DECISION WHETHER OR NOT TO TENDER SHARES AND, IF SO, HOW MANY SHARES TO TENDER. AS OF THE DATE OF THIS OFFERING CIRCULAR, EXECUTIVE OFFICERS AND DIRECTORS OF THE COMPANY DO NOT INTEND TO TENDER SHARES IN THE EXCHANGE OFFER.

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

The Exchange Offer is being made by the Company and the Trust in reliance on the exemption from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"), afforded by Section 3(a)(9) thereof. The Company and the Trust therefore will not pay any commission or other remuneration to any broker, dealer, salesman or other person for soliciting tenders of the Shares. Regular employees of the Company and the Trust, who will not receive additional compensation therefor, may solicit exchanges from holders of Shares.

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS IN CONNECTION WITH THE EXCHANGE OFFER OTHER THAN THOSE CONTAINED IN THIS OFFERING CIRCULAR. IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATIONS SHOULD NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE COMPANY, THE TRUST OR THE ISSUER TRUSTEES (AS DEFINED HEREIN). NEITHER THE DELIVERY OF THIS OFFERING CIRCULAR NOR ANY EXCHANGE MADE HEREUNDER SHALL UNDER ANY CIRCUMSTANCES CREATE ANY IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE COMPANY OR THE TRUST SINCE THE RESPECTIVE DATES AS OF WHICH INFORMATION IS GIVEN HEREIN. TO THE EXTENT THERE IS A MATERIAL CHANGE IN THE AFFAIRS OF THE COMPANY OR THE TRUST AFTER THE DATE HEREOF, THE COMPANY AND THE TRUST WILL PROMPTLY DISCLOSE SUCH INFORMATION IN A MANNER REASONABLY CALCULATED TO INFORM THE HOLDERS OF CAPITAL STOCK OF SUCH CHANGE.

THE EXCHANGE OFFER IS NOT BEING MADE TO, NOR WILL TENDERS BE ACCEPTED FROM OR ON BEHALF OF, HOLDERS OF CAPITAL STOCK IN ANY JURISDICTION IN WHICH THE MAKING OF THE EXCHANGE OFFER OR ITS ACCEPTANCE WOULD NOT BE IN COMPLIANCE WITH THE LAWS OF SUCH JURISDICTION. THE COMPANY AND THE TRUST ARE NOT AWARE OF ANY JURISDICTION WHERE THE MAKING OF THE EXCHANGE OFFER OR THE TENDER OF CAPITAL STOCK WOULD NOT BE IN COMPLIANCE WITH APPLICABLE LAW. IF THE COMPANY AND THE TRUST BECOME AWARE OF ANY JURISDICTION WHERE THE MAKING OF THE EXCHANGE OFFER OR THE TENDER OF CAPITAL STOCK IS NOT IN COMPLIANCE WITH ANY APPLICABLE LAW, THE COMPANY AND THE TRUST WILL MAKE A GOOD FAITH EFFORT TO COMPLY WITH SUCH LAW. IF, AFTER SUCH GOOD FAITH EFFORT, THE COMPANY AND THE TRUST CANNOT COMPLY WITH SUCH LAW, THE EXCHANGE OFFER WILL NOT BE MADE TO (NOR WILL TENDERS BE ACCEPTED FROM OR ON BEHALF OF) THE HOLDERS OF CAPITAL STOCK RESIDING IN SUCH JURISDICTION.

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Any holder of Capital Stock desiring to tender all or any portion of such holder's Shares should (1) complete and sign the Letter of Transmittal (or a facsimile copy thereof) in accordance with the instructions in the Letter of Transmittal, mail or deliver it and any other documents required by the Letter of Transmittal to Norwest Bank Minnesota, N.A., the exchange agent for the Exchange Offer (the "Exchange Agent"), and either mail or deliver the certificates for such Shares to the Exchange Agent along with the Letter of Transmittal or (2) follow the procedures for book-entry transfer set forth in "The Exchange Offer -- Procedures for Tendering Shares" or (3) request such holder's broker, dealer, commercial bank, trust company or other nominee to effect the transaction for such holder. A HOLDER HAVING SHARES REGISTERED IN THE NAME OF A BROKER, DEALER, COMMERCIAL BANK, TRUST COMPANY OR OTHER NOMINEE MUST CONTACT SUCH BROKER, DEALER, COMMERCIAL BANK, TRUST COMPANY OR OTHER NOMINEE IF SUCH HOLDER DESIRES TO TENDER SUCH SHARES IN THE EXCHANGE OFFER.

A holder who desires to tender Shares and whose certificates for such Shares are not immediately available (or who cannot follow the procedures for book-entry transfer on a timely basis) or who cannot transmit the Letter of Transmittal and all other required documents to the Exchange Agent before the Expiration Date should tender such Shares by following the procedures for guaranteed delivery set forth in "The Exchange Offer -- Procedures for Tendering Shares."

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Any questions or requests for assistance or for additional copies of this Offering Circular, the Letter of Transmittal or the Notice of Guaranteed Delivery may be directed to the Information Agent at its addresses and telephone numbers set forth on the back cover of this Offering Circular. Holders of Shares may also contact their broker, dealer, commercial bank, trust company or other nominee for assistance concerning the Exchange Offer.

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## AVAILABLE INFORMATION

The Company is subject to the informational reporting requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and in accordance therewith the Company files reports, proxy statements and other information with the Securities and Exchange Commission (the "SEC"). The reports, proxy statements and other information filed by the Company with the SEC can be inspected and copied at the public reference facilities maintained by the SEC at Judiciary Plaza, Room 1024, 450 Fifth Street, N.W., Washington, D.C. 20549, and at the regional offices of the SEC at Seven World Trade Center, 13th Floor, New York, New York 10048 and Northwestern Atrium Center, 500 West Madison Street (Suite 1400), Chicago, Illinois 60661. Copies of such material also can be obtained at prescribed rates from the Public Reference Section of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. In addition, the SEC maintains a Website (<http://www.sec.gov>) that also contains such reports, proxy statements and other information filed by the Company. Material filed by the Company can also be inspected at the library of the NYSE, 20 Broad Street, New York, New York 10005.

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As used herein, (i) the "Indenture" means the Junior Subordinated Indenture, between the Company and Firststar Bank, National Association ("Firststar Bank"), as trustee (the "Debenture Trustee"), (ii) the "Declaration" means the Amended and Restated Declaration of Trust relating to the Trust among the Company, as Depositor (the "Depositor"), Firststar Bank as Property Trustee (the "Property Trustee"), First Union Trust Company, National Association ("First Union Trust Company") as Delaware Trustee (the "Delaware Trustee"), and the individuals named as Administrative Trustees therein (the "Administrative Trustees") (collectively with the Property Trustee and the Delaware Trustee, the "Issuer Trustees") and (ii) the "Guarantee" means the Guarantee Agreement between the Company and Firststar Bank (the "Guarantee Trustee").

## INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents filed with the SEC by the Company are incorporated by reference in this Offering Circular:

(a) Annual Report on Form 10-K (the "1998 Form 10-K") for the year ended December 31, 1998, filed pursuant to Section 13 of the Exchange Act; and

(b) Quarterly Reports on Form 10-Q for the quarters ended March 31, 1999, June 30, 1999 and September 30, 1999, filed pursuant to Section 13 of the Exchange Act.

Pursuant to Rule 13e-4 under the Exchange Act, the Company and the Trust have filed an Issuer Tender Offer Statement on Schedule 13E-4 (the "Schedule 13E-4") with the SEC. The Schedule 13E-4, including exhibits, may be inspected or copied at the public reference facilities of the SEC in Washington, D.C. See "Available Information."

All reports subsequently filed by the Company pursuant to Section 13(a) and (c) of the Exchange Act and any definitive proxy or information statements filed pursuant to Section 14 of the Exchange Act in connection with any subsequent stockholders' meeting and any reports filed pursuant to Section 15(d) of the Exchange Act prior to completion of the Exchange Offer shall be deemed to be incorporated by reference into this Offering Circular and to be a part hereof from the date of filing such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Offering Circular to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Offering Circular.

This Offering Circular incorporates by reference documents which are not present herein or delivered herewith. The Company will provide without charge to each person to whom this Offering Circular is delivered, on the request of any such person, a copy of any or all of the foregoing documents incorporated herein by reference (other than exhibits to such documents). Written or telephone requests for such documents should be directed to the Information Agent at (800) 848-2998. From outside the U.S. or Canada, call collect: (212) 269-5550. In order to ensure timely delivery of documents, requests should be made at least five business days before the Expiration Date.

## SUMMARY OF THE EXCHANGE OFFER

This summary is qualified in its entirety by the detailed information appearing elsewhere in this Offering Circular or incorporated by reference herein. Terms used in this summary and not defined herein shall have the meanings given to them elsewhere in this Offering Circular.

Securities Offered.....	Up to 2,000,000 Preferred Securities of the Trust.
Exchange Ratio.....	One Preferred Security for each Share validly tendered and accepted for exchange in the Exchange Offer.
Expiration Date.....	12:00 midnight, New York City time, on Monday, January 24, 2000, unless extended. See "The Exchange Offer -- Terms of the Exchange Offer."
Procedures for Tendering Shares.....	Each holder of Shares who wishes to tender his or her Shares must deliver the following documents prior to the Expiration Date to the Exchange Agent at one of the addresses set forth on the back cover hereof: (i) certificates representing such Shares together with the Letter of Transmittal, properly completed and duly executed by such holder, and all other documents required by such Letter of Transmittal, (ii) if such holder wishes to deliver his or her Shares through book-entry transfer, confirmation of such transfer together with an applicable Letter of Transmittal, properly completed and duly executed by such holder, or an Agent's Message (as defined herein), and all other required documents, or (iii) if such holder wishes to tender by guaranteed delivery, a properly completed and duly executed Notice of Guaranteed Delivery. A holder having Shares registered in the name of a broker, dealer, commercial bank, trust company or other nominee must contact such registered holder promptly if such holder wishes to tender such Shares into the Exchange Offer. LETTERS OF TRANSMITTAL, NOTICES OF GUARANTEED DELIVERY AND SHARE CERTIFICATES SHOULD BE SENT TO THE EXCHANGE AGENT, AND NOT TO THE COMPANY OR THE TRUST. See "The Exchange Offer -- Procedures for Tendering Shares."
Purpose of the Exchange Offer.....	On November 3, 1999, the Board of Directors of the Company (the "Board of Directors") adopted a new dividend policy, pursuant to which it expects to declare reduced quarterly dividends on the Shares in 2000 and beyond. The purpose of the Exchange Offer is to offer holders of Shares who prefer not to continue in an equity position as holders of Capital Stock the opportunity to obtain a higher current yield on their investment in the Company through the exchange of their Shares for Preferred Securities. The Company expects the Exchange Offer to result in certain tax efficiencies by enabling it to deduct interest payable on the Junior Subordinated Debentures for U.S. Federal income tax purposes; dividends payable on the Capital Stock are not deductible. Because the conversion price of the Preferred Securities is higher than the current trading price of the Shares, holders of the Preferred Securities have reduced participation in any growth in the value of the Shares. See "Purposes and Effects of the Exchange Offer" and "Summary Financial Information."
Acceptance of Shares and Delivery of Preferred Securities.....	Subject to the terms and conditions of the Exchange Offer, the Company and the Trust will accept for exchange up to 2,000,000

Shares which are properly tendered in the Exchange Offer and not withdrawn prior to the Expiration Date. If the Company and the Trust accept fewer than all Shares validly tendered and not withdrawn before the Expiration Date, whether because of proration or otherwise, the Shares accepted first will consist of all Shares tendered by any record or beneficial owner of an aggregate of fewer than 100 Shares, including any Shares held in the Company's Dividend Reinvestment Plan. No fractional Shares will be accepted by the Company and the Trust. The Trust will deliver Preferred Securities issued pursuant to the Exchange Offer promptly following the Expiration Date. Shares not accepted because of proration will be returned to the tendering holders at the Company's expense as promptly as practicable following the Expiration Date. See "The Exchange Offer -- Acceptance of Shares and Proration" and "-- Odd Lots; Dividend Reinvestment Plan."

- Withdrawal of Tenders..... Tenders may be withdrawn at any time prior to the Expiration Date or, unless previously accepted for exchange, after 12:00 midnight, New York City time, on February 22, 2000. See "The Exchange Offer -- Withdrawal Rights."
- Conditions of the Exchange Offer..... The Exchange Offer is subject to certain conditions, any or all of which may be waived by the Company and the Trust. See "The Exchange Offer -- Certain Conditions of the Exchange Offer."
- Certain Federal Income Tax Considerations..... An exchange of Shares for Preferred Securities pursuant to the Exchange Offer will be a taxable transaction for U.S. Federal income tax purposes. It is possible that the entire amount of the Preferred Securities received in the Exchange Offer will be treated as a dividend taxable as ordinary income. For a discussion of the U.S. Federal income tax consequences of the exchange of Shares, see "U.S. Federal Income Tax Considerations."
- Distributions on the Preferred Securities..... Distributions on the Preferred Securities will be payable on the Preferred Securities at the annual rate of \$2.00 per Preferred Security. Subject to the Distribution deferral provisions described below, Distributions will be payable quarterly in arrears on each March 15, June 15, September 15 and December 15, commencing March 15, 2000. Because Distributions on the Preferred Securities constitute interest for U.S. Federal income tax purposes, corporate holders thereof will not be entitled to a dividends-received deduction.
- Distribution Deferral Provisions..... The ability of the Trust to pay Distributions on the Preferred Securities is solely dependent on its receipt of interest payments from the Company on the Junior Subordinated Debentures. The Company has the right at any time, and from time to time, to defer the interest payments due on the Junior Subordinated Debentures for successive periods (each, a "Deferral Period") not exceeding 20 consecutive quarters for each such Deferral Period. Quarterly Distributions on the Preferred Securities will be deferred by the Trust during any Deferral Period, but will continue to accumulate additional Distributions thereon, compounded quarterly until the end of any such Deferral Period. The Company will cause the Trust to give



written notice of its deferral of an interest payment and the deferral of Distributions on the Preferred Securities to the holders of the Preferred Securities not later than ten days prior to the related record date. The Company has agreed, among other things, not to declare or pay any dividend on the Capital Stock (subject to certain exceptions) during any Deferral Period. If a deferral of an interest payment occurs, the holders of the Preferred Securities will continue to recognize interest income for U.S. Federal income tax purposes in advance of the receipt of any corresponding Distribution. If a holder of Preferred Securities converts its Preferred Securities into Capital Stock during any Deferral Period, the holder will not receive any cash related to any deferred Distributions. See "Risk Factors -- Option to Extend Interest Payment Period; Tax Consequences," "Description of Preferred Securities -- Distributions," "Description of Junior Subordinated Debentures -- Option to Extend Interest Payment Date" and "U.S. Federal Income Tax Considerations -- U.S. Federal Income Tax Consequences of Holding Preferred Securities -- Interest Income and Original Issue Discount."

#### Conversion into Capital

Stock..... Each of the Preferred Securities is convertible, at the option of the holder, into Shares at the rate of 0.73 of a Share for each Preferred Security (equivalent to a conversion price of \$37 per Share), subject to adjustment in certain circumstances. The last reported sale price of the Shares on the New York Stock Exchange Composite Tape on December 20, 1999 was \$27.94 per Share. In connection with any conversion of the Preferred Securities, the Property Trustee, as Conversion Agent, will exchange such Preferred Securities for a Like Amount (as defined in "Description of Preferred Securities -- Liquidation of the Trust and Distribution of Junior Subordinated Debentures") of Junior Subordinated Debentures held by the Trust and immediately convert such Junior Subordinated Debentures into Shares. No fractional Shares will be issued as a result of conversion, but in lieu thereof such fractional interest will be paid by the Company in cash based on the then current market value of the Shares. In addition, no additional Shares will be issued upon conversion of Preferred Securities to account for any accrued but unpaid Distributions on the Preferred Securities at the time of conversion. See "Description of Preferred Securities -- Conversion Rights."

Liquidation Amount..... In the event of any liquidation of the Trust (after satisfaction of liabilities of creditors to the Trust), a holder of each of the Preferred Securities will be entitled to receive \$27 per Preferred Security plus an amount equal to any accrued and unpaid Distributions thereon to the date of payment, unless a Junior Subordinated Debenture is distributed to such holder. See "Description of Preferred Securities -- Liquidation of the Trust and Distribution of Junior Subordinated Debentures."

Maturity..... Although the Preferred Securities do not have a stated maturity, they are subject to mandatory redemption, at the applicable Redemption Price (as defined herein), upon the repayment or redemption, in whole or in part, of the Junior Subordinated Debentures. The Junior Subordinated Debentures will mature on March 15, 2030 (the "Stated Maturity"), unless earlier redeemed as described below.

Upon redemption of the Junior Subordinated Debentures at their Stated Maturity, the Preferred Securities will be redeemed at their liquidation amounts plus an amount equal to any accrued and unpaid Distributions thereon (the "Stated Maturity Price").

Optional Redemption.....

The Junior Subordinated Debentures are redeemable, at the option of the Company (an "Optional Redemption"), in whole or in part, after March 15, 2003, at the prices specified herein (the "Optional Redemption Price"). See "-- Effect of Redemption" below and "Description of Junior Subordinated Debentures -- Redemption -- Optional Redemption."

Tax Event or Investment Company Event Redemption or Distribution.....

Upon the occurrence of a Tax Event (as defined herein), except in certain limited circumstances, or an Investment Company Event (as defined herein), the Company will cause the Issuer Trustees to liquidate the Trust and cause the Junior Subordinated Debentures to be distributed to the holders of the Preferred Securities. In certain limited circumstances, the Company will have the right to redeem the Junior Subordinated Debentures in whole, but not in part, at a price equal to the aggregate principal amount thereof plus accrued and unpaid interest thereon (the "Tax Event Redemption Price"), in lieu of a distribution of the Junior Subordinated Debentures. See "-- Effect of Redemption" below. In the case of a Tax Event, the Company may also elect to cause the Preferred Securities to remain outstanding and pay Additional Sums on the Junior Subordinated Debentures. See "Description of the Preferred Securities -- Tax Event or Investment Company Event Redemption or Distribution" and "Description of Junior Subordinated Debentures -- Additional Sums."

Effect of Redemption.....

The "Stated Maturity Price," "Optional Redemption Price" and "Tax Event Redemption Price" shall each hereinafter be referred to as a Redemption Price. Upon the repayment or redemption of any Junior Subordinated Debentures (other than following the distribution of the Junior Subordinated Debentures to the holders of Trust Securities), the proceeds from such repayment or redemption shall concurrently be applied to redeem, at the applicable Redemption Price, the related Trust Securities with an aggregate liquidation amount equal to the aggregate principal amount of such Junior Subordinated Debentures; provided, however, that in the case of a Debenture Event of Default or an Event of Default under the Declaration, the Preferred Securities will receive a preference over the Common Securities. See "Description of Preferred Securities -- Subordination of Common Securities" and "Description of Junior Subordinated Debentures -- Redemption -- Repayment at Maturity; Redemption of Junior Subordinated Debentures" and "-- Optional Redemption."

Guarantee.....

The Company will irrevocably guarantee, on a subordinated basis and to the extent set forth herein, the payment in full of (i) Distributions on the Preferred Securities to the extent of funds of the Trust available therefor, (ii) the amount payable upon redemption of the Preferred Securities to the extent of funds of the Trust available therefor and (iii) generally, the liquidation amount of the Preferred Securities to the extent of the assets of the Trust available

for distribution to holders of Preferred Securities. The Guarantee will be unsecured and will be subordinate to all Senior Debt of the Company. Upon the liquidation, dissolution or winding up of the Company, its obligations under the Guarantee will rank junior to all of its Senior Debt, and, as a result, funds may not be available for payment under the Guarantee. See "Risk Factors -- Ranking of Obligations Under the Guarantee and the Junior Subordinated Debentures" and "-- Rights Under the Guarantee" and "Description of Guarantee." Effectively, the Company has, through the Guarantee, the Junior Subordinated Debentures, the Indenture and the Declaration, taken together, fully, irrevocably and unconditionally guaranteed all of the Trust's obligations under the Preferred Securities. No single document standing alone or operating in conjunction with fewer than all of the other documents constitutes such guarantee. It is only the combined operation of these documents that has the effect of providing a full, irrevocable and unconditional guarantee of the Trust's obligations under the Preferred Securities. See "Description of Guarantee" and "Relationship among the Preferred Securities, the Junior Subordinated Debentures and the Guarantee."

Liquidation of the Trust.....	The Company, as the holder of the outstanding Common Securities, has the right at any time (including upon the occurrence of a Tax Event or Investment Company Act Event) to terminate the Trust (subject to certain conditions). In the event of such termination of the Trust, after satisfaction of liabilities to creditors of the Trust as required by applicable law, the holders of the Trust Securities generally will be entitled to receive per related Trust Security the liquidation amount plus accumulated and unpaid Distributions thereon to the date of payment, which may be in the form of a distribution of related Junior Subordinated Debentures in certain circumstances on a pro rata basis in accordance with the respective liquidation amounts of such Trust Securities. See "Description of Preferred Securities -- Liquidation of the Trust and Distribution of Junior Subordinated Debentures."
Voting Rights.....	Generally, holders of the Preferred Securities will not have any voting rights. However, if (i) an Event of Default with respect to the Junior Subordinated Debentures occurs and is continuing or (ii) the Company defaults under the Guarantee with respect to the Preferred Securities, the holders of the Preferred Securities will be entitled, by majority vote, to appoint a Special Trustee of the Trust. See "Description of the Preferred Securities -- Voting Rights; Amendment of the Declaration."
Ranking.....	Payments on the Preferred Securities will be made pro rata with the Common Securities except as described under "Description of the Preferred Securities -- Subordination of Common Securities." The Junior Subordinated Debentures will be unsecured and subordinate and junior in right of payment in the manner set forth in the Indenture to all Senior Debt of the Company. See "Description of Junior Subordinated Debentures -- Subordination." At November 30, 1999, the Company had approximately \$89,792,000 of Senior Debt. In addition, the Junior Subordinated Debentures are effectively

subordinated to all existing and future liabilities of the Company's subsidiaries, which totaled \$89,769,000 at November 30, 1999.

Listing.....	Application will be made to list the Preferred Securities on the NYSE.
Absence of Market for the Preferred Securities.....	The Preferred Securities will be a new issue of securities for which there is currently no market and there can be no assurance as to the development or liquidity of any market for the Preferred Securities.
Capital Stock Dividends.....	Each Share is entitled to receive dividends if, as and when declared by the Board of Directors. Since December 10, 1997, the Company has paid a quarterly dividend of \$0.53 per Share. The Board of Directors has proposed to reduce the quarterly dividends on the Shares in 2000 and beyond. See "Market and Price Ranges of Capital Stock; Dividends."
Information Agent.....	D.F. King & Co., Inc., telephone: (800) 848-2998. If calling from outside the U.S. or Canada, call collect: (212) 269-5550.
Exchange Agent.....	Norwest Bank Minnesota, N.A., telephone: (800) 380-1372.
Further Information.....	For further information, contact the Information Agent.

## RISK FACTORS

Prospective exchanging holders of the Shares should carefully review the information contained elsewhere in this Offering Circular and should particularly consider the following matters.

## ABSENCE OF PUBLIC MARKET FOR THE PREFERRED SECURITIES

There is no existing market for the Preferred Securities (or the Junior Subordinated Debentures) and there can be no assurance as to the liquidity of any markets that may develop for the Preferred Securities (or the Junior Subordinated Debentures), the ability of the holders to sell their Preferred Securities (or Junior Subordinated Debentures) or at what price holders of the Preferred Securities (or the Junior Subordinated Debentures) will be able to sell such securities. Future trading prices of the Preferred Securities (and the Junior Subordinated Debentures) will depend on many factors including, among other things, prevailing interest rates, the Company's operating results and the market for similar securities. The Company and the Trust will apply to have the Preferred Securities listed on NYSE. If the Minimum Distribution Condition is not satisfied and the Company and the Trust waive the Minimum Distribution Condition, the Preferred Securities issued in the Exchange Offer will be ineligible for listing on the NYSE, which will adversely affect the liquidity and trading prices of the Preferred Securities.

## RANKING OF OBLIGATIONS UNDER THE GUARANTEE AND THE JUNIOR SUBORDINATED DEBENTURES

The obligations of the Company arising and accruing under the Guarantee issued by the Company for the benefit of the holders of Preferred Securities and under the Junior Subordinated Debentures are general unsecured obligations of the Company which are subordinate and junior in right of payment, to the extent and in the manner set forth in the Guarantee and the Indenture, to all Senior Debt of the Company. At November 30, 1999, the aggregate outstanding Senior Debt of the Company was \$89,792,000.

Because the Company is principally a holding company, the right of the Company to participate in any distribution of assets of any subsidiary upon such subsidiary's dissolution, winding-up, liquidation or reorganization or otherwise (and thus the ability of holders of the Preferred Securities to benefit indirectly from such distribution), is subject to the prior claims of creditors of that subsidiary, except to the extent that the Company may itself be a creditor of that subsidiary and its claims are recognized. Accordingly, the Junior Subordinated Debentures and the Guarantee will at all times be effectively subordinated to all existing and future liabilities of the Company's subsidiaries, and holders of Junior Subordinated Debentures and the Guarantee should look only to the assets of the Company for payments on the Junior Subordinated Debentures and the Guarantee. None of the Indenture, the Guarantee and the Declaration places any limitation on the amount of secured or unsecured debt, including Senior Debt, that may be incurred by the Company or the amount of debt that may be incurred by the Company's subsidiaries. At November 30, 1999, the Company's subsidiaries had Debt and other liabilities of approximately \$89,769,000. See "Description of Guarantee -- Status of the Guarantee" and "Description of Junior Subordinated Debentures -- Subordination." The ability of the Trust to pay amounts due on the Preferred Securities is solely dependent upon the Company making payments on the Junior Subordinated Debentures as and when required.

## OPTION TO EXTEND INTEREST PAYMENT PERIOD; TAX CONSEQUENCES

Provided that no Event of Default (as defined in the Indenture) has occurred and is continuing with respect to the Junior Subordinated Debentures (a "Debenture Event of Default"), the Company has the right under the Indenture to defer the payment of interest on the Junior Subordinated Debentures accruing at any time or from time to time for a period not exceeding 20 consecutive quarters with respect to each Deferral Period; provided, however, that no Deferral Period may extend beyond the Stated Maturity of the Junior Subordinated Debentures. See "Description of Junior Subordinated Debentures -- Option to Extend Interest Payment Date." As a consequence of any such deferral, quarterly Distributions on the Preferred Securities by the Trust will be deferred (and the amount of Distributions to which holders of the Preferred Securities are entitled will accumulate additional Distributions thereon, compounded quarterly from the relevant payment date for such Distributions) during any such Deferral Period. During any such Deferral Period, the Company may not (i) declare or pay any

dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Capital Stock other than stock dividends paid by the Company which consist of stock of the same class as that on which the dividend is being paid or (ii) make any payment of principal of or interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that then rank pari passu in all respects with or junior in interest to the Junior Subordinated Debentures (other than (a) dividends or distributions in Capital Stock, (b) any declaration of a dividend in connection with the implementation of a stockholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto, (c) payments under the Guarantee, (d) purchases or acquisitions of shares of Capital Stock in connection with the satisfaction by the Company of its obligations under any employee benefit plan or any other contractual obligation of the Company (other than a contractual obligation ranking pari passu with or junior to the Junior Subordinated Debentures), (e) as a result of a reclassification of the Company's capital stock or the exchange or conversion of one class or series of the Company's capital stock for another class or series of the Company's capital stock or (f) the purchase of fractional interests in shares of the Company's stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged). A Deferral Period will terminate upon the payment by the Company of all amounts then accrued and unpaid on the Junior Subordinated Debentures (together with interest thereon compounded quarterly, to the extent permitted by applicable law). Upon the termination of any Deferral Period, and subject to the foregoing limitations, the Company may elect to begin a new Deferral Period subject to the above conditions. There is no limitation on the number of times that the Company may elect to begin a Deferral Period. See "Description of the Preferred Securities -- Distributions" and "Description of Convertible Junior Subordinated Debentures -- Option to Extend Interest Payment Date."

Because the Company believes that the likelihood of its exercising its option to defer payments of interest is remote, it will treat the Junior Subordinated Debentures as issued without "original issue discount" ("OID") for U.S. Federal income tax purposes in accordance with applicable Treasury regulations. As a result, holders of the Preferred Securities generally will include their allocable share of the interest on the Junior Subordinated Debentures in taxable income under their own methods of tax accounting (i.e., cash or accrual). Under applicable Treasury regulations, however, if the Company were to exercise its right to defer payments of interest, those Junior Subordinated Debentures would be treated as reissued for OID purposes with OID in an amount equal to the remaining interest payments thereon and would remain OID instruments for as long as the Junior Subordinated Debentures remained outstanding. Consequently, for U.S. Federal income tax purposes, holders of the related Preferred Securities would be required to include their pro rata share of OID in gross income as it accrues in advance of the receipt of cash attributable to such interest income. Such holders would not receive the cash related to such income if they dispose of the Preferred Securities prior to the record date for payment of distributions thereafter. See "U.S. Federal Income Tax Considerations -- U.S. Federal Income Tax Consequences of Holding Preferred Securities -- Interest Income and Original Issue Discount" and "-- Sale of Preferred Securities."

The Company has no current intention of exercising its right to defer payments of interest by extending the interest payment period on the Junior Subordinated Debentures. However, should the Company elect to exercise such right in the future, the market price of the Preferred Securities may be adversely affected. A holder that disposes of its Preferred Securities during a Deferral Period, therefore, might not receive the same return on its investment as a holder that continues to hold its Preferred Securities. In addition, as a result of the existence of the Company's right to defer interest payments on the Junior Subordinated Debentures the market price of the Preferred Securities may be more volatile than the market prices of other securities on which original issue discount accrues, that are not subject to such deferrals.

#### TAX EVENT OR INVESTMENT COMPANY EVENT REDEMPTION OR DISTRIBUTION

Upon the occurrence of a Tax Event (except in certain limited circumstances) or Investment Company Event, the Company will cause the Issuer Trustees to liquidate the Trust and cause Junior Subordinated Debentures to be distributed pro rata to the holders of the Preferred Securities. In certain limited circumstances upon the occurrence of a Tax Event, the Company will have the right to redeem the Junior Subordinated Debentures, in whole, but not in part, for the principal amount thereof plus accrued and unpaid interest thereon, in lieu of a

distribution of the Junior Subordinated Debentures, in which event the Preferred Securities will be redeemed in whole at the liquidation amount of \$27 per each of the Preferred Securities plus accrued and unpaid Distributions. In the case of a Tax Event, the Company may also elect to cause the Preferred Securities to remain outstanding and pay Additional Sums on the Junior Subordinated Debentures. See "Description of Preferred Securities -- Tax Event or Investment Company Event Redemption or Distribution" and "Description of Junior Subordinated Debentures -- Additional Sums."

There can be no assurance as to the market prices for the Preferred Securities or for Junior Subordinated Debentures that may be distributed in respect of the Preferred Securities if a liquidation of the Trust occurs. Accordingly, the Preferred Securities, or the Junior Subordinated Debentures that a holder of Preferred Securities may receive upon liquidation of the Trust, may trade at a discount to the price that the investor paid to purchase the Preferred Securities offered hereby. Because holders of Preferred Securities may receive Junior Subordinated Debentures upon termination of the Trust, prospective purchasers of Preferred Securities are also making an investment decision with regard to the Junior Subordinated Debentures and should carefully review all the information regarding the Junior Subordinated Debentures contained herein. See "Description of Junior Subordinated Debentures."

#### LIQUIDATION OF THE TRUST AND DISTRIBUTION OF JUNIOR SUBORDINATED DEBENTURES

The Company, as holder of all of the outstanding Common Securities, has the right at any time to terminate the Trust and, after satisfaction of liabilities to creditors of the Trust in accordance with applicable law, to cause the Junior Subordinated Debentures to be distributed to the holders of the Preferred Securities and Common Securities in liquidation of the Trust; provided, however, that the Issuer Trustees shall have received an opinion of tax counsel to the effect that holders of Preferred Securities will not recognize any income, gain or loss on such distribution for U.S. Federal income tax purposes. The Junior Subordinated Debentures, if distributed, may be subject to restrictions on transfer as described under "Transfer Restrictions."

#### RIGHTS UNDER THE GUARANTEE

Firststar Bank will act as the Guarantee Trustee and will hold the Guarantee for the benefit of the holders of the Preferred Securities. Firststar Bank will also act as Debenture Trustee for the Junior Subordinated Debentures and as Property Trustee under the Declaration. The Guarantee guarantees to the holders of the Preferred Securities the following payments, to the extent not paid by the Trust: (i) any accumulated and unpaid Distributions required to be paid on the Preferred Securities, to the extent that the Trust has funds on hand available therefor at such time; (ii) the Redemption Price with respect to any Preferred Securities called for redemption, to the extent that the Trust has funds on hand available therefor at such time; and (iii) upon a voluntary or involuntary termination, dissolution or liquidation of the Trust (unless the Junior Subordinated Debentures are distributed to holders of the Trust Securities), the lesser of (a) the aggregate of the liquidation amount and all accumulated and unpaid Distributions to the date of payment, to the extent that the Trust has funds on hand available therefor at such time, and (b) the amount of assets of the Trust remaining available for distribution to holders of the Preferred Securities on liquidation of the Trust. The Company's obligations arising or accruing under the Guarantee will be general unsecured obligations and will be subordinated as described under "Description of Guarantee -- Status of the Guarantee." The holders of at least a majority in aggregate liquidation amount of the outstanding Preferred Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee in respect of the Guarantee or to direct the exercise of any trust power conferred upon the Guarantee Trustee under the Guarantee.

Any holder of Preferred Securities may institute a legal proceeding directly against the Company to enforce its rights under the Guarantee without first instituting a legal proceeding against the Trust, the Guarantee Trustee or any other person or entity. If the Company defaults on its obligation to pay amounts payable under the Junior Subordinated Debentures, the Trust will lack funds for the payment of Distributions or amounts payable on redemption of the Preferred Securities or otherwise, and, in such event, holders of the Preferred Securities will not be able to rely upon the Guarantee for payment of such amounts. Instead, if a Debenture Event of Default has occurred and is continuing and such event is attributable to the failure of the Company to pay any amounts payable in respect of the Junior Subordinated Debentures on the payment date on which such payment is due,

then a holder of Preferred Securities may institute a legal proceeding directly against the Company for enforcement of payment to such holder of any amounts payable in respect of such Junior Subordinated Debentures having a principal amount equal to the aggregate liquidation amount of the Preferred Securities of such holder (a "Direct Action"). In connection with such Direct Action, the Company will have a right of set-off under the Indenture to the extent of any payment made by the Company to such holder of Preferred Securities in the Direct Action. Except as described herein, holders of the Preferred Securities will not be able to exercise directly any other remedy available to the holders of the Junior Subordinated Debentures or assert directly any other rights in respect of the Junior Subordinated Debentures. See "Description of Junior Subordinated Debentures -- Debenture Events of Default" and "-- Enforcement of Certain Rights by Holders of Preferred Securities" and "Description of Guarantee." The Declaration provides that each holder of Preferred Securities by acceptance thereof agrees to the provisions of the Guarantee and the Indenture.

#### LIMITED VOTING RIGHTS

Holders of Preferred Securities will have limited voting rights relating generally to the modification of the Preferred Securities and the Guarantee and the exercise of the Trust's rights as holder of Junior Subordinated Debentures. Holders of Preferred Securities will not be entitled to appoint, remove or replace the Property Trustee or the Delaware Trustee except upon the occurrence of certain events described herein. The Property Trustee and the Company may, subject to certain conditions, amend the Declaration without the consent of any holders of Preferred Securities to cure any ambiguity or to make other provisions not inconsistent with existing provisions of the Declaration or to ensure that the Trust will not be classified for U.S. Federal income tax purposes as an association subject to taxation as a corporation or will be classified as a grantor trust. See "Description of Preferred Securities -- Voting Rights; Amendment of the Declaration" and "-- Removal of Trustees."

#### TRADING CHARACTERISTICS OF THE PREFERRED SECURITIES

If the Preferred Securities are subject to the OID rules, a holder who disposes of its Preferred Securities between record dates for payments of Distributions thereon will be required to include OID on the Junior Subordinated Debentures through the date of disposition in income as ordinary income, and to add such amount to its adjusted tax basis. To the extent the selling price is less than the holder's adjusted tax basis (which basis will include all accrued but unpaid OID), a holder will recognize a capital loss. Subject to certain limited exceptions, capital losses cannot be applied to offset ordinary income for U.S. Federal income tax purposes. See "U.S. Federal Income Tax Considerations."

#### PREFERRED SECURITIES RECEIVED IN THE EXCHANGE OFFER MAY BE TAXABLE AS A DIVIDEND FOR U.S. FEDERAL INCOME TAX PURPOSES

The entire value of the Preferred Securities received in the Exchange Offer may be treated as a dividend taxable as ordinary income. The likelihood of this result may increase if a holder tenders less than all its Shares in the Exchange Offer or because of proration in the Exchange Offer or both. See "U.S. Federal Income Tax Considerations -- U.S. Federal Income Tax Consequences of the Exchange Offer -- Tests for Capital Gain or Loss Treatment."

#### WITHHOLDING OF U.S. FEDERAL INCOME TAX TO FOREIGN HOLDERS

The Company will withhold U.S. Federal income tax at a rate of 30% in connection with a foreign holder's exchange of Shares for Preferred Securities pursuant to the Exchange Offer unless such foreign holder can demonstrate to the Company that such withholding is not required. See "U.S. Federal Income Tax Considerations -- U.S. Federal Income Tax Consequences of the Exchange Offer -- Foreign Holders." The Company will follow the same procedure in connection with Distributions paid on the Preferred Securities to foreign holders. See "U.S. Federal Income Tax Considerations -- U.S. Federal Income Tax Consequences of Holding Preferred Securities -- Foreign Holders."



## THE COMPANY

The Company is engaged in several different businesses including residential and industrial plumbing and sewer, drain and pipe-cleaning services through its wholly owned subsidiary, Roto-Rooter, Inc.; home healthcare services through its wholly owned subsidiary, Patient Care, Inc.; and major appliance and heating, ventilating and air conditioning repair through its wholly owned subsidiary, Service America Systems, Inc.

Investors are encouraged to read the Company's 1998 Form 10-K and the Company's Report on Form 10-Q for the quarter ended September 30, 1999 (the "Third Quarter Form 10-Q"), which are incorporated herein by reference, for a detailed description of the Company's business.

The Company's executive offices are located at 2600 Chemed Center, 255 East Fifth Street, Cincinnati, Ohio 45202-4726, and its telephone number is (513) 762-6900.

## RECENT DEVELOPMENTS

**Reduction of Dividends.** On November 3, 1999, the Board of Directors declared a quarterly cash dividend of \$0.53 per Share, payable on December 10, 1999, to stockholders of record on November 19, 1999. The Board of Directors also adopted a new dividend policy for the year 2000 and beyond. The Board of Directors expects to declare quarterly dividends in 2000 in the range of \$0.10 per Share, down from the current rate of \$0.53 per Share.

**Certain Forecast Information.** The Company expects to report earnings per Share before capital gains of \$1.60 in 1999 and currently projects earnings per Share before capital gains of \$2.05 in 2000. Neither the 1999 nor the 2000 forecast has been adjusted for the Exchange Offer.

The Company does not as a matter of course make public any forecasts as to future performance or earnings. The Company expressly disclaims any obligation to update these forecasts after the expiration or termination of the Exchange Offer.

The forecasts were prepared by the Company and were not prepared with a view to public disclosure or compliance with the published guidelines of the SEC or the guidelines established by the American Institute of Certified Public Accountants regarding projections or forecasts. THESE FORWARD-LOOKING STATEMENTS ARE SUBJECT TO CERTAIN RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY FROM THE FORECASTS. THE FORECASTS REFLECT NUMEROUS ASSUMPTIONS (NOT ALL OF WHICH ARE STATED HERE), ALL MADE BY MANAGEMENT OF THE COMPANY, WITH RESPECT TO INDUSTRY PERFORMANCE, GENERAL BUSINESS, ECONOMIC, MARKET AND FINANCIAL CONDITIONS AND OTHER MATTERS, ALL OF WHICH ARE DIFFICULT TO PREDICT, MANY OF WHICH ARE BEYOND THE COMPANY'S CONTROL. ACCORDINGLY, THERE CAN BE NO ASSURANCE THAT THE ASSUMPTIONS MADE IN PREPARING THE FORECASTS WILL PROVE ACCURATE, AND ACTUAL RESULTS MAY BE MATERIALLY GREATER OR LESS THAN THOSE CONTAINED IN THE FORECASTS.

## SUMMARY FINANCIAL INFORMATION

The summary financial information presented below has been derived from the consolidated financial statements and notes thereto as of and for the two year period ended December 31, 1998, which are included in the Company's 1998 Form 10-K and the consolidated financial statements as of September 30, 1999 and for the nine month periods ended September 30, 1999 and 1998, which are included in the Company's Third Quarter Form 10-Q. The financial results as of and for the year ended December 31, 1998 and the nine months ended September 30, 1999 have also been presented below on a pro forma basis to give effect to the issuance of the Preferred Securities in exchange for Shares pursuant to the Exchange Offer. The 1998 pro forma balance sheet data gives effect to the Exchange Offer as if the Exchange Offer had been completed as of December 31, 1998, and the 1998 pro forma income statement data gives effect to the Exchange Offer as if the Exchange Offer had been completed as of January 1, 1998. The September 30, 1999 pro forma balance sheet data gives effect to the Exchange Offer as if the Exchange Offer had been completed as of September 30, 1999, and the September 30, 1999 pro forma income statement data gives effect to the Exchange Offer as if the Exchange Offer had been completed as of January 1, 1999. The pro forma financial information has been included for comparative purposes only and does not purport to be indicative of the results which would have occurred if these transactions had actually occurred on the dates or for the periods indicated or which may occur in the future.

	YEAR ENDED DECEMBER 31,			NINE MONTHS ENDED SEPTEMBER 30,		
	1997	1998	PRO FORMA 1998(1)	1998	1999	PRO FORMA 1999(1)
	(IN THOUSANDS, EXCEPT PER SHARE DATA AND THE RATIO OF EARNINGS TO FIXED CHARGES)					
<b>INCOME STATEMENT DATA</b>						
Service revenues and sales.....	\$341,729	\$381,283	\$381,283	\$279,872	\$326,313	\$326,313
Income from continuing operations before distributions on Company-obligated Preferred Securities of the Trust.....	\$ 17,077	\$ 19,909	\$ 19,909	\$ 16,509	\$ 14,881	\$ 14,881
Distributions on Company-obligated Preferred Securities of the Trust(2)(3).....	--	--	(2,404)	--	--	(1,803)
Income from continuing operations.....	17,077	19,909	17,505	16,509	14,881	13,078
Discontinued operations.....	13,160	--	--	--	--	--
Net income.....	\$ 30,237	\$ 19,909	\$ 17,505	\$ 16,509	\$ 14,881	\$ 13,078
<b>PER SHARE DATA</b>						
Earnings per Share:						
Income from continuing operations.....	\$ 1.72	\$ 1.98	\$ 2.17	\$ 1.65	\$ 1.42	\$ 1.54
Net income.....	3.04	1.98	2.17	1.65	1.42	1.54
Average Shares outstanding.....	9,940	10,058	8,058	9,999	10,476	8,476
Diluted earnings per Share:						
Income from continuing operations.....	\$ 1.71	\$ 1.97	\$ 2.08	\$ 1.64	\$ 1.41	\$ 1.49
Net income.....	3.02	1.97	2.08	1.64	1.41	1.49
Average Shares outstanding.....	10,014	10,100	9,559	10,041	10,519	9,978
Book value per Share.....	\$ 22.64	\$ 21.45	\$ 20.13	\$ 22.53	\$ 20.56	\$ 19.03
<b>BALANCE SHEET DATA</b>						
Working capital.....	\$ 83,103	\$ 33,533	\$ 33,533	\$ 70,929	\$ 23,098	\$ 23,098
Total assets less goodwill.....	305,835	273,739	273,739	278,993	256,006	256,006
Total assets.....	448,838	429,704	429,704	431,108	420,093	420,093
Long-term debt.....	83,720	80,407	80,407	82,079	84,764	84,764
Company-obligated Preferred Securities of the Trust(2)(4).....	--	--	54,000	--	--	54,000
Stockholders' equity.....	228,120	223,356	169,356	224,027	214,782	160,782
RATIO OF EARNINGS TO FIXED CHARGES.....	3.64	5.52	3.53	6.03	5.82	3.67

## NOTES TO SUMMARY FINANCIAL INFORMATION

- (1) Assumes that 2,000,000 Shares are exchanged for 2,000,000 Preferred Securities.
- (2) The assets of the Trust will consist principally of the Junior Subordinated Debentures, and payments under the Junior Subordinated Debentures will be the sole revenue of the Trust. The Trust exists for the exclusive purposes of (i) issuing the Trust Securities representing undivided beneficial interests in the assets of the Trust, (ii) investing the gross proceeds of the Trust Securities in the Junior Subordinated Debentures and (iii) engaging in only those other activities necessary or incidental thereto. Upon redemption of the Junior Subordinated Debentures, the Preferred Securities will be mandatorily redeemed. The payment of Distributions by the Trust and payments on liquidation of the Trust and the redemption of Preferred Securities are guaranteed by the Company. See "Description of Guarantee."
- (3) Assumes that interest payments on the Junior Subordinated Debentures are deductible for tax purposes and takes such deduction into account. Distributions on the Preferred Securities will accrue at the annual rate of \$2.00 per Preferred Security.
- (4) The liquidation amount per Preferred Security is \$27.

## CAPITALIZATION

The following table sets forth the consolidated capitalization of the Company and its consolidated subsidiaries which should be read in conjunction with the Company's consolidated financial statements as of and for the nine months ended September 30, 1999, which are included in the Company's Third Quarter Form 10-Q.

	SEPTEMBER 30, 1999	
	----- HISTORICAL	AS ADJUSTED(1) -----
	(DOLLARS IN THOUSANDS, EXCEPT FOR SHARE AND PER SHARE DATA)	
TOTAL LONG-TERM DEBT.....	\$ 86,799	\$ 86,799
COMPANY-OBLIGATED PREFERRED SECURITIES OF THE TRUST(2)(3)...	----- --	54,000 -----
STOCKHOLDERS' EQUITY		
Capital Stock -- authorized 15,000,000 Shares \$1 par; issued 13,664,892 Shares.....	13,665	13,665
Paid-in capital.....	164,533	164,533
Retained earnings.....	145,083	145,083
Treasury stock -- 3,216,823 (as adjusted -- 5,216,823) Shares, at cost.....	(98,047)	(152,047)
Unearned compensation.....	(18,049)	(18,049)
Deferred compensation payable in company stock.....	5,250	5,250
Accumulated other comprehensive income.....	2,347	2,347
	-----	-----
Total stockholders' equity.....	214,782	160,782
	-----	-----
Total capitalization.....	\$301,581 =====	\$ 301,581 =====

(1) Assumes that 2,000,000 Shares are exchanged for 2,000,000 Preferred Securities.

(2) The assets of the Trust will consist principally of the Junior Subordinated Debentures, and payments under the Junior Subordinated Debentures will be the sole revenue of the Trust. The Trust exists for the exclusive purposes of (i) issuing the Trust Securities representing undivided beneficial interests in the assets of the Trust, (ii) investing the gross proceeds of the Trust Securities in the Junior Subordinated Debentures and (iii) engaging in only those other activities necessary or incidental thereto. Upon redemption of the Junior Subordinated Debentures, the Preferred Securities will be mandatorily redeemed. The payment of Distributions by the Trust and payments on liquidation of the Trust and the redemption of Preferred Securities are guaranteed by the Company. See "Description of Guarantee."

(3) The liquidation amount per Preferred Security is \$27.

## MARKET AND PRICE RANGES OF CAPITAL STOCK; DIVIDENDS

The Capital Stock (symbol CHE) is listed and traded on the NYSE. The table that follows sets forth, for the calendar quarters indicated, the reported high and low closing sales prices of the Capital Stock on the NYSE Composite Tape, and dividends paid per Share:

	HIGH -----	LOW -----	DIVIDENDS -----
1997:			
First Quarter.....	\$37.50	\$35.50	\$0.52
Second Quarter.....	37.44	31.50	0.52
Third Quarter.....	39.31	35.06	0.52
Fourth Quarter.....	43.00	38.06	0.53
1998:			
First Quarter.....	42.31	38.00	0.53
Second Quarter.....	41.25	32.56	0.53
Third Quarter.....	34.69	25.56	0.53
Fourth Quarter.....	34.88	28.13	0.53
1999:			
First Quarter.....	33.81	25.75	0.53
Second Quarter.....	33.88	26.31	0.53
Third Quarter.....	33.44	29.25	0.53
Fourth Quarter (through December 20, 1999).....	30.13	24.94	0.53

On December 20, 1999, the reported closing sales price of the Capital Stock on the NYSE Composite Tape was \$27.94 per share. HOLDERS ARE URGED TO OBTAIN A CURRENT MARKET QUOTATION FOR THE CAPITAL STOCK. On December 20, 1999, there were approximately 10,398,781 holders of record of the Capital Stock.

On November 3, 1999, the Board of Directors declared a quarterly cash dividend of \$0.53 per Share, payable on December 10, 1999, to stockholders of record on November 19, 1999. The Board of Directors also adopted a new dividend policy for the year 2000 and beyond. The Board of Directors expects to declare quarterly dividends in 2000 in the range of \$0.10 per Share, down from the current rate of \$0.53 per Share.

## PURPOSES AND EFFECTS OF THE EXCHANGE OFFER

## PURPOSES

On November 3, 1999, the Board of Directors adopted a new dividend policy, pursuant to which it expects to declare reduced quarterly dividends on the Shares in 2000 and beyond. The purpose of the Exchange Offer is to offer holders of Shares who prefer not to continue in an equity position as holders of Shares the opportunity to obtain a higher yield on their investment in the Company through the exchange of their Shares for Preferred Securities. The Company expects the Exchange Offer to result in certain tax efficiencies by enabling it to deduct interest payable on the Junior Subordinated Debentures for U.S. Federal income tax purposes; dividends payable on the Capital Stock are not deductible. Because the conversion price of the Preferred Securities is higher than the current trading price of the Shares, holders of the Preferred Securities have reduced participation in any growth in the value of the Shares.

## CERTAIN EFFECTS

The exchange of Preferred Securities for Shares pursuant to the Exchange Offer will reduce the number of outstanding Shares and the number of holders of such Shares.

In the event there are fewer than 300 holders of Shares as a result of the Exchange Offer, the Shares would become eligible for termination of registration under the Exchange Act.

In addition, the exchange of the Shares pursuant to the Exchange Offer will reduce the number of outstanding Shares and the number of holders of Shares. Consequently, the Shares may no longer meet the requirements of the NYSE for continued listing. According to the NYSE's published guidelines, the NYSE would consider delisting the Shares if, among other things, the total number of holders of Shares (including both holders of record and beneficial holders of Shares held in the name of NYSE member organizations) were to fall below 400, such number of total holders were to fall below 1,200 and the average monthly trading volume of the Shares were to fall below 100,000, the number of publicly held Shares (exclusive of management or other concentrated holdings) were to fall below 600,000, the aggregate market value of publicly held Shares were not to exceed \$8 million or the aggregate market value of Shares outstanding (excluding treasury stock) were not to exceed \$12 million. If, as a result of the exchange of Shares pursuant to the Exchange Offer, the Capital Stock no longer meets the requirements of the NYSE for continued listing and the NYSE were to delist the Capital Stock, the market therefor could be adversely affected. The Company does not expect that, following the Exchange Offer, the NYSE will delist the Capital Stock.

NEITHER THE COMPANY NOR THE BOARD OF DIRECTORS MAKES ANY RECOMMENDATION AS TO WHETHER ANY HOLDER OF CAPITAL STOCK SHOULD TENDER ANY OF OR ALL SUCH HOLDER'S SHARES PURSUANT TO THE EXCHANGE OFFER. EACH HOLDER MUST MAKE SUCH HOLDER'S OWN DECISION WHETHER OR NOT TO TENDER SHARES AND, IF SO, HOW MANY SHARES TO TENDER. AS OF THE DATE OF THIS OFFERING CIRCULAR, EXECUTIVE OFFICERS AND DIRECTORS OF THE COMPANY DO NOT INTEND TO TENDER SHARES IN THE EXCHANGE OFFER.

Rule 13e-4 under the Exchange Act generally prohibits the Company, the Trust and their affiliates from purchasing any Shares, other than pursuant to the Exchange Offer, or any Preferred Securities for at least ten business days after the Expiration Date.

## THE EXCHANGE OFFER

## TERMS OF THE EXCHANGE OFFER

Upon the terms and subject to the conditions set forth herein and in the Letter of Transmittal, the Trust will exchange its Preferred Securities for up to 2,000,000 of the outstanding Shares. The Exchange Offer will be effected on a basis of one Preferred Security for each Share validly tendered and accepted for exchange. See "-- Procedures for Tendering Shares." Upon the terms and subject to the conditions set forth herein and in the Letter of Transmittal, the Company and the Trust will accept up to 2,000,000 Shares validly tendered and not withdrawn prior to the Expiration Date and, unless the Exchange Offer has been withdrawn or terminated, will deliver Preferred Securities in exchange therefor to tendering holders of Shares as promptly as practicable following the Expiration Date. The Company and the Trust expressly reserve the right, in their sole discretion, to delay acceptance for exchange of Shares tendered under the Exchange Offer and the delivery of the Preferred Securities with respect to the Shares accepted for exchange (subject to Rules 13e-4 and 14e-1 under the Exchange Act, which require that the Company and the Trust consummate the Exchange Offer or return the Shares deposited by or on behalf of the holders thereof promptly after the termination or withdrawal of the Exchange Offer), or to amend, withdraw or terminate the Exchange Offer at any time prior to the Expiration Date for any of the reasons set forth in "-- Conditions to the Exchange Offer" and "-- Expiration Date; Extensions; Amendments; Termination."

In all cases, except to the extent waived by the Company and the Trust, delivery of Preferred Securities issued with respect to the Shares accepted for exchange pursuant to the Exchange Offer will be made only after timely receipt by the Exchange Agent of Shares (or confirmation of book-entry transfer thereof), a properly completed and duly executed Letter of Transmittal or, in the case of a book-entry transfer, an Agent's Message, and any other required documents.

As of December 20, 1999, there were 10,398,781 Shares outstanding. This Offering Circular, together with the Letter of Transmittal, is being sent to all registered holders of Shares as of December 20, 1999, including the Company's Employee Stock Ownership Plan (the "ESOP"). However, under applicable law, the ESOP may not hold the Preferred Securities and thus will not tender Shares in the Exchange Offer. See "Certain ERISA Considerations."

The Company and the Trust shall be deemed to have accepted tendered Shares when, as and if the Company and the Trust have given oral or written notice thereof to the Exchange Agent. The Exchange Agent will act as agent for the tendering holders for the purpose of receiving Shares from tendering holders who are participating in the Exchange Offer. Firststar Bank will remit Preferred Securities to such tendering holders. Upon the terms and subject to the conditions of the Exchange Offer, delivery of Preferred Securities to tendering holders will be made as promptly as practicable following the Expiration Date.

If proration of tendered Shares is required, because of the difficulty in determining the number of Shares validly tendered (including Shares tendered by the guaranteed delivery procedures described in "-- Procedures for Tendering Shares"), the Company and the Trust do not expect that they will be able to announce the final proration factor or to commence the exchange for any Shares pursuant to the Exchange Offer until approximately five Business Days after the Expiration Date. Preliminary results of the proration will be announced by press release as promptly as practicable after the Expiration Date. Holders of Shares may obtain such preliminary information from the Information Agent and may also be able to obtain such information from their brokers.

Until the final proration factor is known, the Trust will not issue any Preferred Securities in exchange for any Shares accepted for exchange pursuant to the Exchange Offer or return Shares delivered to the Exchange Agent but not tendered or return Shares tendered but not accepted for exchange because of proration. See "-- Acceptance of Shares and Proration."

If any tendered Shares are not accepted for exchange because of an invalid tender, proration, the occurrence of certain other events set forth herein or otherwise, unless otherwise requested by the Holder under "Special Delivery Instructions" in the Letter of Transmittal, such Shares will be returned, at the Company's expense, to the tendering Holder thereof (or in the case of Shares tendered by book-entry transfer into the Exchange Agent's

account at The Depository Trust Company ("DTC" or the "Book-Entry Transfer Facility"), such Shares will be credited to an account maintained at the Book-Entry Transfer Facility designated by the participant therein who so delivered such Shares), as promptly as practicable after the Expiration Date or the withdrawal or termination of the Exchange Offer.

Holders of Shares will not have any appraisal or dissenters' rights under the Delaware General Corporation Law in connection with the Exchange Offer.

Holders who tender Shares in the Exchange Offer will not be required to pay brokerage commissions or fees or, subject to the instructions in the Letter of Transmittal, transfer taxes with respect to the exchange of Shares pursuant to the Offer.

#### CONDITIONS TO THE EXCHANGE OFFER

Notwithstanding any other provisions of the Exchange Offer, or any extension of the Exchange Offer, the Trust will not be required to deliver Preferred Securities in respect of any properly tendered Shares and may terminate the Exchange Offer by oral or written notice to the Exchange Agent and the holders of Shares, or, at its option, may modify or otherwise amend the Exchange Offer with respect to such Shares if any of the following conditions are not satisfied at or prior to the Expiration Date in the case of clauses (a) and (b) below or if any of the events specified in clauses (c) through (f) occurs at or prior to the Expiration Date, whether prior to or simultaneously with the expiration of the Exchange Offer:

(a) a sufficient number of Shares shall have been tendered to satisfy the Minimum Distribution Condition;

(b) the Declaration, the Indenture and the Guarantee shall have been qualified under the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act");

(c) the daily closing sales price of the Shares, as reported by the NYSE, shall not exceed \$30 or be less than \$24;

(d) there shall not have been any action taken or threatened, or any statute, rule, regulation, judgment, order, stay, decree or injunction promulgated, enacted, entered, enforced or deemed applicable to the Exchange Offer, by or before any court or governmental regulatory or administrative agency or authority or tribunal, domestic or foreign, which (i) challenges the making of the Exchange Offer, or might directly or indirectly prohibit, prevent, restrict or delay consummation of the Exchange Offer, or otherwise and adversely affect in any material manner the Exchange Offer, or (ii) could materially adversely affect the business, condition (financial or otherwise), income, operations, properties, assets, liabilities or prospects of the Company and its subsidiaries, taken as a whole or materially impair the contemplated benefits of the Exchange Offer to the Company;

(e) there shall not have occurred or be likely to occur any event affecting the business or financial affairs of the Company that would or might prohibit, prevent, restrict or delay consummation of the Exchange Offer or that will, or is reasonably likely to, materially impair the contemplated benefits of the Exchange Offer or might be material to holders of Shares in deciding whether to accept the Exchange Offer; and

(f) there shall not have occurred (i) any general suspension of or limitation on trading in securities on the NYSE or in the over-the-counter market (whether or not mandatory), (ii) any significant adverse change in the price of the Shares or in the United States securities or financial markets, (iii) a material impairment in the trading market for debt or equity securities, (iv) a declaration of a banking moratorium or any suspension of payments in respect of banks by federal or state authorities in the United States (whether or not mandatory), (v) a commitment of a war, armed hostilities or other national or international crisis directly or indirectly relating to the United States, (vi) any limitation (whether or not mandatory) by any governmental authority on, or other event having a reasonable likelihood of affecting, the extension of credit by banks or other lending institutions in the United States or (vii) any significant adverse change in United States



securities or financial markets generally or in the case of any of the foregoing existing at the time of the commencement of the Exchange Offer, a material acceleration or worsening thereof.

The foregoing conditions are for the sole benefit of the Company and the Trust and may be waived by the Company and the Trust, in whole or in part, in their sole discretion.

#### EXPIRATION DATE; EXTENSIONS; AMENDMENTS; TERMINATION

The Exchange Offer will expire on the Expiration Date. The Company and the Trust expressly reserve the right, in their sole discretion, subject to applicable law, to (i) terminate the Exchange Offer, and not accept for exchange any Shares and promptly return all Shares upon the failure of any of the conditions specified above in "-- Conditions to the Exchange Offer," (ii) waive any condition to the Exchange Offer and accept Shares previously tendered pursuant to the Exchange Offer, (iii) extend the Expiration Date of the Exchange Offer and retain all Shares tendered pursuant to such Exchange Offer until the Expiration Date, subject, however, to all withdrawal rights of holders, (iv) amend the terms of the Exchange Offer or (v) modify the form of the consideration to be paid pursuant to the Exchange Offer or (vi) not accept for exchange the Shares at any time on or prior to the Expiration Date, for any reason. Any amendment applicable to the Exchange Offer will apply to all Shares tendered pursuant to the Exchange Offer. During any extension of the Exchange Offer, all Shares previously tendered pursuant to the Exchange Offer and not withdrawn will remain subject to the Exchange Offer.

If the Company and the Trust make a material change in the terms of the Exchange Offer, the Company and the Trust will extend the Exchange Offer. The minimum period for which the Exchange Offer will be extended following a material change, other than a change in the amount of Shares sought for exchange, will depend upon the facts and circumstances, including the relative materiality of the change. With respect to an increase or decrease in the number of Shares sought in the Exchange Offer or an increase or decrease in the consideration offered to holders of Shares, if required, the Exchange Offer will remain open for a minimum of ten Business Days following public announcement of such change. In the case of any amendment, withdrawal or termination of the Exchange Offer, a public announcement will be issued no later than 9:00 a.m., New York City time, on the next business day after the previously scheduled Expiration Date of the Exchange Offer subject to such extension. If the Trust and the Company withdraw or terminate the Exchange Offer, they will give immediate notice to the Exchange Agent, and all Shares theretofore tendered pursuant to the Exchange Offer will be returned promptly to the tendering Holders thereof. See "-- Withdrawal of Tenders."

#### PROCEDURES FOR TENDERING SHARES

The tender of Shares by a Holder thereof pursuant to one of the procedures set forth below will constitute an agreement between such Holder and the Trust in accordance with the terms and subject to the conditions set forth herein and in the Letter of Transmittal.

Each Holder of Shares wishing to participate in the Exchange Offer must (i)(a) properly complete and sign the Letter of Transmittal in accordance with the instructions contained herein and in the Letter of Transmittal, together with any required signature guarantees, and deliver the same to the Exchange Agent, at its address set forth on the back cover page hereof prior to the Expiration Date and certificates for the Shares must be received by the Exchange Agent at such address or (b) transfer such Shares pursuant to the procedures for book-entry transfer described below and a confirmation of such book-entry transfer must be received by the Exchange Agent, in each case prior to the Expiration Date, or (ii) comply with the guaranteed delivery procedures described below.

LETTERS OF TRANSMITTAL, SHARES AND ANY OTHER REQUIRED DOCUMENTS SHOULD BE SENT ONLY TO THE EXCHANGE AGENT, NOT TO THE TRUST OR THE COMPANY.

THE METHOD OF DELIVERY OF SHARES AND ALL OTHER DOCUMENTS IS AT THE ELECTION AND RISK OF THE HOLDER. IF SENT BY MAIL, IT IS RECOMMENDED THAT REGISTERED MAIL, RETURN RECEIPT REQUESTED, BE USED, INSURANCE BE OBTAINED, AND THE MAILING BE MADE SUFFICIENTLY IN ADVANCE OF THE EXPIRATION DATE TO PERMIT DELIVERY TO THE EXCHANGE AGENT ON OR BEFORE THE EXPIRATION DATE.

Special Procedures for Beneficial Owners. Any beneficial owner whose Shares are registered in the name of a broker, dealer, commercial bank, trust company or other nominee and who wishes to tender should contact such registered Holder promptly and instruct such registered Holder to tender on such beneficial owner's behalf. If such beneficial owner wishes to tender on its own behalf, such owner must, prior to completing and executing the Letter of Transmittal and delivering its Shares, either make appropriate arrangements to register ownership of the Shares in such owner's name or obtain a properly completed stock power from the registered Holder. The transfer of registered ownership may take considerable time and may not be able to be completed prior to the Expiration Date.

Signature Guarantees. If tendered Shares are registered in the name of the signer of the Letter of Transmittal and the Preferred Securities to be issued in exchange therefor are to be issued (and any untendered Shares are to be reissued) in the name of the registered Holder, the signature of such signer need not be guaranteed. If the tendered Shares are registered in the name of someone other than the signer of the Letter of Transmittal, or if Preferred Securities issued in exchange therefor are to be issued in the name of any person other than the signer of the Letter of Transmittal, such tendered Shares must be endorsed or accompanied by written instruments of transfer in form satisfactory to the Trust and duly executed by the registered Holder, and the signature on the endorsement or instrument of transfer must be guaranteed by a financial institution (including most banks, savings and loans associations and brokerage houses) that is a participant in the Securities Transfer Agents Medallion Program, the New York Stock Exchange Medallion Signature Program or the Stock Exchange Medallion Program (any of the foregoing hereinafter referred to as an "Eligible Institution"). If the Preferred Securities and/or the Shares are not exchanged or are to be delivered to an address other than that of the registered Holder appearing on the register for the Shares, the signature in the Letter of Transmittal must be guaranteed by an Eligible Institution.

Book-Entry Transfer. The Exchange Agent will make a request promptly after the date of this Offering Circular to establish accounts with respect to the Shares at the Book-Entry Transfer Facility for the purpose of facilitating the Exchange Offer, and subject to the establishment thereof, any financial institution that is a participant in the Book-Entry Transfer Facility's system may make book-entry delivery of Shares by causing the Book-Entry Transfer Facility to transfer such Shares into the Exchange Agent's account with respect to the Shares in accordance with such Book-Entry Transfer Facility's Automated Tender Offer Program ("ATOP") procedures for such book-entry transfers. However, the exchange for the Shares so tendered will only be made after timely confirmation (a "Book-Entry Confirmation") of such Book-Entry Transfer of Shares into the Exchange Agent's account, and timely receipt by the Exchange Agent of an Agent's Message, or a Letter of Transmittal, and any other documents required by the Letter of Transmittal. The term "Agent's Message" means a message, transmitted by the Book-Entry Transfer Facility and received by the Exchange Agent and forming a part of a Book-Entry Confirmation, which states that such Book-Entry Transfer Facility has received an express acknowledgment from a participant tendering Shares that is the subject of such Book-Entry Confirmation that such participant has received and agrees to be bound by the terms of the Letter of Transmittal, and that the Company and the Trust may enforce such agreement against such participant.

Guaranteed Delivery. If a Holder desires to participate in the Exchange Offer and time will not permit a Letter of Transmittal or Shares to reach the Exchange Agent before the Expiration Date or the procedure for book-entry transfer cannot be completed on a timely basis, a tender may be effected if the Exchange Agent has received at its address on the back cover page hereof prior to the Expiration Date, a letter, telegram or facsimile transmission from an Eligible Institution setting forth the name and address of the tendering Holder, the name(s) in which the Shares are registered and, if the Shares are held in certificated form, the certificate numbers of the Shares to be tendered, and stating that the tender is being made thereby and guaranteeing that within three NYSE trading days after the date of execution of such letter, telegram or facsimile transmission by the Eligible Institution, the Shares in proper form for transfer together with a properly completed and duly executed Letter of Transmittal (and any other required documents), or a confirmation of book-entry transfer of such Shares into the Exchange Agent's account at the Book-Entry Transfer Facility, will be delivered by such Eligible Institution. Unless the Shares being tendered by the above-described method are deposited with the Exchange Agent within the time period set forth above (accompanied or preceded by a properly completed Letter of Transmittal and any

other required documents) or a confirmation of book-entry transfer of such Shares into the Exchange Agent's account at the Book-Entry Transfer Facility in accordance with such Book-Entry Transfer Facility's ATOP procedures is received, the Company and the Trust may, at their option, reject the tender.

Miscellaneous. All questions as to the validity, form, eligibility (including time of receipt) and acceptance for exchange of any tender of Shares will be determined by the Trust, whose determination will be final and binding. The Company and the Trust reserve the absolute right to reject any or all tenders not in proper form or the acceptance for exchange of which may, in the opinion of their counsel, be unlawful. The Company and the Trust also reserve the absolute right to waive any defect or irregularity in the tender of any Shares, and the Trust's interpretation of the terms and conditions of the Exchange Offer (including the instructions in the Letter of Transmittal) will be final and binding. None of the Trust, the Company, the Exchange Agent or any other person will be under any duty to give notification of any defects or irregularities in tenders or incur any liability for failure to give any such notification.

Tenders of Shares involving any irregularities will not be deemed to have been made until such irregularities have been cured or waived. Shares received by the Exchange Agent that are not validly tendered and as to which the irregularities have not been cured or waived will be returned by the Exchange Agent to the tendering Holder (or in the case of Shares tendered by book-entry transfer into the Exchange Agent's account at the Book-Entry Transfer Facility, such Shares will be credited to an account maintained at the Book-Entry Transfer Facility designated by the participant therein who so delivered such Shares), unless otherwise requested by the Holder in the Letter of Transmittal, as promptly as practicable after the Expiration Date or the withdrawal or termination of the Exchange Offer.

#### LETTER OF TRANSMITTAL

The Letter of Transmittal contains, among other things, the following terms and conditions, which are part of the Exchange Offer.

The party tendering Shares for exchange (the "Transferor") exchanges, assigns and transfers the Shares to the Trust, and irrevocably constitutes and appoints the Exchange Agent as the Transferor's agent and attorney-in-fact to cause the Shares to be assigned, transferred and exchanged. The Transferor represents and warrants that it has full power and authority to tender, exchange, assign and transfer the Shares and to acquire Preferred Securities issuable upon the exchange of such tendered Shares and that, when such Transferor's Shares are accepted for exchange, the Trust will acquire good and unencumbered title to such tendered Shares, free and clear of all liens, restrictions, charges and encumbrances and not subject to any adverse claim. The Transferor also warrants that it will, upon request, execute and deliver any additional documents deemed by the Trust to be necessary or desirable to complete the exchange, assignment and transfer of tendered Shares or transfer ownership of such Shares on the account books maintained by the Book-Entry Transfer Facility. All authority conferred by the Transferor will survive the death, bankruptcy or incapacity of the Transferor and every obligation of the Transferor shall be binding upon the heirs, legal representatives, successors, assigns, executors and administrators of such Transferor.

#### WITHDRAWAL OF TENDERS

Tenders of Shares pursuant to the Exchange Offer may be withdrawn at any time prior to the Expiration Date and, unless accepted for exchange by the Trust, may be withdrawn at any time after February 22, 2000.

To be effective, a written notice of withdrawal delivered by mail, hand delivery or facsimile transmission must be timely received by the Exchange Agent at its address set forth on the back cover page hereof. The method of notification is at the risk and election of the Holder. Any such notice of withdrawal must specify (i) the Holder named in the Letter of Transmittal as having tendered Shares to be withdrawn, (ii) if the Shares are held in certificated form, the certificate numbers of the Shares to be withdrawn, (iii) that such Holder is withdrawing its election to have such Shares exchanged and (iv) the name of the registered Holder of such Shares, and must be signed by the Holder in the same manner as the original signature on the Letter of Transmittal (including any required signature guarantees) or be accompanied by evidence satisfactory to the Company and the Trust that the

person withdrawing the tender has succeeded to the beneficial ownership of the Shares being withdrawn. The Exchange Agent will return the properly withdrawn Shares promptly following receipt of notice of withdrawal. If Shares have been tendered pursuant to the procedures for book-entry transfer, any notice of withdrawal must specify the name and number of the account at the Book-Entry Transfer Facility to be credited with the withdrawn Shares and otherwise comply with such Book-Entry Transfer Facility procedures. All questions as to the validity of notice of withdrawal, including time of receipt, will be determined by the Company and the Trust, and such determination will be final and binding on all parties. Withdrawals of tenders of Shares may not be rescinded and any Shares withdrawn will thereafter be deemed not validly tendered for purposes of the Exchange Offer. Properly withdrawn Shares, however, may be retendered by following the procedures therefor described elsewhere herein at any time prior to the Expiration Date. See "-- Procedures for Tendering Shares."

#### ACCEPTANCE OF SHARES AND PRORATION

Upon the terms and subject to the conditions of the Exchange Offer, if 2,000,000 or fewer Shares have been validly tendered and not withdrawn prior to the Expiration Date, the Trust will accept for exchange all such Shares. Upon the terms and subject to the conditions of the Exchange Offer, if more than 2,000,000 Shares have been validly tendered and not withdrawn prior to the Expiration Date, the Trust will accept for exchange Shares from each tendering Holder on a pro rata basis. Fractional Shares resulting from proration will be rounded up or down, as appropriate, to the nearest full Share before being accepted for exchange.

All Shares not accepted pursuant to the Exchange Offer, including Shares not purchased because of proration, will be returned to the tendering Holders, at the Company's expense, as promptly as practicable following the Expiration Date.

#### ODD LOTS; DIVIDEND REINVESTMENT PLAN

If the Company and the Trust accept fewer than all Shares validly tendered before the Expiration Date and not withdrawn, whether because of proration or otherwise, the Shares accepted first will consist of all Shares tendered by any record or beneficial holder of an aggregate of fewer than 100 Shares (an "Odd Lot Holder"), including any Shares held in the Company's Dividend Reinvestment Plan (the "Dividend Reinvestment Plan"). Beneficial holders of 100 or more Shares are not eligible for this preference, even if such holders have separate stock certificates or accounts representing fewer than 100 Shares.

Fractional Shares are not eligible for exchange in the Exchange Offer. Participants in the Dividend Reinvestment Plan should note that if at any time a participant's ownership of Capital Stock falls below 25 Shares, such participant will be automatically terminated from the Dividend Reinvestment Plan. A participant in the Dividend Reinvestment Plan who is also an Odd Lot Holder and who completes the boxes captioned "Dividend Reinvestment Plan Shares" and "Odd Lots" in the Letter of Transmittal should note that any fractional Share remaining in the participant's account in the Dividend Reinvestment Plan upon completion of the Exchange Offer will be sold by the administrator of the Dividend Reinvestment Plan. The proceeds of such sale will be remitted to the participant following the participant's termination from the Dividend Reinvestment Plan in accordance with the administrator's usual procedures and the terms and conditions of the Dividend Reinvestment Plan.

## INFORMATION AGENT AND EXCHANGE AGENT

D.F. King & Co., Inc. has been retained as the Information Agent to assist in connection with the Exchange Offer. Questions and requests for assistance regarding the Exchange Offer, requests for additional copies of this Offering Circular, the Letter of Transmittal and requests for Notice of Guaranteed Delivery may be directed to the Information Agent, telephone: (800) 848-2998. If calling from outside the U.S. or Canada, call collect: (212) 269-5550.

Norwest Bank Minnesota, N.A. has been appointed as Exchange Agent for the Exchange Offer.

## By Mail:

Norwest Bank Minnesota, N.A.  
P.O. Box 64858  
St. Paul, Minnesota 55164-0858  
Attention: Reorganization Department

## By Hand or Overnight Courier:

Norwest Bank Minnesota, N.A.  
161 North Concord Exchange Street  
South St. Paul, Minnesota 55075-1139  
Attention: Reorganization Department

By Facsimile Transmission  
(For Eligible Institutions Only):

(651) 450-4163

Confirm Receipt of Notice of Guaranteed Delivery  
by Telephone:

(651) 450-4110

The Company will pay the Information Agent and Exchange Agent reasonable and customary fees for their services and will reimburse them for all their reasonable out-of-pocket expenses in connection therewith.

## CHEMED CAPITAL TRUST

Chemed Capital Trust is a statutory business trust that was formed under Delaware law on December 21, 1999. The Trust's original declaration of trust will be amended and restated in its entirety by the Company, as sponsor of the Trust, and the trustees of the Trust (the "Issuer Trustees") (as so amended and restated, the "Declaration"), as of or prior to the date the Trust issues the Trust Securities representing undivided beneficial interests in the assets of the Trust and invests the gross proceeds of the Trust Securities in the Junior Subordinated Debentures. The Company will directly or indirectly acquire Common Securities in an aggregate liquidation amount equal to 3% of the total capital of the Trust. Payment on the Common Securities will be made pro rata with the Preferred Securities except that upon the occurrence and during the continuance of an event of default under the Declaration, the rights of the holders of the Common Securities to payment in respect of distributions and payments upon liquidation, redemption and otherwise will be subordinated to the rights of the holders of the Preferred Securities. The assets of the Trust will consist principally of the Junior Subordinated Debentures, and payments under the Junior Subordinated Debentures will be the sole revenue of the Trust. The Trust exists for the exclusive purposes of (i) issuing the Trust Securities representing undivided beneficial interests in the assets of the Trust, (ii) investing the gross proceeds of the Trust Securities in the Junior Subordinated Debentures and (iii) engaging in only those other activities necessary or incidental thereto.

Pursuant to the Declaration, the number of Issuer Trustees will initially be five. Three of the Issuer Trustees (the "Administrative Trustees") will be individuals who are employees or officers of or who are affiliated with the Company. The fourth trustee will be a financial institution that is unaffiliated with the Company (the "Property Trustee"). The fifth trustee will be an entity which maintains its principal place of business in the State of Delaware (the "Delaware Trustee"). Initially, Firststar Bank will act as Property Trustee and First Union Trust Company will act as Delaware Trustee until, in each case, removed or replaced by the holder of the Common Securities. Firststar Bank will also act as indenture trustee under the Guarantee (the "Guarantee Trustee") and under the Indenture (the "Debenture Trustee"). See "Description of Guarantee" and "Description of Junior Subordinated Debentures." In certain circumstances, the holders of a majority of the Preferred Securities will be entitled to appoint one additional trustee of the Trust (a "Special Trustee"), who need not be an officer or employee of or otherwise affiliated with the Company, who will have the same rights, powers and privileges as the Administrative Trustees. See "Description of Preferred Securities -- Voting Rights; Amendment of the Declaration."

The Property Trustee will hold title to the Junior Subordinated Debentures for the benefit of the holders of the Trust Securities and the Property Trustee will have the power to exercise all rights, powers and privileges under the Indenture as the holder of the Junior Subordinated Debentures. In addition, the Property Trustee will maintain exclusive control of a segregated non-interest bearing bank account (the "Property Account") to hold all payments made in respect of the convertible Junior Subordinated Debentures for the benefit of the holders of the Trust Securities. The Guarantee Trustee will hold the Guarantee for the benefit of the holders of the Preferred Securities. Subject to the right of the holders of the Preferred Securities to appoint a Special Trustee, the Company, as the direct or indirect holder of all the Common Securities, will have the right to appoint, remove or replace any of the Issuer Trustees and to increase or decrease the number of trustees; provided, however, that the number of Issuer Trustees shall be at least three, a majority of whom shall be Administrative Trustees. The Company will pay all fees and expenses related to the Trust and the offering of the Preferred Securities. See "Description of Junior Subordinated Debentures."

The rights of the holders of the Preferred Securities, including economic rights, rights to information and voting rights, are as set forth in the Declaration and the Delaware Business Trust Act, as amended (the "Trust Act"). See "Description of Preferred Securities." It is a condition to the Exchange Offer that the Declaration, the Indenture and the Guarantee be qualified under the Trust Indenture Act.

The place of business and the telephone number of the Trust are the principal executive offices and telephone number of the Company. See "Incorporation of Certain Documents by Reference."

## DESCRIPTION OF PREFERRED SECURITIES

Pursuant to the terms of the Declaration, the Issuer Trustees on behalf of the Trust will issue the Preferred Securities and the Common Securities in fully registered form without interest coupons. The Preferred Securities will represent preferred undivided beneficial ownership interests in the Trust and the holders thereof will be entitled to a preference in certain circumstances with respect to Distributions and amounts payable on redemption of the Trust Securities or liquidation of the Trust over the Common Securities, as well as other benefits as described in the Declaration. See "-- Subordination of Common Securities." The Declaration will be qualified under the Trust Indenture Act. This summary of certain provisions of the Preferred Securities, the Common Securities and the Declaration does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all the provisions of the Declaration, including the definitions therein of certain terms. The form of the Declaration is available upon request from the Issuer Trustees.

## GENERAL

Payments on the Preferred Securities will be made pro rata with payments on the Common Securities, except as described under "-- Subordination of Common Securities." Legal title to the Junior Subordinated Debentures will be held by the Property Trustee on behalf of the Trust in trust for the benefit of the holders of the Preferred Securities and Common Securities. The Guarantee executed by the Company for the benefit of the holders of the Preferred Securities will provide for the guarantee on a subordinated basis with respect to the Preferred Securities but will not guarantee payment of Distributions or amounts payable on redemption of the Preferred Securities or on liquidation of the Trust when the Trust does not have funds on hand available to make such payments. See "Description of Guarantee."

## DISTRIBUTIONS

Distributions will accrue on the Preferred Securities at the annual rate of \$2.00 for each Preferred Security, and be payable quarterly in arrears on each March 15, June 15, September 15 and December 15 (each, a "Distribution Date"), to the person in whose name each of the Preferred Securities is registered, subject to certain exceptions, at the close of business on the first of the month in which the applicable Distribution Date occurs. The first Distribution Date is expected to be on March 15, 2000. The amount of Distributions payable for any period will be computed on the number of days elapsed in a 360-day year consisting of twelve 30-day months, except that the Distribution payable on March 15, 2000, will be \$0.50 for each Preferred Security. In the event that any Distribution Date is not a Business Day, payment of the Distributions payable on such date will be made on the next succeeding day that is a Business Day (and without any additional Distributions or other payments in respect to any such delay) with the same force and effect as if made on the date such payment was originally payable. Accrued Distributions that are not paid on the applicable Distribution Date will accrue additional Distributions on the amount thereof (to the extent permitted by law), compounded quarterly from the relevant Distribution Date. "Distribution" as used herein shall include quarterly distributions, additional distributions on quarterly distributions not paid on the applicable Distribution Date, Special Distributions and Additional Sums (as defined herein), as applicable. See "Description of Junior Subordinated Debentures -- Additional Sums." A "Business Day" shall mean any day other than a Saturday or a Sunday, or a day on which banking institutions in The City of New York are authorized or required by law or executive order to remain closed, or a day on which the corporate trust office of the Property Trustee or the Debenture Trustee is closed for business.

So long as no Debenture Event of Default has occurred and is continuing, the Company has the right under the Indenture to defer the payment of interest on the Junior Subordinated Debentures at any time or from time to time for a period not exceeding 20 consecutive quarters with respect to each Deferral Period; provided, however, that no Deferral Period may extend beyond the Stated Maturity of the Junior Subordinated Debentures. See "Description of Junior Subordinated Debentures -- Option to Extend Interest Payment Date." As a consequence of any such election, quarterly Distributions on the Preferred Securities by the Trust will be deferred during any such Deferral Period. Deferred Distributions to which holders of the Preferred Securities are entitled will accumulate additional Distributions thereon, compounded quarterly from the relevant payment date for such Distributions during any such Deferral Period, to the extent permitted by applicable law. During any such Deferral Period, the Company may not (i) declare or pay any dividends or distributions on, or redeem, purchase,

acquire or make a liquidation payment with respect to, any of the Capital Stock other than stock dividends paid by the Company which consist of stock of the same class as that on which the dividend is being paid, (ii) make any payment of principal, interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank pari passu with or junior in interest to the Junior Subordinated Debentures, or (iii) make any guarantee payments with respect to any guarantee by the Company of the debt securities of any subsidiary of the Company if such guarantee ranks pari passu with or junior in interest to the Junior Subordinated Debentures (other than (a) dividends or distributions in Capital Stock, (b) any declaration of a dividend in connection with the implementation of a stockholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto, (c) payments under the Guarantee, (d) purchases or acquisitions of shares of Capital Stock in connection with the satisfaction by the Company of its obligations under any employee benefit plan or any other contractual obligation of the Company (other than a contractual obligation ranking pari passu with or junior to the Junior Subordinated Debentures), (e) as a result of a reclassification of the Company's capital stock or the exchange or conversion of one class or series of the Company's capital stock for another class or series of the Company's capital stock or (f) the purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged). A Deferral Period will terminate upon the payment by the Company of all amounts then accrued and unpaid on the Junior Subordinated Debentures (together with interest thereon compounded quarterly, to the extent permitted by applicable law). Upon the termination of any Deferral Period, and subject to the foregoing limitations, the Company may elect to begin a new Deferral Period. No interest or other amounts shall be due and payable during a Deferral Period, except at the end thereof. The Company must give the Property Trustee, the Administrative Trustees and the Debenture Trustee notice of its election of any such Deferral Period and shall cause the Trust to give such notice (which shall include notice of the deferral of Distributions on Preferred Securities) to holders of Preferred Securities not later than ten days prior to the related record date for Distributions on Preferred Securities. There is no limitation on the number of times that the Company may elect to begin a Deferral Period. See "Description of Junior Subordinated Debentures -- Option to Extend Interest Payment Date" and "U.S. Federal Income Tax Considerations -- U.S. Federal Income Tax Consequences of Holding Preferred Securities -- Interest Income and Original Issue Discount."

The Company has no current intention of exercising its right to defer payments of interest on the Junior Subordinated Debentures.

The revenue of the Trust available for distribution to holders of the Preferred Securities will be limited to payments under the Junior Subordinated Debentures in which the Trust will invest the proceeds from the issuance and sale of the Trust Securities. See "Description of Junior Subordinated Debentures -- General." If the Company does not make interest payments on the Junior Subordinated Debentures, the Property Trustee will not have funds available to pay Distributions on the Preferred Securities. The payment of Distributions (if and to the extent the Trust has funds legally available for the payment of such Distributions and cash sufficient to make such payments) is guaranteed by the Company on a limited basis as set forth herein under "Description of Guarantee."

#### CONVERSION RIGHTS

General. Preferred Securities will be convertible at any time prior to 5:00 p.m., New York City time, on the Stated Maturity date (except that Preferred Securities called for redemption will be convertible at any time prior to 5:00 p.m., New York City time, on any Optional Redemption Date), at the option of the holder thereof and in the manner described below, into Shares. Each of the Preferred Securities is convertible, at the option of the holder, into 0.73 of a Share for each of the Preferred Securities (equivalent to a conversion price (the "Initial Conversion Price") of \$37 per Share). The conversion ratio and the equivalent conversion price will be subject to adjustment as described under "-- Conversion Price Adjustments" below, and the conversion price and equivalent conversion ratio in effect at any time after giving effect to all such adjustments are hereinafter referred to as the Applicable Conversion Price and the Applicable Conversion Ratio, respectively. The Trust will not convert Junior Subordinated Debentures held by it except pursuant to a notice of conversion delivered to the Property Trustee, as Conversion Agent, by a holder of Preferred Securities. A holder of each of the Preferred Securities wishing to exercise its conversion right must deliver an irrevocable conversion notice, together, if each



of the Preferred Securities is in certificated form with such certificated security, to the Conversion Agent which shall, on behalf of such holder, exchange such Preferred Securities for a Like Amount of Junior Subordinated Debentures and immediately convert such Junior Subordinated Debentures into Shares. Holders may obtain copies of the required form of the conversion notice from the Conversion Agent.

Holders of Preferred Securities at the close of business on a Distribution record date will be entitled to receive the Distribution payable on such Preferred Securities on the corresponding Distribution Date notwithstanding the conversion of such Preferred Securities following such Distribution record date but prior to such Distribution Date. Except as provided in the immediately preceding sentence, neither the Company nor the Trust will make, or be required to make, any payment, allowance or adjustment for accrued and unpaid Distributions, whether or not in arrears, on converted Preferred Securities. The Company will make no payment or allowance for distributions on the Shares issued upon such conversion, except to the extent that such Shares are held of record on the record date for any such distributions. Each conversion will be deemed to have been effected immediately prior to the close of business on the day on which the related conversion notice was received by the Trust.

No fractional Shares will be issued as a result of conversion, but in lieu thereof such fractional interest will be paid by the Company in cash based on the then current market value of the Shares.

Conversion Price Adjustments -- General. The Applicable Conversion Price will be subject to adjustment in certain events including, without duplication: (i) the payment of dividends (and other distributions) payable in Capital Stock on the Capital Stock; (ii) the issuance to all holders of Capital Stock of rights or warrants; (iii) subdivisions and combinations of Capital Stock; (iv) the payment of dividends (and other distributions) to all holders of Capital Stock consisting of evidences of indebtedness of the Company, securities or capital stock, cash or assets (including securities, but excluding those rights, warrants, dividends and distributions referred to in clauses (i) and (ii) and dividends and distributions paid exclusively in cash); (v) the payment of dividends (and other distributions) on Capital Stock paid exclusively in cash, excluding cash dividends if the annualized per Share amount thereof does not exceed 12 1/2% of the current market price of Capital Stock as of the trading day immediately preceding the date of declaration of such dividend; and (vi) payment to holders of Capital Stock in respect of a tender or exchange offer (other than an odd-lot offer) by the Company or any subsidiary of the Company for Capital Stock at a price in excess of 110% of the current market price of Capital Stock as of the trading day next succeeding the last date tenders or exchanges may be made pursuant to such tender or exchange offer.

The Company may, at its option, make such reductions in the Applicable Conversion Price as the Company's Board of Directors deems advisable to avoid or diminish any income tax to holders of Capital Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes. See "U.S. Federal Income Tax Considerations -- U.S. Federal Income Tax Consequences of Holding Preferred Securities -- Adjustment of Conversion Price."

No adjustment of the Applicable Conversion Price will be made upon the issuance of any Shares pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on securities of the Company and the investment of additional optional amounts in Shares under any such plan or the issuance of any Shares or options or rights to purchase such Shares pursuant to any present or future employee, director or consultant benefit plan or program of the Company or pursuant to any option, warrant, right, or exercisable, exchangeable or convertible security outstanding as of the date the Preferred Securities were first issued. There shall also be no adjustment of the Applicable Conversion Price in case of the issuance of any Capital Stock (or securities convertible into or exchangeable for Capital Stock), except as specifically described above. If any action would require adjustment of the Applicable Conversion Price pursuant to more than one of the anti-dilution provisions, only one adjustment shall be made and such adjustment shall be the amount of adjustment that has the highest absolute value to holders of the Preferred Securities. No adjustment in the Applicable Conversion Price will be required unless such adjustment would require an increase or decrease of at least 1% of the Applicable Conversion Price, but any adjustment that would otherwise be required to be made shall be carried forward and taken into account in any subsequent adjustment.

Conversion Price Adjustments -- Merger, Consolidation or Sale of Assets of the Company. In the event that the Company is a party to any transaction (including a merger, consolidation, sale of all or substantially all of the assets of the Company, recapitalization or reclassification of Capital Stock or any compulsory share exchange (each of the foregoing being referred to as a "Company Transaction")), in each case, as a result of which Shares shall be converted into the right to receive other securities, cash or other property, then lawful provision shall be made as part of the terms of such Company Transaction whereby the holder of each of the Preferred Securities then outstanding shall have the right thereafter to convert each of the Preferred Securities only into (i) in the case of any Company Transaction other than a Company Transaction involving a Capital Stock Fundamental Change (as defined herein), the kind and amount of securities, cash and other property receivable upon the consummation of such Company Transaction by a holder of that number of Shares into which each of the Preferred Securities was convertible immediately prior to such Company Transaction, or (ii) in the case of a Company Transaction involving a Capital Stock Fundamental Change, common stock of the kind received by holders of Capital Stock (but in each case after giving effect to any adjustment discussed below relating to a Fundamental Change (as defined herein) if such Company Transaction also constitutes a Fundamental Change). The holders of Preferred Securities will have no voting rights with respect to any Company Transaction described in this section.

In the case of any Company Transaction involving a Fundamental Change, the Applicable Conversion Price will be adjusted immediately after such Fundamental Change as follows:

(i) in the case of a Non-Stock Fundamental Change (as defined herein), the Applicable Conversion Price will thereupon become the lower of (a) the Applicable Conversion Price immediately prior to such Non-Stock Fundamental Change and (b) the result obtained by multiplying the greater of the Relevant Price (as defined herein) or the then applicable Reference Market Price (as defined herein) by the Optional Redemption Ratio (as defined herein) (such product shall hereinafter be referred to as the "Adjusted Relevant Price" or the "Adjusted Reference Market Price," as the case may be); and

(ii) in the case of a Capital Stock Fundamental Change, the Applicable Conversion Price will thereupon be adjusted by multiplying such Applicable Conversion Price by a fraction of which the numerator is the Purchaser Stock Price (as defined herein) and the denominator is the Relevant Price; provided, however, that in the event of a Capital Stock Fundamental Change in which (a) 100% of the value of the consideration received by a holder of Capital Stock is common stock of the successor, acquiror or other third party (and cash, if any, is paid only with respect to any fractional interests in such common stock resulting from such Capital Stock Fundamental Change) and (b) all the Capital Stock is exchanged for, converted into, or acquired for common stock (and cash with respect to fractional interests) of the successor, acquiror or other third party, the Applicable Conversion Price will thereupon be adjusted by multiplying such conversion price by a fraction of which the numerator is one and the denominator is the number of shares of common stock of the successor, acquiror, or other third party received by a holder of one Share of Capital Stock as a result of such Capital Stock Fundamental Change.

In the absence of the adjustments to the Applicable Conversion Price after a Fundamental Change, in the case of a Company Transaction each of the Preferred Securities would become convertible into the securities, cash, or other property receivable by a holder of the number of shares of Capital Stock into which each of the Preferred Securities was convertible immediately prior to such Company Transaction. Thus, in the absence of the Fundamental Change provisions, a Company Transaction could substantially lessen or eliminate the value of the conversion privilege associated with the Preferred Securities. For example, if the Company were acquired in a cash merger, each of the Preferred Securities would become convertible solely into cash and would no longer be convertible into securities whose value would vary depending on the future prospects of the Company and other factors.

In Non-Stock Fundamental Change transactions, the foregoing conversion price adjustments are designed to increase the securities, cash or other property into which each of the Preferred Securities is convertible. In a Non-Stock Fundamental Change transaction in which the initial value received per Share (measured as described in the definition of Adjusted Relevant Price) is lower than the then Applicable Conversion Price of each of the Preferred Securities but greater than or equal to the Adjusted Reference Market Price, the Applicable Conversion Price will be adjusted as described above with the effect that each of the Preferred Securities will be convertible into

securities, cash or other property of the same type received by the holders of Capital Stock in such transaction with the Applicable Conversion Price adjusted as though such initial value had been the Adjusted Relevant Price. In a Non-Stock Fundamental Change transaction in which the initial value received per Share (measured as described in the definition of Adjusted Relevant Price) is lower than both the Applicable Conversion Price of each of the Preferred Securities and the Adjusted Reference Market Price, the Applicable Conversion Price will be adjusted as described above but calculated as though such initial value had been the Adjusted Reference Market Price.

In Capital Stock Fundamental Change transactions, the foregoing adjustments are designed to provide in effect that (i) where Capital Stock is converted partly into such common stock and partly into other securities, cash or property, each of the Preferred Securities will be convertible solely into a number of shares of such common stock determined so that the initial value of such shares (measured as described in the definition of Purchaser Stock Price) equals the value of the Shares into which each of the Preferred Securities was convertible immediately before the transaction (measured as aforesaid) and (ii) where Capital Stock is converted solely into such common stock, each of the Preferred Securities will be convertible into the same number of shares of such common stock receivable by a holder of the number of Shares into which each of the Preferred Securities was convertible immediately before such transaction.

"Capital Stock Fundamental Change" means any Fundamental Change in which more than 50% of the value (as determined in good faith by the Board of Directors of the Company) of the consideration received by holders of Capital Stock consists of common stock that for each of the ten consecutive trading days immediately prior to and including the Entitlement Date (as defined herein) has been admitted for listing or admitted for listing subject to notice of issuance on a national securities exchange or quoted on the National Market System of the Nasdaq Stock Market or any successor national automated interdealer quotation system (the "NNM").

"Closing Price" of any security on any day means the last reported sale price of such security on such day, or in case no sale takes place on such day, the average of the closing bid and asked prices in each case on the principal national securities exchange on which such securities are listed or admitted to trading or, if not listed or admitted to trading on any national securities exchange, on the NNM or, if such securities are not listed or admitted to trading on any national securities exchange or quoted on the NNM, the average of the closing bid and asked prices of such security in the over-the-counter market as furnished by any New York Stock Exchange member firm selected by the Company for such purpose.

"Entitlement Date" means the record date for determination of the holders of Capital Stock entitled to receive securities, cash or other property in connection with a Non-Stock Fundamental Change or a Capital Stock Fundamental Change or, if there is no such record date, the date upon which holders of Capital Stock shall have the right to receive such securities, cash or other property.

"Fundamental Change" means the occurrence of any transaction or event in connection with a plan pursuant to which all or substantially all the Capital Stock is exchanged for, converted into, acquired for or constitute solely the right to receive securities, cash or other property (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization or otherwise); provided, however, that, in the case of a plan involving more than one such transaction or event, for purposes of adjustment of the Applicable Conversion Price, such Fundamental Change shall be deemed to have occurred when substantially all the Capital Stock has been exchanged for, converted into, or acquired for or constitute solely the right to receive securities, cash, or other property, but the adjustment shall be based upon the highest weighted average per share consideration that a holder of Capital Stock could have received in such transactions or events as a result of which more than 50% of the Capital Stock has been exchanged for, converted into, or acquired for or constitute solely the right to receive securities, cash or other property.

"Non-Stock Fundamental Change" means any Fundamental Change other than a Capital Stock Fundamental Change.

"Optional Redemption Ratio" means a fraction of which the numerator will be \$27 and the denominator will be the then current Optional Redemption Price or, prior to March 15, 2003, an amount per each of the Preferred Securities determined by the Company in its sole discretion, after consultation with an investment

banking firm, to be the equivalent of the hypothetical redemption price that would have been applicable if the Preferred Securities had been redeemable during such period.

"Purchaser Stock Price" means, with respect to any Capital Stock Fundamental Change, the average of the Closing Prices for the common stock received in such Capital Stock Fundamental Change for the ten consecutive trading days prior to and including the Entitlement Date, as adjusted in good faith by the Company to appropriately reflect any of the events referred to in clauses (i) through (vi) of the first paragraph under "-- Conversion Price Adjustments -- General."

"Reference Market Price" initially means on the date of original issuance of the Preferred Securities, \$18.00 (which is an amount equal to 66 2/3% of the liquidation amount per Preferred Security), and, in the event of any adjustment to the Applicable Conversion Price, other than as a result of a Non-Stock Fundamental Change, the Reference Market Price shall also be adjusted so that the ratio of the Reference Market Price to the Applicable Conversion Price after giving effect to any such adjustment shall always be the same as the ratio of \$18.00 to the Initial Conversion Price.

"Relevant Price" means (i) in the case of a Non-Stock Fundamental Change in which the holder of Capital Stock receives only cash, the amount of cash received by the holder of one Share of Capital Stock and (ii) in the event of any other Non-Stock Fundamental Change or any Capital Stock Fundamental Change, the average of the daily Closing Prices for Capital Stock during the ten consecutive trading days prior to and including the Entitlement Date, in each case as adjusted in good faith by the Company to appropriately reflect any of the events referred to in clauses (i) through (vi) of the first paragraph under "-- Conversion Price Adjustments -- General."

#### MANDATORY REDEMPTION

Upon the repayment in full of the Junior Subordinated Debentures at the Stated Maturity or a redemption in whole or in part of the Junior Subordinated Debentures (other than following any distribution of the Junior Subordinated Debentures to the holders of the Trust Securities), the proceeds from such repayment or redemption shall be applied by the Property Trustee to redeem, on a pro rata basis, a Like Amount of Trust Securities, on the Redemption Date, in an amount per Trust Security equal to the applicable Redemption Price, which Redemption Price will be equal to (i) the liquidation amount of each of the Preferred Securities plus any accrued and unpaid Distributions thereon (A) in the case of the repayment of the Junior Subordinated Debentures at Stated Maturity (the "Stated Maturity Price"), or (B) in the case of the redemption of the Junior Subordinated Debentures in certain limited circumstances upon the occurrence of a Tax Event or (ii) in the case of an Optional Redemption on or after March 15, 2003, the Optional Redemption Price (as defined under "Description of Junior Subordinated Debentures -- Redemption -- Optional Redemption").

#### REDEMPTION PROCEDURES

Preferred Securities shall be redeemed, if at all, at the applicable Redemption Price with the proceeds from the contemporaneous repayment or redemption of the Junior Subordinated Debentures. Redemptions of the Preferred Securities shall be made and the applicable Redemption Price shall be payable on each Redemption Date only to the extent that the Trust has funds on hand available for the payment of such Redemption Price. See also "-- Subordination of Common Securities."

If the Trust gives a notice of redemption in respect of the Preferred Securities, then, by 12:00 noon, New York City time, on the date fixed for redemption (the "Redemption Date"), to the extent funds are available, with respect to the Preferred Securities held in global form, the Property Trustee will deposit irrevocably with DTC funds sufficient to pay the applicable Redemption Price and will give DTC irrevocable instructions and authority to pay the applicable Redemption Price to the holders of the Preferred Securities. See "-- Form, Book-Entry Procedures and Transfer." With respect to the Preferred Securities held in certificated form, the Property Trustee, to the extent funds are available, will irrevocably deposit with the paying agent for the Preferred Securities funds sufficient to pay the applicable Redemption Price and will give such paying agent irrevocable instructions and authority to pay the Redemption Price to the holders thereof upon surrender of their certificates evidencing the Preferred Securities. See "-- Payment and Paying Agency." Notwithstanding the foregoing, Distributions payable on or prior to the Redemption Date shall be payable to the holders of the Preferred Securities on the

relevant record dates for the related Distribution Dates. If notice of redemption shall have been given and funds deposited as required, then upon the date of such deposit, all rights of the holders of the Preferred Securities will cease, except the right of the holders of the Preferred Securities to receive the applicable Redemption Price, but without interest on such Redemption Price, and the Preferred Securities will cease to be outstanding. In the event that any Redemption Date is not a Business Day, then payment of the applicable Redemption Price payable on such date will be made on the next succeeding day which is a Business Day (and without any interest or other payment in respect of any such delay), except that, if such Business Day falls in the next calendar year, such payment will be made on the immediately preceding Business Day. In the event that payment of the applicable Redemption Price is improperly withheld or refused and not paid either by the Trust or by the Company pursuant to the Guarantee as described under "Description of Guarantee," Distributions on Preferred Securities will continue to accrue from the Redemption Date originally established by the Trust to the date such Redemption Price is actually paid, in which case the actual payment date will be the date fixed for redemption for purposes of calculating the Redemption Price.

Subject to applicable law (including United States Federal securities law), the Company or its subsidiaries may at any time and from time to time purchase outstanding Preferred Securities by tender, in the open market or by private agreement.

If the Company desires to consummate an Optional Redemption it must send a notice to each holder of Trust Securities at its registered address in accordance with the notice procedures set forth under "Description of Junior Subordinated Debentures -- Redemption -- Optional Redemption." Notice of a Tax Event Redemption will be mailed at least 20 days but not more than 60 days before the Redemption Date to each holder of Preferred Securities. Notice of repayment at Stated Maturity is not required.

#### TAX EVENT OR INVESTMENT COMPANY EVENT REDEMPTION OR DISTRIBUTION

If a Tax Event occurs, the Company shall cause the Issuer Trustees to liquidate the Trust and cause Junior Subordinated Debentures to be distributed to the holders of the Preferred Securities in liquidation of the Trust within 90 days following the occurrence of such Tax Event; provided, however, that such liquidation and distribution shall be conditioned on (i) the Issuer Trustees' receipt of an opinion of nationally recognized independent tax counsel (reasonably acceptable to the Issuer Trustees) experienced in such matters (a "No Recognition Opinion"), which opinion may rely on published revenue rulings of the Internal Revenue Service, to the effect that the holders of the Preferred Securities will not recognize any income, gain or loss for U.S. Federal income tax purposes as a result of such liquidation and distribution of Junior Subordinated Debentures, and (ii) the Company being unable to avoid such Tax Event within such 90-day period by taking some ministerial action or pursuing some other reasonable measure that, in the sole judgment of the Company, will have no adverse effect on the Trust, the Company or the holders of the Preferred Securities and will involve no material cost. Furthermore, if (i) the Company has received an opinion (a "Redemption Tax Opinion") of nationally recognized independent tax counsel (reasonably acceptable to the Issuer Trustees) experienced in such matters that, as a result of a Tax Event, there is more than an insubstantial risk that the Company would be precluded from deducting the interest on the Junior Subordinated Debentures for U.S. Federal income tax purposes, even after the Junior Subordinated Debentures were distributed to the holders of the Preferred Securities upon liquidation of the Trust as described above, or (ii) the Issuer Trustees shall have been informed by such tax counsel that it cannot deliver a No Recognition Opinion, the Company shall have the right, upon not less than 20 nor more than 60 days' notice and within 90 days following the occurrence and continuation of the Tax Event, to redeem the Junior Subordinated Debentures, in whole, but not in part, for cash, for the principal amount thereof plus accrued and unpaid interest thereon and, following such redemption, all the Preferred Securities will be redeemed by the Trust at the aggregate liquidation amount thereof plus accrued and unpaid Distributions thereon; provided, however, that, if at the time there is available to the Company or the Trust the opportunity to eliminate, within such 90-day period, the Tax Event by taking some ministerial action or pursuing some other reasonable measure that, in the sole judgment of the Company, will have no adverse effect on the Company, the Trust or the holders of the Preferred Securities and will involve no material cost, the Company or the Trust will pursue such measure in lieu of redemption. See "-- Mandatory Redemption." In lieu of the foregoing options, the Company will also have the option of causing the Preferred Securities to remain outstanding and pay Additional Sums, if

any, on the Junior Subordinated Debentures. See "Description of Junior Subordinated Debentures -- Additional Sums."

"Tax Event" means the receipt by the Property Trustee of an opinion of a nationally recognized independent tax counsel to the Company (reasonably acceptable to the Issuer Trustees) experienced in such matters (a "Dissolution Tax Opinion") to the effect that, as a result of (i) any amendment to or change (including any announced prospective change (which shall not include a proposed change), provided that a Tax Event shall not occur more than 90 days before the effective date of any such prospective change) in the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein, (ii) any judicial decision or official administrative pronouncement, ruling, regulatory procedure, notice or announcement, including any notice or announcement of intent to adopt such procedures or regulations (an "Administrative Action"), (iii) any amendment to or change in the administrative position or interpretation of any Administrative Action or judicial decision that differs from the theretofore generally accepted position, in each case, by any legislative body, court, governmental agency or regulatory body, irrespective of the manner in which such amendment or change is made known, which amendment or change is effective or such Administrative Action or decision is announced, or (iv) any current or future audit, examination or proceeding relating to the Company or any related party, in each case, on or after the date of original issuance of the Junior Subordinated Debentures or the issue date of the Preferred Securities issued by the Trust, there is more than an insubstantial risk that (a) if the Junior Subordinated Debentures are held by the Property Trustee, (I) the Trust is, or will be within 90 days of the date of such opinion, subject to U.S. Federal income tax with respect to interest accrued or received on the Junior Subordinated Debentures or subject to more than a de minimis amount of other taxes, duties or other governmental charges as determined by such counsel, or (II) any portion of interest payable by the Company to the Trust on the Junior Subordinated Debentures is not, or within 90 days of the date of such opinion will not be, deductible by the Company in whole or in part for U.S. Federal income tax purposes or (b) with respect to Junior Subordinated Debentures which are no longer held by the Property Trustee, any portion of interest payable by the Company on the Junior Subordinated Debentures is not, or within 90 days of the date of such opinion will not be, deductible by the Company in whole or in part for U.S. Federal income tax purposes.

If an Investment Company Event occurs, the Company shall cause the Issuer Trustees to liquidate the Trust and cause the Junior Subordinated Debentures to be distributed to the holders of the Preferred Securities in liquidation of the Trust within 90 days following the occurrence of such Investment Company Event.

"Investment Company Event" means the occurrence of a change in law or regulation or a written change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority or any advice to the Company from any regulatory authority (a "Change in 1940 Act Law") to the effect that the Trust is or will be considered an "investment company" which is required to be registered under the Investment Company Act of 1940, as amended (the "1940 Act"), which Change in 1940 Act Law becomes effective on or after the date of this Offering Circular.

The distribution by the Company of the Junior Subordinated Debentures will effectively result in the cancelation of the Preferred Securities. See "-- Liquidation of the Trust and Distribution of Junior Subordinated Debentures."

#### LIQUIDATION OF THE TRUST AND DISTRIBUTION OF JUNIOR SUBORDINATED DEBENTURES

The Company, as the holder of the outstanding Common Securities, will have the right at any time (including upon the occurrence of a Tax Event or Investment Company Act Event) to terminate the Trust and cause a Like Amount of the Junior Subordinated Debentures to be distributed to the holders of the Trust Securities upon liquidation of the Trust; provided, however, that (a) the Issuer Trustees shall have received a No Recognition Opinion prior to the liquidation of the Trust and (b) following such distribution of the Junior Subordinated Debentures, the Company must use its best efforts to maintain a rating of such Junior Subordinated Debentures by any nationally recognized rating agency for so long as any such Junior Subordinated Debentures are outstanding.

The Trust shall automatically terminate upon the first to occur of (i) certain events of bankruptcy, dissolution or liquidation of the Company; (ii) the distribution of a Like Amount of the Junior Subordinated Debentures to

the holders of the Trust Securities if the Company, as Depositor, has given written direction to the Property Trustee to terminate the Trust (which direction is optional and, except as described above, wholly within the discretion of the Company, as Depositor); (iii) redemption of all the Trust Securities as described under "-- Mandatory Redemption"; (iv) expiration of the term of the Trust; and (v) the entry of an order for the dissolution of the Trust by a court of competent jurisdiction.

If an early termination occurs as described in clause (i), (ii), (iv) or (v) above, the Trust shall be liquidated by the Issuer Trustees as expeditiously as the Issuer Trustees determine to be possible by distributing, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, to the holders of such Trust Securities a Like Amount of the Junior Subordinated Debentures, unless such distribution would not be practical, in which event such holders will be entitled to receive out of the assets of the Trust available for distribution to holders, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, an amount equal to, in the case of holders of Preferred Securities, the aggregate liquidation amount thereof plus accrued and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"). If such Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then the amounts payable directly by the Trust on the Preferred Securities shall be paid on a pro rata basis. The Company, as holder of the Common Securities, will be entitled to receive distributions upon any such liquidation pro rata with the holders of the Preferred Securities, except that if a Debenture Event of Default (or an event that, with notice or passage of time, would become such a Debenture Event of Default) or an Event of Default under the Declaration has occurred and is continuing, the Preferred Securities shall have a priority over the Common Securities with respect to any such distributions. See "-- Subordination of Common Securities."

"Like Amount" means (i) with respect to a redemption of Preferred Securities, Preferred Securities having an aggregate liquidation amount equal to that portion of the principal amount of Junior Subordinated Debentures to be contemporaneously redeemed in accordance with the Indenture, allocated to the Common Securities and to the Preferred Securities based upon the relative liquidation amounts of such classes and the proceeds of which will be used to pay the applicable Redemption Price of the Preferred Securities and (ii) with respect to a distribution of Junior Subordinated Debentures to holders of Preferred Securities in connection with a dissolution or liquidation of the Trust, Junior Subordinated Debentures having a principal amount equal to the aggregate liquidation amount of the Trust Securities of the holder to whom such Junior Subordinated Debentures are distributed.

If the Company does not redeem the Junior Subordinated Debentures prior to Stated Maturity and the Trust is not liquidated and the Junior Subordinated Debentures are not distributed to holders of the Trust Securities, the Preferred Securities will remain outstanding until the repayment of the Junior Subordinated Debentures at the Stated Maturity and the distribution of the Liquidation Distribution to the holders of the Preferred Securities.

On and after the liquidation date fixed for any distribution of Junior Subordinated Debentures to holders of the Trust Securities, (i) the Preferred Securities will no longer be deemed to be outstanding, (ii) DTC or its nominee, as the record holder of the Preferred Securities, will receive a registered global certificate or certificates representing the Junior Subordinated Debentures to be delivered upon such distribution with respect to Preferred Securities held by DTC or its nominee and (iii) any certificates representing Preferred Securities not held by DTC or its nominee will be deemed to represent Junior Subordinated Debentures having a principal amount equal to the liquidation amount of such Preferred Securities and bearing accrued and unpaid interest in an amount equal to the accumulated and unpaid Distributions on such Preferred Securities until such certificates are presented to the Administrative Trustees or their agent for cancellation, whereupon the Company will issue to such holder, and the Debenture Trustee will authenticate, a certificate representing such Junior Subordinated Debentures.

There can be no assurance as to the market prices for the Preferred Securities or the Junior Subordinated Debentures that may be distributed in exchange for the Trust Securities if a dissolution and liquidation of the Trust were to occur. Accordingly, the Preferred Securities that an investor may purchase, or the Junior Subordinated Debentures that the investor may receive on dissolution and liquidation of the Trust, may trade at a discount to the price that the investor paid to purchase the Preferred Securities offered hereby.

## SUBORDINATION OF COMMON SECURITIES

Payment of Distributions on, and the Redemption Price of, the Preferred Securities and Common Securities, as applicable, shall be made pro rata to the holders of Preferred Securities and Common Securities based on the liquidation amount of the Trust Securities; provided, however, that, if on any Distribution Date or Redemption Date any Debenture Event of Default (or an event that, with notice or passage of time, would become such an Event of Default) or an Event of Default under the Declaration shall have occurred and be continuing, no payment of any Distribution on, or applicable Redemption Price of, any of the Common Securities, and no other payment on account of the redemption, liquidation or other acquisition of such Common Securities, shall be made unless payment in full in cash of all accrued and unpaid Distributions on all of the outstanding Preferred Securities for all Distribution periods terminating on or prior thereto, or, in the case of payment of the applicable Redemption Price, the full amount of such Redemption Price on all of the outstanding Preferred Securities, shall have been made or provided for, and all funds available to the Property Trustee shall first be applied to the payment in full in cash of all Distributions on, or the applicable Redemption Price of, the Preferred Securities then due and payable.

In the case of any Event of Default under the Declaration resulting from a Debenture Event of Default, the Company as holder of the Common Securities will be deemed to have waived any right to act with respect to any such Event of Default under the Declaration until the effect of all such Events of Default have been cured, waived or otherwise eliminated. Until all such Events of Default under the Declaration have been so cured, waived or otherwise eliminated, the Property Trustee shall act solely on behalf of the holders of such Preferred Securities and not on behalf of the Company as holder of the Common Securities, and only the holders of the Preferred Securities will have the right to direct the Property Trustee to act on their behalf.

## EVENTS OF DEFAULT; NOTICE

Any one of the following events constitutes an "Event of Default" under the Declaration (an "Event of Default") (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(i) the occurrence of a Debenture Event of Default (see "Description of Junior Subordinated Debentures -- Debenture Events of Default");

(ii) default by the Trust in the payment of any Distribution when it becomes due and payable, and continuation of such default for a period of 30 days (subject to the deferral of any due date in the case of a Deferral Period);

(iii) default by the Trust in the payment of any Redemption Price of any Trust Security when it becomes due and payable;

(iv) default in the performance, or breach, in any material respect, of any covenant or warranty of the Issuer Trustees in the Declaration (other than a covenant or warranty, a default in the performance of which or the breach of which is addressed in clause (ii) or (iii) above), and continuation of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the defaulting Issuer Trustee or Issuer Trustees by the holders of at least 25% in aggregate liquidation amount of the outstanding Preferred Securities, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" under the Declaration; or

(v) the occurrence of certain events of bankruptcy or insolvency with respect to the Property Trustee and the failure by the Company to appoint a successor Property Trustee within 60 days thereof.

Within three Business Days after the occurrence of any Event of Default actually known to the Property Trustee, the Property Trustee shall transmit notice of such Event of Default to the holders of the Preferred Securities, the Administrative Trustees and the Company, unless such Event of Default shall have been cured or waived. The Company and the Administrative Trustees are required to file annually with the Property Trustee a



certificate as to whether or not they are in compliance with all the conditions and covenants applicable to them under the Declaration.

If a Debenture Event of Default (or an event that with notice or the passage of time, would become such an Event of Default) or an Event of Default under the Declaration has occurred and is continuing, the Preferred Securities shall have a preference over the Common Securities as described above. See "-- Liquidation of the Trust and Distribution of Junior Subordinated Debentures" and "-- Subordination of Common Securities."

#### REMOVAL OF ISSUER TRUSTEES

Unless a Debenture Event of Default shall have occurred and be continuing, any Issuer Trustee may be removed at any time by the holder of the Common Securities. If a Debenture Event of Default has occurred and is continuing, the Property Trustee and the Delaware Trustee may be removed at such time by the holders of a majority in liquidation amount of the outstanding Preferred Securities. In no event will the holders of the Preferred Securities have the right to vote to appoint, remove or replace the Administrative Trustees, which voting rights are vested exclusively in the Company as the holder of the Common Securities. No resignation or removal of the Delaware Trustee or the Property Trustee and no appointment of a successor trustee shall be effective until the acceptance of appointment by the successor trustee in accordance with the provisions of the Declaration.

#### CO-TRUSTEES AND SEPARATE PROPERTY TRUSTEE

Unless an Event of Default shall have occurred and be continuing, at any time or times, for the purpose of meeting the legal requirements of the Trust Indenture Act or of any jurisdiction in which any part of the Trust's property may at the time be located, the Company, as the holder of the Common Securities, and the Administrative Trustees shall have power to appoint one or more persons either to act as a co-trustee, jointly with the Property Trustee, of all or any part of such Trust's property, or to act as separate trustee of any such property, in either case with such powers as may be provided in the instrument of appointment, and to vest in such person or persons in such capacity any property, title, right or power deemed necessary or desirable, subject to the provisions of the Declaration. In case a Debenture Event of Default has occurred and is continuing, the Property Trustee alone shall have power to make such appointment.

#### MERGER OR CONSOLIDATION OF ISSUER TRUSTEES

Any person into which the Property Trustee, the Delaware Trustee or any Administrative Trustee that is not a natural person may be merged or converted or with which it may be consolidated, or any person resulting from any merger, conversion or consolidation to which such Issuer Trustee shall be a party, or any person succeeding to all or substantially all the corporate trust business of such Issuer Trustee, shall be the successor of such Issuer Trustee under the Declaration, provided such person shall be otherwise qualified and eligible.

#### MERGERS, CONSOLIDATIONS, AMALGAMATIONS OR REPLACEMENTS OF THE TRUST

The Trust may not merge with or into, consolidate, amalgamate or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety to any corporation or other person, except as described below or as otherwise set forth in the Declaration. The Trust may, at the request of the Company, as Depositor, with the consent of the Administrative Trustees but without the consent of the holders of the Preferred Securities, the Property Trustee or the Delaware Trustee, merge with or into, consolidate, amalgamate or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety to, a trust organized as such under the laws of any State; provided, however, that (i) such successor entity either (a) expressly assumes all of the obligations of the Trust with respect to the Preferred Securities or (b) substitutes for the Preferred Securities other securities having substantially the same terms as the Preferred Securities (the "Successor Securities") so long as the Successor Securities rank the same as the Preferred Securities in priority with respect to distributions and payments upon liquidation, redemption and otherwise, (ii) the Company expressly appoints a trustee of such successor entity possessing the same powers and duties as the Property Trustee as the holder of the Junior Subordinated Debentures, (iii) the Successor Securities are listed or traded, or any Successor Securities will be listed or traded upon notification of issuance, on any national securities exchange, national automated quotation system or other organization on which the Preferred Securities are then listed or traded, if any, (iv) such merger,

consolidation, amalgamation, replacement, conveyance, transfer or lease does not cause the Preferred Securities (including any Successor Securities) to be downgraded by any nationally recognized statistical rating organization, (v) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the holders of the Preferred Securities (including any Successor Securities) in any material respect, (vi) such successor entity has a purpose identical and limited to that of the Trust, (vii) prior to such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, the Company has received an opinion from independent counsel to the Trust experienced in such matters to the effect that (a) such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease does not adversely affect the rights, preferences and privileges of the holders of the Preferred Securities (including any Successor Securities) in any material respect, and (b) following such merger, consolidation, amalgamation, replacement, conveyance, transfer or lease, neither the Trust nor such successor entity will be required to register as an investment company under the 1940 Act, (viii) the Company or any permitted successor or assignee owns all of the common securities of such successor entity and guarantees the obligations of such successor entity under the Successor Securities at least to the extent provided by the Guarantee and (ix) such merger, consolidation, amalgamation, replacement or lease is not a taxable event for holders of the Preferred Securities. Notwithstanding the foregoing, the Trust shall not, except with the consent of holders of 100% in aggregate liquidation amount of the Trust Securities, consolidate, amalgamate, merge with or into, or be replaced by or convey, transfer or lease its properties and assets substantially as an entirety to any other entity or permit any other entity to consolidate, amalgamate, merge with or into, or replace it, if such consolidation, amalgamation, merger, replacement, conveyance, transfer or lease would cause the Trust or the successor entity to be classified as an association taxable as a corporation (or to substantially increase the likelihood that the Trust or the successor entity would be classified as other than a grantor trust) for U.S. Federal income tax purposes.

#### VOTING RIGHTS; AMENDMENT OF THE DECLARATION

Except as provided below and under "Description of Guarantee -- Amendments and Assignment" and as otherwise required by law and the Declaration, the holders of the Preferred Securities will have no voting rights.

In addition to the rights of the holders of Preferred Securities with respect to the enforcement of payment to the Trust of principal of or interest on the Junior Subordinated Debentures as provided under "Description of Junior Subordinated Debentures -- Debenture Events of Default," if (i) a Debenture Event of Default occurs and is continuing or (ii) the Company defaults under the Guarantee with respect to the Preferred Securities (each an "Appointment Event"), then the holders of the Preferred Securities, acting as a single class, will be entitled by the majority vote of such holders to appoint a Special Trustee. Any holder of Preferred Securities (other than the Company or any of its affiliates) shall be entitled to nominate any person to be appointed as Special Trustee. Not later than 30 days after such right to appoint a Special Trustee arises, the Issuer Trustees shall convene a meeting of the holders of Preferred Securities for the purpose of appointing a Special Trustee. If the Issuer Trustees fail to convene such meeting within such 30-day period, the holders of not less than 10% of the aggregate stated liquidation amount of the outstanding Preferred Securities will be entitled to convene such meeting. The provisions of the Declaration relating to the convening and conduct of the meetings of the holders will apply with respect to any such meeting. Any Special Trustee so appointed shall cease to be a Special Trustee if the Appointment Event pursuant to which the Special Trustee was appointed and all other Appointment Events cease to be continuing. Notwithstanding the appointment of any such Special Trustee, the Company shall retain all rights under the Indenture, including the right to defer payments of interest by extending the interest payment period as provided under "Description of Junior Subordinated Debentures -- Option to Extend Interest Payment Date." If such an extension occurs, there will be no Debenture Event of Default and, consequently, no Event of Default for failure to make any scheduled interest payment during the Deferral Period on the date originally scheduled.

The Declaration may be amended from time to time by the Company, the Property Trustee and the Administrative Trustees, without the consent of the holders of the Trust Securities, (i) to cure any ambiguity, correct or supplement any provision in the Declaration that may be inconsistent with any other provision, or to make any other provisions with respect to ministerial matters or questions arising under the Declaration, which shall not be inconsistent with the other provisions of the Declaration, or (ii) to modify, eliminate or add to any

provisions of the Declaration to such extent as shall be necessary to ensure that the Trust will not be taxable as a corporation or will be classified for U.S. Federal income tax purposes as a grantor trust at all times that any Trust Securities are outstanding or to ensure that the Trust will not be required to register as an "investment company" under the 1940 Act; provided, however, that in the case of clause (i), such action shall not adversely affect in any material respect the interests of any holder of Trust Securities, and any amendments of the Declaration shall become effective when notice thereof is given to the holders of the Trust Securities. The Declaration may also be amended by the Issuer Trustees and the Company with (i) the consent of holders representing not less than a majority (based upon liquidation amounts) of the outstanding Preferred Securities, and (ii) receipt by the Issuer Trustees of an opinion of counsel to the effect that such amendment or the exercise of any power granted to the Issuer Trustees in accordance with such amendment will not affect the Trust's status as a grantor trust for U.S. Federal income tax purposes or the Trust's exemption from status as an "investment company" under the 1940 Act. In addition, without the consent of each holder of Trust Securities, the Declaration may not be amended to (i) change the amount or timing of any Distribution on the Trust Securities or otherwise adversely affect the amount of any Distribution required to be made in respect of the Trust Securities as of a specified date or (ii) restrict the right of a holder of Trust Securities to institute suit for the enforcement of any such payment on or after such date.

So long as any Junior Subordinated Debentures are held by the Trust, the Issuer Trustees shall not (i) direct the time, method and place of conducting any proceeding for any remedy available to the Debenture Trustee, or executing any trust or power conferred on the Property Trustee with respect to the Junior Subordinated Debentures, (ii) waive any past default that is waivable under the Indenture, (iii) exercise any right to rescind or annul a declaration that the principal of all the Junior Subordinated Debentures shall be due and payable or (iv) consent to any amendment, modification or termination of the Indenture or the Junior Subordinated Debentures, where such consent shall be required, without, in each case, obtaining the prior approval of the holders of a majority in aggregate liquidation amount of all outstanding Preferred Securities; provided, however, that where a consent under the Indenture would require the consent of each holder of Junior Subordinated Debentures affected thereby, no such consent shall be given by the Property Trustee without the prior consent of each holder of the Preferred Securities. The Issuer Trustees shall not revoke any action previously authorized or approved by a vote of the holders of the Preferred Securities except by subsequent vote of such holders. The Property Trustee shall notify each holder of Preferred Securities of any notice of default with respect to the Junior Subordinated Debentures. In addition to obtaining the foregoing approvals of such holders of the Preferred Securities, prior to taking any of the foregoing actions, the Issuer Trustees shall obtain an opinion of counsel experienced in such matters to the effect that such action will not affect the Trust's status as a grantor trust for U.S. Federal income tax purposes on account of such action.

Any required approval of holders of Preferred Securities may be given at a meeting of such holders convened for such purpose or pursuant to written consent. The Property Trustee will cause a notice of any meeting at which holders of Preferred Securities are entitled to vote, or of any matter upon which action by written consent of such holders is to be taken, to be given to each holder of record of Preferred Securities in the manner set forth in the Declaration.

No vote or consent of the holders of Preferred Securities will be required for the Trust to redeem and cancel the Preferred Securities in accordance with the Declaration.

Notwithstanding that holders of the Preferred Securities are entitled to vote or consent under any of the circumstances described above, any of the Preferred Securities that are owned by the Company, the Issuer Trustees or any affiliate of the Company or any Issuer Trustees, shall, for purposes of such vote or consent, be treated as if they were not outstanding.

#### EXPENSES AND TAXES

In the Indenture, the Company has agreed to pay all debts and other obligations (other than with respect to payments of Distributions, amounts payable upon redemption and the liquidation amount of the Trust Securities) and all costs and expenses of the Trust (including costs and expenses relating to the organization of the Trust, the fees and expenses of the Issuer Trustees and the costs and expenses relating to the operation of the Trust) and the

offering of the Preferred Securities, and to pay any and all taxes and all costs and expenses with respect to the foregoing (other than United States withholding taxes) to which the Trust might become subject. The foregoing obligations of the Company under the Indenture are for the benefit of, and shall be enforceable by, any person to whom any such debts, obligations, costs, expenses and taxes are owed (a "Creditor") whether or not such Creditor has received notice thereof. Any such Creditor may enforce such obligations of the Company directly against the Company, and the Company has irrevocably waived any right or remedy to require that any such Creditor take any action against the Trust or any other person before proceeding against the Company. The Company has also agreed in the Indenture to execute such additional agreement(s) as may be necessary or desirable to give full effect to the foregoing.

#### FORM, BOOK-ENTRY PROCEDURES AND TRANSFER

Preferred Securities will be issued in fully registered form. Investors may elect to hold their Preferred Securities directly or, subject to the rules and procedures of DTC, hold their interest in a global certificate (the "Global Preferred Securities") registered in the name of Cede & Co., as nominee of DTC. However, tendering holders of Shares held in global form shall initially receive an interest in the Global Preferred Securities and tendering holders of Shares held directly in certificated form shall initially receive Preferred Securities in certificated form. See "The Exchange Offer -- Procedures for Tendering." Except as set forth below, the Global Preferred Securities may be transferred, in whole and not in part, only to DTC or another nominee of DTC. Investors may hold their beneficial interests in the Global Preferred Securities directly through DTC if they have an account with DTC or indirectly through organizations which have accounts with DTC.

DTC has advised the Company as follows: DTC is a limited-purpose trust company organized under the laws of the State of New York, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Exchange Act. DTC was created to hold securities of institutions that have accounts with DTC ("participants") and to facilitate the clearance and settlement of securities transactions among its participants in such securities through electronic book-entry changes in accounts of the participants, thereby eliminating the need for physical movement of securities certificates. DTC's participants include securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. Access to DTC's book-entry system is also available to others such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a participant, whether directly or indirectly.

Upon the issuance of the Global Preferred Securities, DTC will credit, on its book-entry registration and transfer system, the principal amount of the Preferred Securities represented by such Global Preferred Securities to the accounts of participants. Ownership of beneficial interests in the Global Preferred Securities will be limited to participants or persons that may hold interests through participants. Ownership of beneficial interests in the Global Preferred Securities will be shown on, and the transfer of those ownership interests will be effected only through, records maintained by DTC (with respect to participants' interests) and such participants (with respect to the owners of beneficial interests in the Global Preferred Securities other than participants). The laws of some jurisdictions may require that certain purchasers of securities take physical delivery of such securities in definitive form. Such limits and laws may impair the ability to transfer or pledge beneficial interests in the Global Preferred Securities.

So long as DTC or its nominee is the registered holder and owner of the Global Preferred Securities, DTC or such nominee, as the case may be, will be considered the sole legal owner and holder of the related Preferred Securities for all purposes of the Declaration, the Guarantee and the Indenture. The Company understands that under existing industry practice, in the event an owner of a beneficial interest in the Global Preferred Securities desires to take any action that DTC, as the holder of the Global Preferred Securities, is entitled to take, DTC would authorize the participants to take such action, and that the participants would authorize beneficial owners owning through such participants to take such action or would otherwise act upon the instructions of beneficial owners owning through them.

Payment of amounts with respect to the Preferred Securities represented by the Global Preferred Securities registered in the name of and held by DTC or its nominee will be made to DTC or its nominee, as the case may be, as the registered owner and holder of the Global Preferred Securities.

The Company expects that DTC or its nominee, upon receipt of payment of amounts with respect to the Global Preferred Securities, will credit participants' accounts with payments in amounts proportionate to their respective beneficial interests in the principal amount of the Global Preferred Securities as shown on the records of DTC or its nominee. The Company also expects that payments by participants to owners of beneficial interests in the Global Preferred Securities held through such participants will be governed by standing instructions and customary practices and will be the responsibility of such participants. Neither the Company nor the Trust will have any responsibility or liability for any aspect of the records relating to, or payments made on account of, beneficial ownership interests in the Global Preferred Securities or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests or for any other aspect of the relationship between DTC and its participants or the relationship between such participants and the owners of beneficial interests in the Global Preferred Securities owning through such participants.

Although DTC has agreed to the foregoing procedures in order to facilitate transfers of interests in the Global Preferred Securities among participants of DTC, it is under no obligation to perform or continue to perform such procedures, and such procedures may be discontinued at any time. Neither the Company nor the Trust will have any responsibility for the performance by DTC or its participants or indirect participants of their respective obligations under the rules and procedures governing their operations.

Neither the Company nor the Trust shall be liable for any delay by DTC or any participant or indirect participant in identifying the beneficial owners of the Preferred Securities, and the Company and the Trust may conclusively rely on, and shall be protected in relying on, instructions from DTC for all purposes (including with respect to the registration and delivery, and their respective principal amounts, of the Preferred Securities to be issued).

The information in this Offering Circular concerning DTC and DTC's book-entry system has been obtained from such sources that the Company believes to be reliable. Neither the Company nor the Trust will have any responsibility for the performance by DTC or its participants of their respective obligations as described hereunder or under the rules and procedures governing their respective operations.

#### PAYMENT AND PAYING AGENCY

Payments in respect of the Global Preferred Securities shall be made to DTC, which shall credit the relevant accounts at DTC on the applicable Distribution Dates, or, in respect of the Preferred Securities that are not held by DTC, such payments shall be made by check mailed to the address of the holder entitled thereto as such address shall appear on the register. The paying agent (the "Paying Agent") shall initially be the Property Trustee and any co-paying agent chosen by the Property Trustee and acceptable to the Administrative Trustees and the Company. The Paying Agent shall be permitted to resign as Paying Agent upon 30 days' written notice to the Property Trustee, the Administrative Trustees and the Company. In the event that the Property Trustee shall no longer be the Paying Agent, the Administrative Trustees shall appoint a successor (which shall be a bank or trust company acceptable to the Administrative Trustees and the Company) to act as Paying Agent.

The Property Trustee has informed the Trust that so long as it serves as paying agent for the Preferred Securities, it anticipates that information regarding Distributions on the Preferred Securities, including payment date, record date and redemption information, will be made available through Firststar Bank.

#### REGISTRAR, CONVERSION AGENT AND TRANSFER AGENT

The Property Trustee will act as registrar, conversion agent and transfer agent for the Preferred Securities.

#### INFORMATION CONCERNING THE PROPERTY TRUSTEE

The Property Trustee, other than during the occurrence and continuance of an Event of Default, undertakes to perform only such duties as are specifically set forth in the Declaration and, during the existence of an Event of

Default, must exercise the same degree of care and skill as a prudent person would exercise or use in the conduct of his or her own affairs. Subject to this provision, the Property Trustee is under no obligation to exercise any of the powers vested in it by the Declaration at the request of any holder of Trust Securities unless it is offered reasonable indemnity against the costs, expenses and liabilities that might be incurred thereby. If no Event of Default has occurred and is continuing and the Property Trustee is required to decide between alternative causes of action, construe ambiguous provisions in the Declaration or is unsure of the application of any provision of the Declaration, and the matter is not one on which holders of the Preferred Securities or the Common Securities are entitled under the Declaration to vote, then the Property Trustee shall take such action as is directed by the Company and, if not so directed, shall take such action as it deems advisable and in the best interests of the holders of the Trust Securities and will have no liability except for its own bad faith, negligence or willful misconduct.

#### MISCELLANEOUS

The Administrative Trustees are authorized and directed to conduct the affairs of and to operate the Trust in such a way that the Trust will not be deemed to be an "investment company" required to be registered under the 1940 Act or classified as an association taxable as a corporation for U.S. Federal income tax purposes (or in a way that would substantially increase the risk that the Trust would be classified as other than a grantor trust for U.S. Federal income tax purposes), and so that the Junior Subordinated Debentures will be treated as indebtedness of the Company for U.S. Federal income tax purposes. In this connection, the Company and the Administrative Trustees are authorized to take any action, not inconsistent with applicable law, the certificate of trust of the Trust or the Declaration, that the Company and the Administrative Trustees determine in their discretion to be necessary or desirable for such purposes, as long as such action does not materially adversely affect the interests of the holders of the Trust Securities.

Holders of the Trust Securities have no preemptive or similar rights.

The Trust may not borrow money or issue debt or mortgage or pledge any of its assets.

#### DESCRIPTION OF JUNIOR SUBORDINATED DEBENTURES

The Junior Subordinated Debentures are to be issued under the Indenture between the Company and Firststar Bank, as trustee (the "Debenture Trustee"). The Indenture will be qualified under the Trust Indenture Act. This summary of certain terms and provisions of the Junior Subordinated Debentures and the Indenture does not purport to be complete, and where reference is made to particular provisions of the Indenture, such provisions, including the definitions of certain terms, some of which are not otherwise defined herein, are qualified in their entirety by reference to all of the provisions of the Indenture and those terms made a part of the Indenture by incorporation of the Trust Indenture Act.

#### GENERAL

Interest will accrue on the Junior Subordinated Debentures at the annual rate of \$2.00 for each \$27 principal amount thereof and will be payable quarterly in arrears on each of March 15, June 15, September 15 and December 15 (each, an "Interest Payment Date"), commencing March 15, 2000, to the person in whose name each Convertible Junior Subordinated Debenture is registered, subject to certain exceptions, at the close of business on the first of the month in which the applicable Interest Payment Date occurs. It is anticipated that, until the liquidation of the Trust, each Convertible Junior Subordinated Debenture will be registered in the name of the Trust and held by the Property Trustee for the benefit of the holders of the Trust Securities. The amount of interest payable for any period will be computed on the basis of the number of days elapsed in a 360-day year consisting of twelve 30-day months, except that the interest payment payable on March 15, 2000, will be \$0.50 for each \$27 principal amount. In the event that any Interest Payment Date is not a Business Day, then payment of the interest payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay), with the same force and effect as if made on the applicable Interest Payment Date. Accrued interest that is not paid on the applicable Interest Payment Date will bear additional interest on the amount thereof (to the extent permitted by law), compounded quarterly from the

relevant Interest Payment Date. The term "interest" as used herein shall include quarterly interest payments, interest on quarterly interest payments not paid on the applicable Interest Payment Date, Special Interest and Additional Sums, as applicable. See "-- Additional Sums."

Unless previously redeemed or repurchased in accordance with the Indenture, the Junior Subordinated Debentures will mature on March 15, 2030 (the "Stated Maturity"). See "-- Redemption -- Repayment at Maturity; Redemption of Junior Subordinated Debentures."

The Junior Subordinated Debentures will be unsecured and will rank junior and be subordinate in right of payment to all Senior Debt. Because the Company is principally a holding company, the right of the Company to participate in any distribution of assets of any subsidiary upon such subsidiary's liquidation or reorganization or otherwise (and thus the ability of holders of the Preferred Securities to benefit indirectly from such distribution), is subject to the prior claims of creditors of such subsidiary, except to the extent that the Company may itself be recognized as a creditor of such subsidiary. Accordingly, the Junior Subordinated Debentures will be subordinated to all Senior Debt and effectively subordinated to all existing and future liabilities of the Company's subsidiaries, and holders of Junior Subordinated Debentures should look only to the assets of the Company for payments on the Junior Subordinated Debentures. The Indenture does not limit the incurrence or issuance of other secured or unsecured debt of the Company, including Senior Debt, whether under the Indenture or any existing or other indenture that the Company may enter into in the future or otherwise. See "Risk Factors -- Ranking of Obligations Under the Guarantee and the Junior Subordinated Debentures" and "-- Subordination."

#### OPTION TO EXTEND INTEREST PAYMENT DATE

As long as no Debenture Event of Default has occurred and is continuing, the Company has the right under the Indenture to defer the payment of interest on the Junior Subordinated Debentures at any time or from time to time for a period not exceeding 20 consecutive quarters with respect to each Deferral Period, provided, however, that no Deferral Period may extend beyond the Stated Maturity of the Junior Subordinated Debentures. At the end of a Deferral Period, the Company must pay all interest then accrued and unpaid on the Junior Subordinated Debentures (together with interest accrued thereon compounded quarterly from the relevant Interest Payment Date, to the extent permitted by applicable law). During a Deferral Period and for so long as the Junior Subordinated Debentures remain outstanding, interest will continue to accrue and holders of Junior Subordinated Debentures (and holders of the Preferred Securities) will be required to accrue interest income (in the form of OID) for U.S. Federal income tax purposes. See "U.S. Federal Income Tax Considerations -- U.S. Federal Income Tax Consequences of Holding Preferred Securities -- Interest Income and Original Issue Discount."

During any Deferral Period, the Company may not (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Company's capital stock other than stock dividends paid by the Company which consist of stock of the same class as that on which the dividend is being paid and (ii) make any payment of principal, interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank pari passu with or junior in interest to the Junior Subordinated Debentures or (iii) make any guarantee payments with respect to any guarantee by the Company of the debt securities of any subsidiary of the Company if such guarantee ranks pari passu with or junior in interest to the Junior Subordinated Debentures (other than (a) dividends or distributions in Capital Stock, (b) any declaration of a dividend in connection with the implementation of a stockholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto, (c) payments under the Guarantee, (d) purchases or acquisitions of shares of Capital Stock in connection with the satisfaction by the Company of its obligations under any employee benefit plan or any other contractual obligation of the Company (other than a contractual obligation ranking pari passu with or junior to the Junior Subordinated Debentures), (e) as a result of a reclassification of the Company's capital stock or the exchange or conversion of one class or series of the Company's capital stock for another class or series of the Company's capital stock or (f) the purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged). A Deferral Period will terminate upon the payment by the Company of all interest then accrued and unpaid on the Junior Subordinated Debentures (together with interest accrued thereon, compounded quarterly, to the extent permitted by applicable law). Upon the termination of any Deferral Period, and subject to the foregoing limitations, the

Company may elect to begin a new Deferral Period. No interest shall be due and payable during a Deferral Period, except at the end thereof. The Company must give the Property Trustee, the Administrative Trustees and the Debenture Trustee notice of its election of any Deferral Period at least ten days prior to the record date for the Distributions on the Preferred Securities that would have been payable except for the election to begin or extend such Deferral Period. The Debenture Trustee shall give notice of the Company's election to begin or extend a new Deferral Period to the holders of the Preferred Securities. There is no limitation on the number of times that the Company may elect to begin a Deferral Period.

#### REDEMPTION

##### Repayment at Maturity; Redemption of Junior Subordinated Debentures

The Junior Subordinated Debentures must be repaid at Stated Maturity, unless earlier redeemed. The circumstances in which the Company may redeem the Junior Subordinated Debentures prior to Stated Maturity are described below. Upon the repayment in full at maturity or redemption, in whole or in part, of the Junior Subordinated Debentures (other than following the distribution of the Junior Subordinated Debentures to the holders of the Trust Securities), the proceeds from such repayment or redemption shall concurrently be applied to redeem, at the applicable Redemption Price, a Like Amount of Trust Securities, upon the terms and conditions described herein. See "Description of Preferred Securities -- Mandatory Redemption."

##### Optional Redemption

The Company shall have the right to redeem the Junior Subordinated Debentures, in whole or in part, at any time or from time to time after March 15, 2003, upon not less than 30 nor more than 60 days' notice, at a redemption price equal to \$27.27 per \$27 principal amount of the Junior Subordinated Debentures to be redeemed plus any accrued and unpaid interest, including Additional Sums, if any, to the date of redemption, if redeemed on or before March 15, 2004, and thereafter at \$27 per \$27 principal amount of Junior Subordinated Debentures plus, in each case, accrued and unpaid interest, including Additional Sums, if any, to the redemption date.

In the event of any redemption in part, the Company shall not be required (i) to issue, register the transfer of or exchange any Junior Subordinated Debenture during a period beginning at the opening of business 15 days before any selection for redemption of Junior Subordinated Debentures and ending at the close of business on the earliest date on which the relevant notice of redemption is deemed to have been given to all holders of Junior Subordinated Debentures to be so redeemed and (ii) to register the transfer of or exchange any Junior Subordinated Debentures so selected for redemption, in whole or in part, except the unredeemed portion of any Junior Subordinated Debenture being redeemed in part.

##### Tax Event Redemption

The Company may also, under certain limited circumstances within 90 days of the occurrence and continuation of a Tax Event, redeem (a "Tax Event Redemption") the Junior Subordinated Debentures in whole, but not in part, at the aggregate principal amount thereof plus accrued and unpaid interest thereon to the date of redemption (the "Tax Event Redemption Price"). See "Description of Preferred Securities -- Tax Event or Investment Company Event Redemption or Distribution."

If the Company is permitted to consummate a Tax Event Redemption and it desires to do so, it must mail notice to holders of Preferred Securities at least 20 days but not more than 60 days before the Redemption Date.

#### ADDITIONAL SUMS

If (i) the Property Trustee is the sole holder of all Junior Subordinated Debentures and (ii) the Trust is required to pay any additional taxes, duties, assessments or other governmental charges as a result of a Tax Event or otherwise ("Additional Sums"), the Company will pay as additional amounts on the Junior Subordinated Debentures such amounts as shall be required so that the Distributions payable by the Trust in respect of the Trust Securities shall not be reduced as a result of any such Additional Sums.



## RESTRICTIONS ON CERTAIN PAYMENTS

If (i) a Debenture Event of Default has occurred and is continuing, (ii) the Company is in default with respect to its payment of any obligations under the Guarantee or (iii) the Company has given notice of its election of a Deferral Period as provided in the Indenture and has not rescinded such notice, or such Deferral Period is continuing, the Company may not (a) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Company's capital stock other than stock dividends paid by the Company which consist of stock of the same class as that on which the dividend is being paid, (b) make any payment of principal, interest or premium, if any, on or repay or repurchase or redeem any debt securities of the Company that rank pari passu with or junior in interest to the Junior Subordinated Debentures or (c) make any guarantee payments with respect to any guarantee by the Company of the debt securities of any subsidiary of the Company if such guarantee ranks pari passu with or junior in interest to the Junior Subordinated Debentures (in each case other than (A) dividends or distributions in Capital Stock, (B) any declaration of a dividend in connection with the implementation of a stockholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto, (C) payments under the Guarantee, (D) purchases or acquisitions of shares of Capital Stock in connection with the satisfaction by the Company of its obligations under any employee benefit plan or any other contractual obligation of the Company (other than a contractual obligation ranking pari passu with or junior in interest to the Junior Subordinated Debentures), (E) as a result of a reclassification of the Company's capital stock or the exchange or conversion of one class or series of the Company's capital stock for another class or series of the Company's capital stock or (F) the purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged).

## MODIFICATION OF INDENTURE

From time to time the Company and the Debenture Trustee may, without the consent of the holders of Junior Subordinated Debentures, amend, waive or supplement the Indenture for specified purposes, including, among other things, curing ambiguities, defects or inconsistencies (provided that any such action does not materially adversely affect the interest of the holders of Junior Subordinated Debentures or the holders of the Preferred Securities so long as they remain outstanding) and qualifying, or maintaining the qualification of, the Indenture under the Trust Indenture Act. The Indenture contains provisions permitting the Company and the Debenture Trustee, with the consent of the holders of not less than a majority in principal amount of Junior Subordinated Debentures, to modify the Indenture in a manner affecting the rights of the holders of Junior Subordinated Debentures; provided, however, that no such modification may, without the consent of the holder of each outstanding Convertible Junior Subordinated Debenture so affected, change the Stated Maturity, or reduce the principal amount of the Junior Subordinated Debentures, or reduce the rate or extend the time of payment of interest thereon or reduce the percentage of principal amount of Junior Subordinated Debentures the consent of whose holders is required to amend, waive or supplement the Indenture, or have certain other effects as set forth in the Indenture.

## DEBENTURE EVENTS OF DEFAULT

The Indenture provides that any one or more of the following described events with respect to the Junior Subordinated Debentures that has occurred and is continuing constitutes a "Debenture Event of Default":

(i) failure for 30 days to pay any interest on the Junior Subordinated Debentures when due (subject to the deferral of any due date in the case of a Deferral Period);

(ii) failure to pay any principal or premium, if any, on the Junior Subordinated Debentures when due, whether at maturity, upon redemption, by declaration of acceleration or otherwise;

(iii) failure to observe or perform certain other covenants contained in the Indenture for 90 days after written notice to the Company from the Debenture Trustee or the holders of at least 25% in aggregate outstanding principal amount of the Junior Subordinated Debentures;

(iv) failure by the Company to issue and deliver shares of Capital Stock upon an election by a holder of Preferred Securities to convert such Preferred Securities;

(v) certain events in bankruptcy, insolvency or reorganization of the Company; or

(vi) the voluntary or involuntary dissolution, winding-up or termination of the Trust, except in connection with the distribution of the Junior Subordinated Debentures to the holders of Trust Securities in liquidation of the Trust, the redemption of all of the Trust Securities of the Trust, or certain mergers, consolidations or amalgamations, each as permitted by the Declaration.

The holders of a majority in aggregate outstanding principal amount of the Junior Subordinated Debentures have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Debenture Trustee. The Debenture Trustee or the holders of not less than 25% in aggregate outstanding principal amount of the Junior Subordinated Debentures may declare the principal due and payable immediately upon a Debenture Event of Default and, should the Debenture Trustee or such holders of Junior Subordinated Debentures fail to make such declaration, the holders of at least 25% in aggregate liquidation amount of the Preferred Securities shall have such right. The holders of a majority in aggregate outstanding principal amount of the Junior Subordinated Debentures may annul such declaration and waive the default if the default (other than the non-payment of the principal of the Junior Subordinated Debentures which has become due solely by such acceleration) has been cured and a sum sufficient to pay all matured installments of interest and principal due otherwise than by acceleration has been deposited with the Debenture Trustee. Should the holders of Junior Subordinated Debentures fail to annul such declaration and waive such default, the holders of a majority in aggregate liquidation amount of the Preferred Securities shall have such right.

The holders of a majority in aggregate outstanding principal amount of the Junior Subordinated Debentures affected thereby may, on behalf of the holders of all the Junior Subordinated Debentures, waive any past default, except a default in the payment of principal of (or premium, if any) or interest (unless such default has been cured and a sum sufficient to pay all matured installments of interest and principal due otherwise than by acceleration has been deposited with the Debenture Trustee) or a default in respect of a covenant or provision which under the Indenture cannot be modified or amended without the consent of the holder of each outstanding Junior Subordinated Debenture. Should the holders of such Junior Subordinated Debentures fail to annul such declaration and waive such default, the holders of a majority in aggregate liquidation amount of the Preferred Securities shall have such right. The Company is required to file annually with the Debenture Trustee a certificate as to whether or not the Company is in compliance with all the conditions and covenants applicable to it under the Indenture.

In case a Debenture Event of Default occurs and is continuing, the Property Trustee will have the right to declare the principal of and the interest on the Junior Subordinated Debentures, and any other amounts payable under the Indenture, to be forthwith due and payable and to enforce its other rights as a creditor with respect to the Junior Subordinated Debentures.

#### ENFORCEMENT OF CERTAIN RIGHTS BY HOLDERS OF PREFERRED SECURITIES

If a Debenture Event of Default has occurred and is continuing and such event is attributable to the failure of the Company to pay interest or principal on the Junior Subordinated Debentures on the date such interest or principal is otherwise payable, a holder of Preferred Securities may institute a Direct Action. The Company may not amend the Indenture to remove the foregoing right to bring a Direct Action without the prior written consent of the holders of all the Preferred Securities. Notwithstanding any payments made to a holder of Preferred Securities by the Company in connection with a Direct Action, the Company shall remain obligated to pay the principal of and interest on the Junior Subordinated Debentures, and the Company shall be subrogated to the rights of the holders of such Preferred Securities with respect to payments on the Preferred Securities to the extent of any payments made by the Company to such holder in any Direct Action.

The holders of the Preferred Securities will not be able to exercise directly any remedies, other than those set forth in the preceding paragraph, available to the holders of the Junior Subordinated Debentures unless there shall

have been an Event of Default under the Declaration. See "Description of Preferred Securities -- Events of Default; Notice."

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

The Indenture provides that the Company shall not consolidate with or merge with or into any other person or convey, transfer or lease its properties and assets substantially as an entirety to any person, and no person shall consolidate with or merge with or into the Company or convey, transfer or lease its properties and assets substantially as an entirety to the Company, unless (i) in case the Company consolidates with or merges with or into another person or conveys or transfers its properties and assets substantially as an entirety to any person, the successor person is organized under the laws of the United States or any State of the United States or the District of Columbia, and such successor person expressly assumes the Company's obligations on the Junior Subordinated Debentures issued under the Indenture and shall have provided for conversion rights in accordance with Article XIII of the Indenture; (ii) immediately after giving effect thereto, no Debenture Event of Default, and no event which, after notice or lapse of time or both, would become a Debenture Event of Default, shall have occurred and be continuing; (iii) if at the time any Preferred Securities are outstanding, such transaction is permitted under the Declaration and the Guarantee and does not give rise to any breach or violation of the Declaration or the Guarantee; and (iv) certain other conditions as prescribed in the Indenture are met.

The general provisions of the Indenture do not afford holders of the Junior Subordinated Debentures protection in the event of a highly leveraged or other transaction involving the Company that may adversely affect holders of the Junior Subordinated Debentures.

#### SUBORDINATION

The Junior Subordinated Debentures are subordinate and junior in right of payment to all Senior Debt to the extent provided in the Indenture. Upon any payment or distribution of assets to creditors upon any liquidation, dissolution, winding-up, reorganization, assignment for the benefit of creditors, marshaling of assets or any bankruptcy, insolvency, debt restructuring or similar proceedings in connection with any insolvency or bankruptcy proceeding of the Company, the holders of Senior Debt will first be entitled to receive payment in full of principal of, and premium and interest, if any, on, such Senior Debt before the holders of Junior Subordinated Debentures, or the Property Trustee on behalf of the holders, will be entitled to receive or retain any payment or distribution in respect thereof.

In the event of the acceleration of the maturity of the Junior Subordinated Debentures, the holders of all Senior Debt outstanding at the time of such acceleration will first be entitled to receive payment in full of all amounts due thereon (including any amounts due upon acceleration) before the holders of the Junior Subordinated Debentures will be entitled to receive or retain any payment in respect of the principal of, and premium and interest, if any, on, the Junior Subordinated Debentures.

If the Company defaults in the payment of any principal of, or premium or interest, if any, on, any Senior Debt when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration of acceleration or otherwise, and such default continues beyond the period of grace, if any, specified in the instrument evidencing such Senior Debt, then, unless and until such default has been cured or waived or has ceased to exist or all Senior Debt has been paid, no direct or indirect payment (in cash, property, securities, by set-off or otherwise) shall be made or agreed to be made for principal of, and premium and interest, if any, on, the Junior Subordinated Debentures, or in respect of any redemption, repayment, retirement, purchase or other acquisition of any of the Junior Subordinated Debentures.

"Senior Debt" means (i) the principal of, and premium and interest, if any, on, all indebtedness of the Company for money borrowed, whether outstanding on the date of execution of the Indenture or thereafter created, assumed or incurred, (ii) all obligations to make payment pursuant to the terms of financial instruments, such as (a) securities contracts and foreign currency exchange contracts, (b) derivative instruments, such as swap agreements (including interest rate and foreign exchange rate swap agreements), cap agreements, floor agreements, collar agreements, interest rate agreements, foreign exchange agreements, options, commodity futures contracts and commodity options contracts, and (c) similar financial instruments, except, in the case of

both (i) and (ii) above, such indebtedness and obligations that are expressly stated to rank junior in right of payment to, or pari passu in right of payment with, the Junior Subordinated Debentures; (iii) indebtedness or obligations of others of the kind described in both (i) and (ii) above for the payment of which the Company is responsible or liable as guarantor or otherwise and (iv) any deferrals, renewals or extensions of any such Senior Debt; provided, however, that Senior Debt shall not be deemed to include (a) any Debt of the Company which, when incurred and without respect to any election under Section 1111(b) of the United States Bankruptcy Code of 1978, was without recourse to the Company, (b) trade accounts payable and accrued liabilities arising in the ordinary course of business, (c) any Debt of the Company to any of its subsidiaries, (d) Debt to any employee of the Company and (e) Debt which by its terms is subordinated to trade accounts payable or accrued liabilities arising in the ordinary course of business to the extent that payments made to the holders of such Debt by the holders of the Junior Subordinated Debentures as a result of the subordination provisions of the Indenture would be greater than such payments otherwise would have been as a result of any obligation of such holders of such Debt to pay amounts over to the obligees on such trade accounts payable or accrued liabilities arising in the ordinary course of business as a result of subordination provisions to which such Debt is subject.

"Debt" means (i) the principal of, and premium and interest, if any, 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.

The Indenture places no limitation on the amount of Senior Debt that may be incurred by the Company. The Company expects from time to time to incur additional indebtedness constituting Senior Debt. At November 30, 1999, the aggregate outstanding Senior Debt of the Company was approximately \$89,792,000. The Indenture also places no limitation on the Debt of the Company's subsidiaries, which is effectively senior in right of payment to the Junior Subordinated Debentures. As of November 30, 1999, the Company's subsidiaries had Debt and other liabilities of approximately \$89,769,000 .

#### REGISTRATION AND TRANSFER

Unless and until distributed to holders of the Trust Securities, the Junior Subordinated Debentures will be registered in the name of and held by the Property Trustee. Should the Junior Subordinated Debentures be distributed to holders of the Trust Securities, such Junior Subordinated Debentures will be issued in fully registered form. In such event, investors may elect to hold their Junior Subordinated Debentures directly or, subject to the rules and procedures of DTC, hold interests in a global certificate deposited with DTC and registered in the name of Cede & Co., as nominee of DTC.

Payments on Junior Subordinated Debentures held in global form will be made to DTC, as the depository for the Junior Subordinated Debentures. In the case of Junior Subordinated Debentures issued in certificated form, principal and interest will be payable, the transfer of the Junior Subordinated Debentures will be registrable, and Junior Subordinated Debentures will be exchangeable for Junior Subordinated Debentures of other denominations of a like aggregate principal amount, at the corporate office of the Debenture Trustee in New York, New York, or at the offices of any paying agent or transfer agent appointed by the Company; provided, however, that payment of interest may be made at the option of the Company by check mailed to the address of the persons entitled thereto or by wire transfer.

For a description of DTC and the terms of the depository arrangements relating to payments, transfers, voting rights, redemptions and other notices and other matters, see "Description of Preferred Securities -- Form, Book-Entry Procedures and Transfer." If the Junior Subordinated Debentures are distributed to the holders of the Trust Securities upon the termination of the Trust, the form, book-entry and transfer procedures with respect to the Preferred Securities as described under "Description of Preferred Securities -- Form, Book-Entry Procedures and Transfer," shall apply to the Junior Subordinated Debentures mutatis mutandis.

## PAYMENT AND PAYING AGENTS

Payment of the principal of, and premium and interest, if any, on, the Junior Subordinated Debentures will be made at the office or agency of the Company maintained for that purpose in New York, New York, 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 (except in the case of Junior Subordinated Debentures that are held in global form) by check mailed to each registered holder or by wire transfer. Payment of any interest on any Junior Subordinated Debenture will be made to the person in whose name such Junior Subordinated Debenture is registered at the close of business on the record date for such interest, except in the case of defaulted interest.

## GOVERNING LAW

The Indenture and the Junior Subordinated Debentures will be governed by and construed in accordance with the laws of the State of Delaware.

## INFORMATION CONCERNING THE DEBENTURE TRUSTEE

The Debenture Trustee shall have and be subject to all the duties and responsibilities specified with respect to an indenture trustee under the Trust Indenture Act. Subject to such provisions, the Debenture Trustee is under no obligation to exercise any of the powers vested in it by the Indenture at the request of any holder of Junior Subordinated Debentures, unless offered reasonable indemnity by such holder against the costs, expenses and liabilities which might be incurred thereby. The Debenture Trustee is not required to expend or risk its own funds or otherwise incur personal financial liability in the performance of its duties if the Debenture Trustee reasonably believes that repayment or adequate indemnity is not reasonably assured to it.

## DESCRIPTION OF GUARANTEE

The Guarantee will be executed and delivered by the Company concurrently with the issuance by the Trust of the Preferred Securities for the benefit of the holders from time to time of such Preferred Securities. Firstar Bank will act as trustee (the "Guarantee Trustee") under the Guarantee. The Guarantee will be qualified under the Trust Indenture Act. This summary of certain provisions of the Guarantee does not purport to be complete and is subject to, and qualified in its entirety by reference to, all of the provisions of the Guarantee, including the definitions therein of certain terms, and the Trust Indenture Act. The Guarantee Trustee will hold the Guarantee for the benefit of the holders of the Preferred Securities.

## GENERAL

Pursuant to the Guarantee, the Company will irrevocably agree to pay in full on a subordinated basis, to the extent set forth herein, the Guarantee Payments (as defined herein) to the holders of the Preferred Securities, as and when due, regardless of any defense, right of set-off or counterclaim that the Trust may have or assert other than the defense of payment. The following payments with respect to the Preferred Securities, to the extent not paid by or on behalf of the Trust (the "Guarantee Payments"), will be subject to the Guarantee: (i) any accrued and unpaid Distributions required to be paid on the Preferred Securities, to the extent that the Trust has funds on hand available therefor at such time, (ii) the applicable Redemption Price with respect to Preferred Securities called for redemption, to the extent that the Trust has funds on hand available therefor at such time, and (iii) upon a voluntary or involuntary dissolution, winding up or liquidation of the Trust (other than in connection with the distribution of Junior Subordinated Debentures to the holders of the Preferred Securities or the redemption of all of the Preferred Securities) the lesser of (a) the Liquidation Distribution, to the extent the Trust has funds available therefor and (b) the amount of assets of the Trust remaining available for distribution to holders of the Preferred Securities upon liquidation of the Trust after satisfaction of liabilities to creditors of the Trust as required by applicable law. The Company's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Company to the holders of the Preferred Securities or by causing the Trust to pay such amounts to such holders.

The Guarantee will be an irrevocable guarantee on a subordinated basis of the Trust's obligations under the Preferred Securities, although it will apply only to the extent that the Trust has funds sufficient to make such payments, and is not a guarantee of collection. If the Company does not make interest payments on the Junior Subordinated Debentures held by the Trust, the Trust will not be able to pay Distributions on the Preferred Securities and will not have funds legally available therefor.

The Guarantee will rank subordinate and junior in right of payment to all Senior Debt. See "-- Status of the Guarantee." Because the Company is principally a holding company, the right of the Company to participate in any distribution of assets of any subsidiary, upon such subsidiary's liquidation or reorganization or otherwise (and thus the ability of the holders of Preferred Securities to benefit indirectly from any such distribution), is subject to the prior claims of creditors of such subsidiary, except to the extent the Company may itself be recognized as a creditor of that subsidiary. Accordingly, the Company's obligations under the Guarantee will be effectively subordinated to all existing and future liabilities of the Company's subsidiaries, and claimants should look only to the assets of the Company for payments thereunder. The Guarantee does not limit the incurrence or issuance of other secured or unsecured debt of the Company, including Senior Debt, whether under any indenture that the Company may enter into in the future or otherwise.

Taken together, the Company's obligations under the Guarantee, the Declaration, the Junior Subordinated Debentures and the Indenture, including the Company's obligation to pay the costs, expenses and other liabilities of the Trust (other than the Trust's obligations to the holders of the Trust Securities under the Trust Securities), provide, in the aggregate, a full, irrevocable and unconditional guarantee of all of the Trust's obligations under the Preferred Securities. No single document standing alone or operating in conjunction with fewer than all the other documents constitutes such guarantee. It is only the combined operation of these documents that has the effect of providing a full, irrevocable and unconditional guarantee of the Trust's obligations under the Preferred Securities. See "Relationship Among the Preferred Securities, the Junior Subordinated Debentures and the Guarantee."

#### STATUS OF THE GUARANTEE

The Guarantee will constitute an unsecured obligation of the Company and will rank subordinate and junior in right of payment to all Senior Debt in the same manner as Junior Subordinated Debentures.

The Guarantee will constitute a guarantee of payment and not of collection (i.e., the guaranteed party may institute a legal proceeding directly against the Company to enforce its rights under the Guarantee without first instituting a legal proceeding against any other person or entity). The Guarantee will be held for the benefit of the holders of the Preferred Securities. The Guarantee will not be discharged except by payment of the Guarantee Payments in full to the extent not paid by the Trust or upon distribution to the holders of the Preferred Securities of the Junior Subordinated Debentures. The Guarantee does not place a limitation on the amount of additional Senior Debt that may be incurred by the Company. The Company expects from time to time to incur additional indebtedness constituting Senior Debt.

#### AMENDMENTS AND ASSIGNMENT

Except with respect to any changes that do not materially adversely affect the rights of holders of the Preferred Securities (in which case no vote will be required), the Guarantee may not be amended without the prior approval of the holders of not less than a majority of the aggregate liquidation amount of the outstanding Preferred Securities. The manner of obtaining any such approval will be as set forth under "Description of Preferred Securities -- Voting Rights; Amendment of the Declaration." All guarantees and agreements contained in the Guarantee shall bind the successors, assigns, receivers, trustees and representatives of the Company and shall inure to the benefit of the holders of the Preferred Securities then outstanding.

#### EVENTS OF DEFAULT

An event of default under the Guarantee will occur upon the failure of the Company to perform any of its payment or other obligations thereunder; provided, however, that except with respect to a default in payment of any Guarantee Payment, the Company shall have received notice of default and shall not have cured such default

within 60 days after receipt of such notice. The holders of not less than a majority in aggregate liquidation amount of the Preferred Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee in respect of the Guarantee or to direct the exercise of any trust or power conferred upon the Guarantee Trustee under the Guarantee.

Any holder of the Preferred Securities may institute a legal proceeding directly against the Company to enforce its rights under the Guarantee without first instituting a legal proceeding against the Trust, the Guarantee Trustee or any other person or entity.

The Company, as guarantor, is required to file annually with the Guarantee Trustee a certificate as to whether or not the Company is in compliance with all the conditions and covenants applicable to it under the Guarantee.

#### INFORMATION CONCERNING THE GUARANTEE TRUSTEE

The Guarantee Trustee, other than during the occurrence and continuance of a default by the Company in performance of the Guarantee, undertakes to perform only such duties as are specifically set forth in the Guarantee and, after default with respect to the Guarantee, must exercise the same degree of care and skill as a prudent person would exercise or use in the conduct of his or her own affairs. Subject to this provision, the Guarantee Trustee is under no obligation to exercise any of the powers vested in it by the Guarantee at the request of any holder of the Preferred Securities unless it is offered reasonable indemnity against the costs, expenses and liabilities that might be incurred thereby.

#### TERMINATION OF THE GUARANTEE

The Guarantee will terminate and be of no further force and effect upon full payment of the Redemption Price of the Preferred Securities, upon full payment of the amounts payable upon liquidation of the Trust or upon distribution of Junior Subordinated Debentures to the holders of the Preferred Securities. The Guarantee will continue to be effective or will be reinstated, as the case may be, if at any time any holder of the Preferred Securities must restore payment of any sums paid under the Preferred Securities or the Guarantee.

#### GOVERNING LAW

The Guarantee will be governed by and construed in accordance with the laws of the State of Delaware.

RELATIONSHIP AMONG THE PREFERRED SECURITIES, THE  
JUNIOR SUBORDINATED DEBENTURES AND THE GUARANTEE

FULL AND UNCONDITIONAL GUARANTEE

Payments of Distributions and other amounts due on the Preferred Securities (to the extent the Trust has funds available for the payment of such Distributions) are irrevocably guaranteed by the Company as and to the extent set forth under "Description of Guarantee." Taken together, the Company's obligations under the Junior Subordinated Debentures, the Indenture, the Declaration and the Guarantee provide, in the aggregate, a full, irrevocable and unconditional guarantee of payments of Distributions and other amounts due on the Preferred Securities. No single document standing alone or operating in conjunction with fewer than all of the other documents constitutes such guarantee. It is only the combined operation of these documents that has the effect of providing a full, irrevocable and unconditional guarantee of the Trust's obligations under the Trust Securities. If and to the extent that the Company does not make payments on the Junior Subordinated Debentures, the Trust will not pay Distributions or other amounts due on the Preferred Securities. The Guarantee does not cover payment of Distributions when the Trust does not have sufficient funds to pay such Distributions. In such event, the remedy of a holder of Preferred Securities is to institute a Direct Action. The obligations of the Company under the Guarantee are subordinate and junior in right of payment to all Senior Debt.

SUFFICIENCY OF PAYMENTS

As long as payments of interest and other payments are made when due on the Junior Subordinated Debentures, such payments will be sufficient to cover Distributions and other payments due on the Preferred Securities, primarily because: (i) the aggregate principal amount or applicable Redemption Price of the Junior Subordinated Debentures will be equal to the sum of the aggregate liquidation amount or applicable Redemption Price, as applicable, of the Trust Securities; (ii) the interest rate payable on the Junior Subordinated Debentures and interest and other payment dates on the Junior Subordinated Debentures will match the Distribution rate and Distribution and other payment dates for the Preferred Securities; (iii) the Company shall pay for all costs, expenses and liabilities of the Trust except the Trust's obligations to holders of Trust Securities under such Trust Securities; and (iv) the Declaration further provides that the Trust will not engage in any activity that is not consistent with the limited purposes thereof.

Notwithstanding anything to the contrary in the Indenture, the Company has the right to set off any payment it is otherwise required to make thereunder with and to the extent the Company has theretofore made, or is concurrently on the date of such payment making, any payment under the Guarantee used to satisfy the related payment of indebtedness under the Indenture.

ENFORCEMENT RIGHTS OF HOLDERS OF PREFERRED SECURITIES

A holder of any of the Preferred Securities may institute a legal proceeding directly against the Company to enforce its rights under the Guarantee without first instituting a legal proceeding against the Guarantee Trustee, the Trust or any other person or entity.

A default or event of default under any Senior Debt would not constitute a default or Event of Default under the Declaration. However, in the event of payment defaults under, or acceleration of, Senior Debt, the subordination provisions of the Indenture provide that no payments may be made in respect of the Junior Subordinated Debentures until such Senior Debt has been paid in full or any payment default thereunder has been cured or waived. Failure to make required payments on Junior Subordinated Debentures would constitute an Event of Default under the Declaration.

LIMITED PURPOSE OF THE TRUST

The Preferred Securities evidence a beneficial interest in the Trust, and the Trust exists for the sole purpose of issuing the Preferred Securities and Common Securities and investing the proceeds of the Trust Securities in Junior Subordinated Debentures.



## RIGHTS UPON TERMINATION

Upon any voluntary or involuntary termination, winding-up or liquidation of the Trust involving the liquidation of the Junior Subordinated Debentures, after satisfaction of the liabilities of creditors of the Trust as required by applicable law, the holders of the Trust Securities will be entitled to receive, out of assets held by the Trust, the Liquidation Distribution in cash. See "Description of Preferred Securities -- Liquidation of the Trust and Distribution of Junior Subordinated Debentures." Upon any voluntary or involuntary liquidation or bankruptcy of the Company, the Property Trustee, as holder of the Junior Subordinated Debentures, would be a subordinated creditor of the Company, subordinated in right of payment to all Senior Debt as set forth in the Indenture, but entitled to receive payment in full of principal and interest, before any stockholders of the Company receive payments or distributions. Since the Company is the guarantor under the Guarantee and has agreed to pay for all costs, expenses and liabilities of the Trust (other than the Trust's obligations to the holders of its Trust Securities), the positions of a holder of Preferred Securities and a holder of Junior Subordinated Debentures relative to other creditors and to stockholders of the Company in the event of liquidation or bankruptcy of the Company are expected to be substantially the same.

## DESCRIPTION OF CAPITAL STOCK

The holders of the Capital Stock are entitled to one vote for each Share on all matters on which the holders of Capital Stock are entitled to vote and do not have any cumulative voting rights. The Board of Directors may, in its sole discretion, declare dividends on the Capital Stock, to be paid out of funds legally available therefor. Holders of Capital Stock do not have any preemptive, conversion, redemption or sinking fund rights. All outstanding Shares of the Capital Stock are fully paid and nonassessable.

The transfer agent and registrar for the Capital Stock is Norwest Bank Minnesota, N.A.

The Capital Stock is listed on the NYSE under the trading symbol "CHE."

## U.S. FEDERAL INCOME TAX CONSIDERATIONS

## GENERAL

The following is a summary of the material U.S. Federal income tax consequences of the Exchange Offer and ownership of Preferred Securities. However, the summary is limited in the following ways:

- It only applies to Exchanging Holders (as defined below).
- It assumes that the Shares and Preferred Securities are held as capital assets within the meaning of Section 1221 of the Internal Revenue Code of 1986, as amended (the "Code").
- It is based on the Code, Treasury regulations thereunder (the "Treasury Regulations") and administrative and judicial interpretations thereof, as of the date hereof. All of these are subject to change, possibly on a retroactive basis.
- It does not describe the special tax considerations applicable to special classes of holders such as banks, thrifts, real estate investment trusts, regulated investment companies, insurance companies, dealers in securities or currencies or tax-exempt investors. It also does not apply to persons who hold or will hold the Shares or Preferred Securities as a part of a "straddle," "synthetic security," "hedge," "conversion transaction" or other integrated investment.
- It does not address the tax consequences to persons who have a functional currency other than the U.S. dollar or the tax consequences to shareholders, partners or beneficiaries of a holder of Capital Stock or Preferred Securities.
- It does not apply to a Foreign Holder (as defined below) who or which (a) owns 10% or more of the Shares or (b) is a "controlled foreign corporation" with respect to the Company.

- It does not describe any alternative minimum tax consequences or the tax laws of any state, local or foreign government that may be applicable to the Shares or Preferred Securities.

No rulings have been, or will be, sought from the Internal Revenue Service ("IRS") with respect to the Exchange Offer or ownership of Preferred Securities. Accordingly, there can be no assurance that the IRS will not challenge the conclusions expressed in this summary or that a court would not sustain such a challenge. In particular, if the Junior Subordinated Debentures were considered equity, rather than indebtedness, for U.S. Federal income tax purposes, the U.S. Federal income tax consequences would be significantly different than described below.

For purposes of this summary:

- an "Exchanging Holder" is a holder of Shares that exchanges such Shares for Preferred Securities in the Exchange Offer.
- a Foreign Holder is any Exchanging Holder who or which is an individual, a corporation, an estate or a trust that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code.

#### CLASSIFICATION OF THE TRUST AS A GRANTOR TRUST

In connection with the issuance of the Preferred Securities, Cravath, Swaine & Moore, tax counsel to the Company and the Trust, will render its opinion, under then current law and assuming full compliance with the terms of the Declaration and the Indenture (and certain other documents), and based on certain facts and assumptions contained in such opinion, that the Trust will be classified for U.S. Federal income tax purposes as a grantor trust and not as an association (or a publicly traded partnership) taxable as a corporation. Accordingly, for U.S. Federal income tax purposes, each holder of Preferred Securities generally will be considered the owner of an undivided interest in the Junior Subordinated Debentures, and each holder will be required to include in its gross income all income, gain or loss with respect to its allocable share of those Junior Subordinated Debentures.

#### CLASSIFICATION OF THE JUNIOR SUBORDINATED DEBENTURES AS INDEBTEDNESS

In connection with the issuance of the Junior Subordinated Debentures, Cravath, Swaine & Moore will render its opinion under then current law and assuming full compliance with the terms of the Indenture (and certain other documents), and based on certain facts and assumptions contained in such opinion, that the Junior Subordinated Debentures to be held by the Trust should be classified for U.S. Federal income tax purposes as indebtedness of the Company. By acceptance of Preferred Securities, each holder covenants to treat the Junior Subordinated Debentures as indebtedness and the Preferred Securities as evidence of indirect beneficial ownership interest in the Junior Subordinated Debentures. The remainder of this discussion assumes, unless specifically indicated otherwise, that the Junior Subordinated Debentures will be classified as indebtedness of the Company for U.S. Federal income tax purposes.

#### U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE EXCHANGE OFFER

An exchange of Shares for Preferred Securities pursuant to the Exchange Offer will be a taxable transaction. The U.S. Federal income tax consequences to an Exchanging Holder will vary and depend on each Exchanging Holder's particular circumstances. An Exchanging Holder will be treated either as recognizing capital gain or loss from the exchange of Shares or as receiving a dividend distribution from the Company.

##### Capital Gain or Loss Treatment

If the exchange by an Exchanging Holder qualifies for capital gain or loss treatment under either of the two tests described below, then an Exchanging Holder will recognize capital gain or loss equal to the difference between (i) the fair market value of the Preferred Securities, as of the Expiration Date, received in the Exchange Offer and (ii) its tax basis in the Shares surrendered therefor. Any such gain or loss will be long-term capital gain or loss if the Shares were held for more than one year as of the Expiration Date.

## Dividend Treatment

If the exchange by an Exchanging Holder does not satisfy either of the two tests described below, the exchange will be deemed to constitute a distribution taxable as a dividend. Such Exchanging Holder will be required to include the fair market value of the Preferred Securities, as of the Expiration Date, received in the Exchange Offer in income as ordinary dividend income. The tax basis in the Shares surrendered in the Exchange Offer will be added to the tax basis of the remaining Shares held by the Exchanging Holder. However, if the amount of the distribution exceeds the Company's current or accumulated earnings and profits, as calculated for U.S. Federal income tax purposes ("E&P"), the excess will instead be treated first as a tax-free return of capital (thereby reducing such Exchanging Holder's basis in its Shares on a dollar-for-dollar basis) to the extent of the Exchanging Holder's basis in its Shares and thereafter as capital gain.

An Exchanging Holder that is a U.S. corporation may be entitled to claim a dividends-received deduction under Section 243 of the Code, subject to applicable limitations. However, it is expected that any such dividend would constitute an "extraordinary dividend" under Section 1059 of the Code. Corporate holders are urged to consult with their tax advisors concerning these matters.

## Tests for Capital Gain or Loss Treatment

An Exchanging Holder will qualify for capital gain or loss, rather than dividend, treatment if the exchange of Shares for Preferred Securities either

- is "substantially disproportionate" with respect to the Exchanging Holder or
- is "not essentially equivalent to a dividend" with respect to the Exchanging Holder.

The "substantially disproportionate" test is satisfied if the percentage of the then outstanding Shares actually and constructively owned by the Exchanging Holder immediately after the exchange is less than 80% of the percentage of the then outstanding Shares actually and constructively owned by such Exchanging Holder immediately before such exchange.

The "not essentially equivalent to a dividend test" is satisfied if the exchange results in a "meaningful reduction" in the Exchanging Holder's percentage interest in the Shares. The IRS has indicated in published rulings that even a small reduction in the proportionate interest of a small minority shareholder in a publicly held corporation who or which exercises no control over corporate affairs may constitute such a "meaningful reduction." Exchanging Holders expecting to rely on the "not essentially equivalent to a dividend" test should consult their own tax advisors as to its application in their particular situation.

In determining whether an Exchanging Holder will satisfy either of the two tests for capital gain or loss treatment, an Exchanging Holder must take into account not only the Shares that it actually owns, but also any Shares which it will be considered to "constructively" own under Section 318 of the Code. An Exchanging Holder may be considered to constructively own, among other things, any Shares that it has a right to acquire by way of the conversion feature of the Preferred Securities. In addition, an Exchanging Holder may be considered to own Shares or Preferred Securities actually owned, and in some cases, constructively owned, by certain related individuals or entities.

In calculating its percentage interest in Shares after the Exchange Offer, an Exchanging Holder must take into account the following:

- the Exchanging Holder is treated as owning the Capital Stock that it could acquire by converting its Preferred Securities and
- the total outstanding Shares is reduced by the number of Shares accepted for exchange in the Exchange Offer, and, as to any Exchanging Holder, is increased by the Shares that would be issued to that Exchanging Holder on conversion of its Preferred Securities but is not increased by any Shares that would be issued to other holders on conversion of their Preferred Securities.

If an Exchanging Holder exchanges less than all its Shares in the Exchange Offer, this may adversely affect such Exchanging Holder's ability to satisfy the tests for capital gain or loss treatment. This result could

arise if an Exchanging Holder tenders less than all its Shares in the Exchange Offer or as a result of proration in the Exchange Offer or both.

If an Exchanging Holder sells or otherwise disposes of Shares at or about the same time as the Exchange Offer, such sales may be taken into account in determining whether the Exchanging Holder satisfies either the "substantially disproportionate" or the "not essentially equivalent to a dividend" test. An Exchanging Holder should consult with its tax advisor regarding the treatment of such sales of Capital Stock.

#### Foreign Holders

A Foreign Holder may not be subject to U.S. Federal income tax on the exchange if the Foreign Holder satisfies either of the two tests for capital gain or loss treatment described above, unless:

- the Foreign Holder's gain is effectively connected with a trade or business of the Foreign Holder within the United States, or
- the Foreign Holder is an individual and is present in the United States for 183 or more days in the taxable year of the Expiration Date and certain other conditions are met.

However, if the Foreign Holder does not satisfy either of the two tests for capital gain or loss treatment described above, its dividend income will be subject to withholding of U.S. Federal income tax at a rate of 30% or such lower rate as may be specified in an applicable income tax treaty unless the dividend is effectively connected with the conduct of a trade or business in the United States. In addition, in the case of a Foreign Holder that is a corporation, such Foreign Holder also may be subject to an additional "branch profits tax" at a rate of 30% or such lower rate as may be specified by an applicable income tax treaty.

The Company will have no way of knowing whether any Exchanging Holder satisfies either of the two tests for capital gain or loss treatment described above. As a result, to protect itself, the Company will withhold U.S. Federal income tax at a rate of 30% from gross proceeds paid pursuant to the Exchange Offer to a Foreign Holder or its agent, unless the Exchanging Holder demonstrates to the Company that no withholding or a reduced rate of withholding should apply. In order to provide for such withholding, the Company or Firststar Bank may sell some portion of the Preferred Securities that otherwise would have been distributed to an Exchanging Holder. A Foreign Holder may apply for a refund of any excess withholding by filing a claim with the IRS.

#### Holders of Shares Who Do Not Participate in the Exchange Offer

Holders of Shares who elect not to participate in the Exchange Offer and who consequently do not exchange their Shares will not recognize gain or loss as a consequence of the Exchange Offer.

#### U.S. FEDERAL INCOME TAX CONSEQUENCES OF HOLDING PREFERRED SECURITIES

##### Tax Basis and Holding Period

A Exchanging Holder's initial tax basis for its Preferred Securities will equal the fair market value of the Preferred Securities as of the Expiration Date, and its holding period in the Preferred Securities will commence the day after the Expiration Date.

##### Issue Price

The issue price of each \$27 principal amount of each Junior Subordinated Debenture will be equal to the fair market value of a Preferred Security on the Expiration Date.

##### Interest Income and Original Issue Discount

Unless the rules applicable to OID or bond premium apply to the Junior Subordinated Debentures, as discussed below, stated interest on the Preferred Securities will generally be taxable to a holder as ordinary income when paid or accrued in accordance with that holder's regular method of accounting for U.S. Federal income tax purposes. While the existence of an issuer's option to defer the payment of interest on debt

instruments generally results in the application of the OID rules, debt instruments like the Junior Subordinated Debentures are not considered issued with OID if there is only a "remote" likelihood of the Company exercising its option of deferral.

The Company believes, and this discussion assumes, that, as of the date hereof, the likelihood of deferring payments of interest under the terms of the Junior Subordinated Debentures is "remote" within the meaning of the applicable Treasury Regulations. This belief is based in part on the fact that exercising that option would prevent the Company from declaring dividends on its Capital Stock and would prevent the Company from making any payments with respect to debt securities that rank pari passu with or junior to the Junior Subordinated Debentures. Therefore, although the matter is not free from doubt, the Company believes that the Junior Subordinated Debentures should not be treated as subject to the OID rules at the time of their original issuance by reason of the Company's deferral option. No rulings or other interpretations have been issued by the IRS which have addressed the meaning of the term "remote" as used in the applicable Treasury regulations, and it is possible that the IRS could take a position contrary to the interpretations herein.

If the likelihood of the Company exercising the option to defer any payment of interest were determined not to be "remote" or if the Company were to exercise its option to defer payments of interest, the Junior Subordinated Debentures would be treated as subject to the OID rules at the time of their original issuance or at the time of such exercise, as the case may be, for the entire remaining term of the Junior Subordinated Debentures. Under these rules, OID would accrue on an economic accrual basis and would be includible in income on the accrual method, including during any interest deferral period, regardless of the holder's method of accounting for U.S. Federal income tax purposes. Consequently, holders of the Preferred Securities would be required to include OID in gross income even though the Company would not make any actual distributions during the extension period. Actual distributions of interest on the Junior Subordinated Debentures generally would not be separately taxable. A holder that disposes of its Preferred Securities prior to the record date for payment of distributions on the Junior Subordinated Debentures will be subject to tax on OID accrued through the date of disposition (and not previously included in income), but will not receive cash from the Trust with respect to such OID.

OID will also arise on the Junior Subordinated Debentures if the issue price is less than the principal amount of the Junior Subordinated Debentures by a percentage amount equal to or greater than the product of (i) 0.25% and (ii) the number of complete years to its maturity. Such OID would also be required to be included in income as it accrues over the term of the Junior Subordinated Debentures.

Holders will not be entitled to the dividends-received deduction with respect to any amounts received with respect to the Preferred Securities.

#### Bond Premium

If the issue price of the Junior Subordinated Debentures is greater than their principal amount, the excess will be bond premium that is amortizable over the term of the Junior Subordinated Debentures, but only to the extent such excess is not attributable to the conversion feature of the Preferred Security. The amount of such bond premium that is amortized in any taxable year will be treated as a reduction of the holder's interest or OID income on the Junior Subordinated Debentures for such year and will reduce the holder's tax basis in the Junior Subordinated Debentures on a dollar-for-dollar basis.

#### Receipt of Junior Subordinated Debentures or Cash Upon Liquidation of the Trust

If the Junior Subordinated Debentures are distributed to holders in exchange for the Preferred Securities and in liquidation of the Trust, a holder would not be subject to U.S. Federal income tax and would receive an aggregate tax basis and holding period in the Junior Subordinated Debentures equal to its aggregate tax basis and holding period in its Preferred Securities.

If the Junior Subordinated Debentures are redeemed for cash and the proceeds of such redemption distributed to holders in redemption of their Preferred Securities, a holder would recognize gain or loss as if it sold such redeemed Preferred Securities for cash. See "Sale of Preferred Securities" immediately below.

## Sale of Preferred Securities

A holder who sells Preferred Securities will be considered to have disposed of all or part of its pro rata share of the Junior Subordinated Debentures and will recognize gain or loss equal to the difference between the amount realized on the sale and the holder's adjusted tax basis in such Preferred Securities. A holder's adjusted tax basis in the Preferred Securities generally will be its initial purchase price decreased by principal payments received on the Preferred Securities. If the OID rules apply to the Junior Subordinated Debentures, a holder's adjusted tax basis is increased by OID includible in income and decreased by distributions or other payments received on the Junior Subordinated Debentures (other than interest that is not treated as OID) since and including the day that the Junior Subordinated Debentures became subject to the OID rules. Any such gain or loss generally will be capital gain or loss (except to the extent of any accrued interest with respect to such holder's pro rata share of the Junior Subordinated Debentures required to be included in income as ordinary income) and will be long-term capital gain or loss if such holder's holding period for such Preferred Securities is more than one year at the time of sale.

If the Junior Subordinated Debentures are subject to the OID rules, a holder who disposes of its Preferred Securities between record dates for payments of distributions thereon will be required to include OID on the Junior Subordinated Debentures through the date of disposition in income as ordinary income, and to add such amount to its adjusted tax basis. To the extent the amount recognized on the sale is less than the holder's adjusted tax basis (which basis will include all accrued but unpaid OID), a holder will recognize a capital loss. Subject to certain limited exceptions, capital losses cannot be applied to offset ordinary income for U.S. Federal income tax purposes.

## Conversion of Preferred Securities into Shares

A holder of Preferred Securities will not recognize income, gain or loss upon the conversion, through the Property Trustee, as Conversion Agent, of Junior Subordinated Debentures into Shares (although the holder will be required to continue to accrue any OID through the date of conversion). The holder will recognize gain upon the receipt of cash in lieu of a fractional share of Capital Stock. Such gain will be equal to the amount of cash received less the holder's tax basis in such fractional share.

A holder's tax basis and holding period in the Shares received upon conversion of Preferred Securities will generally be equal to the holder's tax basis and holding period in the Preferred Securities, except that a holder's tax basis will be reduced by the basis allocated to any fractional shares for which cash is received.

## Adjustment of Conversion Price

Treasury Regulations promulgated under Section 305 of the Code would treat holders of Preferred Securities as having received a constructive distribution from the Company if the Applicable Conversion Ratio of the Junior Subordinated Debentures were adjusted and both (i) as a result of such adjustment, the proportionate interest (measured by the number of Shares into which the Junior Subordinated Debentures are convertible) of the holders of the Preferred Securities in the assets or earnings and profits of Company were increased, and (ii) the adjustment was not made pursuant to a bona fide, reasonable antidilution formula. An adjustment in the conversion ratio would not be considered made pursuant to such a formula if the adjustment was made to compensate for certain taxable distributions with respect to the Shares. Thus, under certain circumstances, a reduction in the conversion price for the holders may result in deemed dividend income to holders to the extent of the current or accumulated earnings and profits of the Company. Holders of the Preferred Securities would be required to include their allocable share of such deemed dividend income in gross income but would not receive any cash related thereto.

## Foreign Holders

### Payments on the Preferred Securities and Shares

If the Preferred Securities are treated as indebtedness for U.S. Federal income tax purposes, no withholding tax would be imposed provided that the Foreign Holder met certain certification requirements.

However, if the Preferred Securities constitute equity for U.S. Federal income tax purposes, payments made on the Preferred Securities to a Foreign Holder will be subject to withholding of U.S. Federal income tax at a rate of 30% or such lower rate as may be specified in an applicable income tax treaty unless the dividend is effectively connected with the conduct of a trade or business in the United States.

Because the Junior Subordinated Debentures may be classified as equity, rather than indebtedness, of the Company for U.S. Federal income tax purposes, the Company will withhold U.S. Federal income tax at a rate of 30%, or such lower rate as may be provided by an applicable income tax treaty.

A Foreign Holder that is eligible for a reduced rate of withholding tax pursuant to an applicable income tax treaty may submit documentation to the Company in order to avail itself of such treaty. Foreign Holders may obtain a refund of any excess amounts withheld by filing an appropriate claim for refund with the IRS.

If a Foreign Holder is treated as receiving a deemed dividend as a result of the adjustment of the conversion price of the Preferred Securities as described above, such deemed dividend will generally be subject to the same rules.

Under current regulations, dividends paid to an address in a foreign country are presumed to be paid to a resident of that country for the purpose of determining the applicable income tax treaty rate. Recently finalized Treasury regulations contain certain certification requirements with respect to payments of dividends made after December 31, 2000.

#### Conversion

A Foreign Holder will be subject to the same rules described above under "-- Conversion of Preferred Securities Into Shares" on the conversion of the Preferred Securities into Shares.

#### Sale of Preferred Securities or Shares

A Foreign Holder will not be subject to tax on any gain (except for gain attributable to accrued and unpaid interest, which would be treated as interest subject to the rules described above) recognized upon the sale or other disposition of the Preferred Securities or Shares unless (i) the Foreign Holder is an individual who is present in the United States for 183 days or more in the taxable year of disposition, and certain other conditions apply or (ii) the gain is effectively connected with the conduct by the Foreign Holder of a trade or business in the United States.

#### INFORMATION REPORTING AND BACKUP WITHHOLDING

Annual tax information reporting requirements generally will apply to interest paid or accrued on the Preferred Securities, distributions made with respect to the Shares and sale or redemption proceeds received on the Preferred Securities or the Shares to which it converts, and such amounts may be subject to a "backup" withholding tax of 31% unless the holder complies with certain identification requirements. Any withheld amounts will be allowed as a credit against the holder's U.S. Federal income tax liability, provided the holder provides the required information to the IRS.

The United States Treasury Department has issued final Treasury regulations governing information reporting and the certification procedures regarding withholding and backup withholding on certain amounts paid to Foreign Holders after December 31, 2000. Such regulations, among other things, may change the certification procedures relating to the receipt by intermediaries of payments on behalf of a beneficial owner of Preferred Securities.

THE U.S. FEDERAL INCOME TAX DISCUSSION SET FORTH ABOVE IS INCLUDED FOR GENERAL INFORMATION ONLY AND MAY NOT BE APPLICABLE DEPENDING UPON A HOLDER'S PARTICULAR SITUATION. HOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS WITH RESPECT TO THE TAX CONSEQUENCES TO THEM OF THE EXCHANGE OFFER AND OF THE OWNERSHIP OF PREFERRED SECURITIES, INCLUDING THE TAX CONSEQUENCES UNDER STATE, LOCAL, FOREIGN AND OTHER TAX LAWS AND THE POSSIBLE EFFECTS OF CHANGES IN U.S. FEDERAL OR OTHER TAX LAWS.

## CERTAIN ERISA CONSIDERATIONS

The Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and the Code impose certain requirements on employee benefit plans and certain other retirement plans and arrangements, including individual retirement accounts and annuities, that are subject to ERISA and the Code (all of which are hereinafter referred to as "ERISA Plans") and on persons who are fiduciaries with respect to such ERISA Plans. In accordance with ERISA's general fiduciary standards, before acquiring Preferred Securities in the Exchange Offer, an ERISA Plan fiduciary should determine whether such an acquisition is permitted under the governing ERISA Plan instruments and is appropriate for the ERISA Plan in view of its overall investment policy and the composition and diversification of its portfolio. Other provisions of ERISA and the Code prohibit certain transactions involving the assets of an ERISA Plan and persons who have certain specified relationships to the ERISA Plan ("parties in interest" within the meaning of ERISA or "disqualified persons" within the meaning of the Code). Thus, an ERISA Plan fiduciary considering acquiring Preferred Securities in the Exchange Offer should also consider whether such acquisition might constitute or give rise to a prohibited transaction under ERISA or the Code, or whether any exemption to the prohibited transaction rules may apply.

In addition, under Section 2510.3-101 of the United States Department of Labor Regulations (the "Regulation"), if immediately after any acquisition of Preferred Securities, 25 percent or more of the value of the Preferred Securities is held by ERISA Plans, employee benefit plans not subject to ERISA (for example, governmental plans) and entities whose underlying assets include plan assets by reason of a plan's investment in the entity, then the assets of the Trust (including the Junior Subordinated Debentures) would be treated as assets of ERISA Plans holding Preferred Securities, unless another exemption or exception applied. In such event, the persons providing services with respect to the assets of the Trust may be subject to the fiduciary responsibility provisions of Title I of ERISA and the prohibited transaction provisions of ERISA and Section 4975 of the Code with respect to transactions involving such assets. In order to avoid certain prohibited transactions that might otherwise arise in connection with the Trust assets, each investing ERISA Plan, by its acquisition of Preferred Securities, will be deemed to have directed the Trustee to acquire the Junior Subordinated Debentures and to have approved all of the documents relating to the Trust assets. Moreover, the holders of Preferred Securities will have the right to direct the Property Trustee as to the exercise of remedies in connection with any Event of Default.

ANY ERISA PLAN PROPOSING TO ACQUIRE PREFERRED SECURITIES IN THE EXCHANGE OFFER SHOULD CONSULT WITH ITS COUNSEL REGARDING THE APPLICATION OF ERISA, THE CODE AND THE REGULATION WITH RESPECT TO AN INVESTMENT IN PREFERRED SECURITIES.



Any questions or requests for assistance or for additional copies of this Offering Circular, the Letter of Transmittal or the Notice of Guaranteed Delivery may be directed to the Information Agent. Holders of Shares may also contact their broker, dealer, commercial bank, trust company or other nominee for assistance concerning the Exchange Offer.

THE INFORMATION AGENT FOR THE EXCHANGE OFFER IS:

D.F. KING & CO., INC.  
77 WATER STREET  
NEW YORK, NEW YORK 10005  
TELEPHONE: (800) 848-2998

FROM OUTSIDE THE U.S. OR CANADA, CALL COLLECT: (212) 269-5550

The Letter of Transmittal, certificates for Shares and any other required documents should be sent or delivered by each holder of the Shares or such holder's broker, dealer, commercial bank, trust company or other nominee to the Exchange Agent at its address set forth below.

THE EXCHANGE AGENT FOR THE EXCHANGE OFFER IS:

NORWEST BANK MINNESOTA, N.A.  
SHAREOWNER SERVICES  
161 NORTH CONCORD EXCHANGE STREET  
SOUTH SAINT PAUL, MINNESOTA 55075-1139

FACSIMILE TRANSMISSION:  
(FOR ELIGIBLE INSTITUTIONS ONLY)

(651) 450-4163

TO CONFIRM RECEIPT OF  
NOTICE OF GUARANTEED DELIVERY:

(651) 450-4110

LETTER OF TRANSMITTAL

TO TENDER SHARES OF CAPITAL STOCK OF

CHEMED CORPORATION

PURSUANT TO THE OFFERING CIRCULAR

DATED DECEMBER 23, 1999

THE EXCHANGE OFFER, THE PRORATION PERIOD AND WITHDRAWAL RIGHTS WILL EXPIRE AT 12:00 MIDNIGHT, NEW YORK CITY TIME, ON JANUARY 21, 2000, UNLESS THE EXCHANGE OFFER IS EXTENDED.

TO: NORWEST BANK MINNESOTA, N.A., EXCHANGE AGENT

BY MAIL:
NORWEST BANK MINNESOTA, N.A.
P.O. BOX 64858
ST. PAUL, MINNESOTA 55164-0858
ATTENTION: REORGANIZATION DEPARTMENT

BY HAND OR OVERNIGHT COURIER:
NORWEST BANK MINNESOTA, N.A.
161 NORTH CONCORD EXCHANGE STREET
SOUTH ST. PAUL, MINNESOTA 55075-1139
ATTENTION: REORGANIZATION DEPARTMENT

DELIVERY OF THIS INSTRUMENT TO AN ADDRESS OTHER THAN THOSE SHOWN ABOVE DOES NOT CONSTITUTE A VALID DELIVERY.

This Letter of Transmittal is to be used only if (a) certificates for Shares (as defined below) are to be delivered with it or (b) unless an Agent's Message (as defined in the Offering Circular dated December 23, 1999 (the "Offering Circular")) is utilized, Shares are being delivered by book-entry transfer to the account maintained by the Exchange Agent at The Depository Trust Company ("DTC" or the "Book-Entry Transfer Facility") as set forth under the "The Exchange Offer -- Procedures for Tendering Shares" in the Offering Circular.

Holders whose certificates for Shares are not immediately available (or who cannot follow the procedure for book-entry transfer on a timely basis) or who cannot transmit this Letter of Transmittal and all other required documents to the Exchange Agent before the Expiration Date (as defined in the Offering Circular) may nevertheless tender their Shares according to the guaranteed delivery procedure set forth under "The Exchange Offer -- Procedures for Tendering Shares" in the Offering Circular. See Instruction 2.

DELIVERY OF THE LETTER OF TRANSMITTAL AND THE OTHER REQUIRED DOCUMENTS TO THE BOOK-ENTRY TRANSFER FACILITY DOES NOT CONSTITUTE DELIVERY TO THE EXCHANGE AGENT.

DESCRIPTION OF SHARES TENDERED
(SEE INSTRUCTIONS 2, 3 AND 4)

NAME(S) AND ADDRESS(ES) OF REGISTERED HOLDER(S)
(PLEASE FILL IN EXACTLY AS NAME(S) APPEAR(S) ON
CERTIFICATE(S))

SHARES TENDERED
(ATTACH ADDITIONAL LIST IF NECESSARY)

NUMBER OF
SHARES
REPRESENTED BY
CERTIFICATE(S)\*
NUMBER OF
SHARES
TENDERED\*\*

[ ] PLEASE CHECK HERE IF CERTIFICATE(S) FOR PART OR ALL OF
YOUR SHARES HAVE BEEN
LOST, STOLEN, MISPLACED OR DESTROYED. SEE INSTRUCTION 2. TOTAL SHARES

\* NEED NOT BE COMPLETED IF SHARES ARE DELIVERED BY BOOK-ENTRY TRANSFER.
\*\* UNLESS OTHERWISE INDICATED, IT WILL BE ASSUMED THAT ALL SHARES REPRESENTED BY ANY CERTIFICATES DELIVERED TO THE
EXCHANGE AGENT ARE BEING TENDERED. SEE INSTRUCTION 4.

IF YOU ARE A PARTICIPANT IN THE DIVIDEND REINVESTMENT PLAN, THE NUMBER OF SHARES ON THE LABEL AFFIXED TO THIS LETTER OF TRANSMITTAL INCLUDES SHARES HELD BY YOU IN THE DIVIDEND REINVESTMENT PLAN, IF ANY. IN ORDER TO TENDER ANY SHARES IN THE DIVIDEND REINVESTMENT PLAN, YOU MUST FILL OUT THE BOX BELOW.

DIVIDEND REINVESTMENT PLAN SHARES  
(SEE INSTRUCTION 12)

This section is to be completed ONLY by participants in the Dividend Reinvestment Plan who wish to tender Shares held in the Dividend Reinvestment Plan. Participants in the Dividend Reinvestment Plan should note that if at any time a participant's ownership of Capital Stock falls below 25 Shares, such participant will be automatically terminated from the Dividend Reinvestment Plan. Fractional Shares will not be accepted for exchange in the Exchange Offer.

[ ] Check here to instruct the Exchange Agent to tender on behalf of the undersigned ALL Shares (except fractional Shares) credited to the Dividend Reinvestment Plan account of the undersigned (including any Shares purchased after December 23, 1999 and credited to such account).

[ ] Check here to instruct the Exchange Agent to tender on behalf of the undersigned the following number of Shares credited to the Dividend Reinvestment Plan account of the undersigned:

Shares: \_\_\_\_\_

ODD LOTS  
(SEE INSTRUCTION 11)

To be completed ONLY if Shares are being tendered by or on behalf of a person owning beneficially and of record an aggregate of fewer than 100 Shares, including any Shares held in the Dividend Reinvestment Plan. Participants in the Dividend Reinvestment Plan should note that if at any time a participant's ownership of Capital Stock falls below 25 Shares, such participant will be automatically terminated from the Dividend Reinvestment Plan. Fractional Shares will not be accepted for exchange in the Exchange Offer. The undersigned either (check one box):

[ ] is the beneficial or record owner of an aggregate of fewer than 100 Shares, all of which are being tendered;

OR

[ ] is a broker dealer, commercial bank, trust company, or other nominee that (a) is tendering for the beneficial owner(s) thereof, Shares with respect to which it is the record owner and (b) believes, based upon representations made to it by such beneficial owner(s), that each such person is the beneficial owner of an aggregate of fewer than 100 Shares and is tendering all of such Shares.

[ ] CHECK HERE IF TENDERED SHARES ARE BEING DELIVERED BY BOOK-ENTRY TRANSFER MADE TO AN ACCOUNT MAINTAINED BY THE EXCHANGE AGENT AT THE BOOK-ENTRY TRANSFER FACILITY AND COMPLETE THE FOLLOWING:

Name of Tendering Institution: \_\_\_\_\_  
Account Number at the Book-Entry Transfer Facility: \_\_\_\_\_  
Transaction Code Number: \_\_\_\_\_

[ ] CHECK HERE IF CERTIFICATES FOR TENDERED SHARES ARE BEING DELIVERED PURSUANT TO A NOTICE OF GUARANTEED DELIVERY PREVIOUSLY SENT TO THE EXCHANGE AGENT AND COMPLETE THE FOLLOWING:

Name(s) of the Tendering Holder(s): \_\_\_\_\_  
Date of Execution of Notice of Guaranteed Delivery: \_\_\_\_\_  
Name of Institution Which Guaranteed Delivery: \_\_\_\_\_

If Delivered by Book-Entry Transfer, Give

Account Number at the Book Entry Transfer Facility: \_\_\_\_\_  
Transaction Code Number: \_\_\_\_\_

NOTE: SIGNATURES MUST BE PROVIDED BELOW  
PLEASE READ THE ACCOMPANYING INSTRUCTIONS CAREFULLY

Ladies and Gentlemen:

The undersigned hereby tenders to Chemed Corporation, a Delaware corporation (the "Company"), and Chemed Capital Trust, a Delaware statutory business trust (the "Trust"), the above-described shares (the "Shares") of Capital Stock, par value \$1 per share (the "Capital Stock"), of the Company, in exchange for Convertible Trust Preferred Securities representing undivided beneficial interests in the assets of the Trust (the "Preferred Securities"), on the basis of one Preferred Security for each Share validly tendered and accepted for exchange, upon the terms and subject to the conditions set forth in the Offering Circular, receipt of which is hereby acknowledged, and in this Letter of Transmittal (which together constitute the "Exchange Offer"). Shares not accepted for exchange because of proration will be returned. Fractional Shares will not be accepted in the Exchange Offer. Fractional Shares resulting from proration will be rounded up or down, as appropriate, to the nearest full Share before being accepted for exchange.

Subject to and effective upon acceptance for exchange of the Shares tendered herewith in accordance with the terms of the Exchange Offer (including, if the Exchange Offer is extended or amended, the terms or conditions of any such extension or amendment), the undersigned hereby sells, assigns and transfers to or upon the order of the Company and the Trust all right, title and interest in and to all the Shares tendered hereby that are exchanged pursuant to the Exchange Offer and hereby irrevocably constitutes and appoints the Exchange Agent for the Exchange Offer (the "Exchange Agent") the true and lawful agent and attorney-in-fact of the undersigned with respect to such Shares, with full power of substitution (such power of attorney being deemed to be an irrevocable power coupled with an interest), to:

- (a) deliver certificates for such Shares, or transfer ownership of such Shares on the account books maintained by the Book-Entry Transfer Facility, together, in any such case, with all accompanying evidence of transfer and authenticity, to or upon the order of the Company and the Trust;
- (b) present certificates for such Shares for cancellation and transfer of such Shares on the Company's books; and
- (c) receive all benefits and otherwise exercise all rights of beneficial ownership of such Shares, all in accordance with the terms of the Exchange Offer.

The undersigned hereby represents and warrants that:

- (a) the undersigned "owns" the Shares tendered hereby within the meaning of Rule 14e-4 promulgated under the Securities Exchange Act of 1934, as amended, and has full power and authority to validly tender, sell, assign and transfer the Shares tendered hereby;
- (b) the tender of Shares by the undersigned complies with Rule 14e-4;
- (c) when and to the extent the Company and the Trust accept the Shares for exchange, the Company and the Trust will acquire good, marketable and unencumbered title thereto, free and clear of all security interests, liens, charges, encumbrances, conditional sales agreements or other obligations relating to their sale or transfer, and not subject to any adverse claim;
- (d) on request, the undersigned will execute and deliver any additional documents the Exchange Agent, the Company or the Trust deems necessary or desirable to complete the assignment, transfer and exchange of the Shares tendered hereby; and
- (e) the undersigned has read and agrees to all the terms of the Exchange Offer.

The undersigned understands that, upon acceptance by the Company and the Trust of the Shares tendered hereby, the undersigned will be deemed to have waived all right with respect to any dividends on such Shares.

The undersigned understands that tenders of Shares pursuant to any one of the procedures described under "The Tender Offer -- Procedures for Tendering Shares" in the Offering Circular and in the instructions hereto will constitute a binding agreement among the undersigned, the Company and the Trust upon the terms and subject to the conditions of the Exchange Offer.

The undersigned recognizes that, under certain circumstances set forth in the Offering Circular, the Company and the Trust may terminate or amend the Exchange Offer or may not be required to accept for exchange any of the Shares.

All authority conferred or agreed to be conferred in this Letter of Transmittal shall survive the death or incapacity of the undersigned, and any obligation of the undersigned hereunder shall be binding upon the heirs, personal representatives, successors and assigns of the undersigned. Except as stated in the Exchange Offer, this tender is irrevocable.

Unless otherwise indicated under "Special Issuance Instructions," please deliver Preferred Securities and/or return or issue the certificate(s) evidencing any Shares not tendered or not accepted for exchange in the name(s) of the registered holder(s) appearing under "Description of Shares Tendered". Similarly, unless otherwise indicated under "Special Delivery Instructions," please deliver Preferred Securities and/or the certificate(s) evidencing any Shares not tendered or not accepted for exchange (and accompanying documents, as appropriate) to the address(es) of the registered holder(s) appearing under "Description of Shares Tendered". In the event that both the "Special Delivery Instructions" and the "Special Issuance Instructions" are completed, please issue Preferred Securities and/or issue or return the certificate(s) evidencing any Shares not tendered or accepted for exchange in the name(s) of, and deliver said check and/or certificate(s) to, the person or persons so indicated. In the case of book-entry delivery of Shares, please credit the account maintained at the Book-Entry Transfer Facility indicated above with any Shares not accepted for exchange. The undersigned recognizes that the Company and the Trust have no obligation pursuant to the "Special Issuance Instructions" to transfer any Shares from the name(s) of the registered holder(s) thereof if the Company and the Trust do not accept for exchange any of the Shares so tendered.

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 SPECIAL DELIVERY INSTRUCTIONS  
 (SEE INSTRUCTIONS 4 AND 8)

To be completed ONLY if certificates for Preferred Securities and/or certificates for Shares not tendered or not exchanged are to be mailed to someone other than the undersigned or to the undersigned at an address other than that shown below the undersigned's signature.

Mail certificates and check to:

Name \_\_\_\_\_  
 (PLEASE PRINT)

Address \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 (ZIP CODE)

SPECIAL ISSUANCE INSTRUCTIONS  
 (SEE INSTRUCTIONS 1, 4, 5, 6, 7, AND 8)

To be completed ONLY if certificates for Preferred Securities and/or certificates for Shares not tendered or not exchanged are to be registered and issued in the name of someone other than the undersigned.

Issue any certificates and check to:

Name \_\_\_\_\_  
 (PLEASE PRINT)

Address \_\_\_\_\_  
 \_\_\_\_\_  
 (ZIP CODE)  
 \_\_\_\_\_  
 (TAXPAYER IDENTIFICATION NUMBER)

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SIGN HERE  
 (SEE INSTRUCTIONS 1 AND 5)  
 (PLEASE COMPLETE SUBSTITUTE FORM W-9 BELOW)

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SIGNATURE(S) OF OWNER(S)

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Name(s) \_\_\_\_\_  
 (PLEASE PRINT)

Capacity (full title) \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_  
 (INCLUDE ZIP CODE)

Area Code and Telephone Number \_\_\_\_\_

Taxpayer Identification Number \_\_\_\_\_  
 (SEE INSTRUCTION 10)

Dated: \_\_\_\_\_

(Must be signed by registered holder(s) exactly as name(s) appear(s) on certificate(s) for Shares or on a security position listing or by person(s) authorized to become registered holder(s) by certificates and documents transmitted herewith. If signature is by a trustee, executor, administrator, guardian, attorney-in-fact, agent, officer of a corporation or other person acting in a fiduciary or representative capacity, please set forth full title. See Instruction 5.)

GUARANTEE OF SIGNATURE(S)  
 (SEE INSTRUCTIONS 1 AND 5)

Authorized Signature \_\_\_\_\_

Name \_\_\_\_\_  
 (PLEASE PRINT)

Title \_\_\_\_\_

Name of Firm \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_  
 (INCLUDE ZIP CODE)

Area Code and Telephone Number \_\_\_\_\_

Dated: \_\_\_\_\_

## IMPORTANT TAX INFORMATION

Under U.S. Federal income tax law, a holder whose tendered Shares are accepted for exchange is required by law to provide the Exchange Agent with such holder's correct taxpayer identification number ("TIN") on the Substitute Form W-9 below. If the Exchange Agent is not provided with the correct TIN, the Internal Revenue Service may subject the holder or other payee to a \$50 penalty. In addition, cash payments that are made to such holder or other payee with respect to Shares exchanged pursuant to the Exchange Offer may be subject to 31% backup withholding.

Certain holders (including, among others, all corporations and certain foreign individuals) are not subject to these backup withholding and reporting requirements and should indicate their status by writing "exempt" across the face of the Substitute Form W-9. In order for a foreign individual to qualify as an exempt recipient, the holder must submit a Form W-8, signed under penalties of perjury, attesting to that individual's exempt status. A Form W-8 can be obtained from the Exchange Agent. See the enclosed "Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9" for more instructions.

If backup withholding applies, 31% of any such cash payments to be made to the holder or other payee will be withheld. Backup withholding is not an additional tax. Rather, the tax liability of persons subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of taxes, a refund may be obtained from the Internal Revenue Service.

The box in Part 2 of the Substitute Form W-9 may be checked if the tendering holder has not been issued a TIN and has applied for a TIN or intends to apply for a TIN in the near future. If the box in Part 2 is checked, the holder or other payee must also complete the Certificate of Awaiting Taxpayer Identification Number below in order to avoid backup withholding. Notwithstanding that the box in Part 2 is checked and the Certificate of Awaiting Taxpayer Identification Number is completed, the 31% will be withheld on all cash payments made prior to the time a properly certified TIN is provided to the Exchange Agent.

## WHAT NUMBER TO GIVE THE EXCHANGE AGENT

The holder is required to give the Exchange Agent the TIN (e.g., social security number or employer identification number) of the record owner of the Shares or of the last transferee appearing on the transfers attached to, or endorsed on, the certificates evidencing the Shares. If the Shares are registered in more than one name or are not registered in the name of the actual owner, consult the enclosed "Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9" for additional guidance on which number to report.

SUBSTITUTE

FORM W-9

PAYER'S REQUEST FOR TAXPAYER IDENTIFICATION NUMBER (TIN) AND CERTIFICATION

PART I -- PLEASE PROVIDE YOUR TIN IN THE BOX AT RIGHT AND CERTIFY BY SIGNING AND DATING BELOW

SOCIAL SECURITY NUMBER(S)

/ /

OR EMPLOYER IDENTIFICATION NUMBER(S)

/

PART II Awaiting TIN [ ] CERTIFICATION -- UNDER THE PENALTIES OF PERJURY, I CERTIFY THAT THE INFORMATION PROVIDED ON THIS FORM IS TRUE, CORRECT AND COMPLETE.

NAME (PLEASE PRINT)

ADDRESS

(INCLUDING ZIP CODE)

SIGNATURE

DATE

YOU MUST COMPLETE THE FOLLOWING CERTIFICATE IF YOU CHECKED THE BOX IN PART 2 OF SUBSTITUTE FORM W-9

CERTIFICATE OF AWAITING TAXPAYER IDENTIFICATION NUMBER

I CERTIFY UNDER PENALTIES OF PERJURY THAT A TAXPAYER IDENTIFICATION NUMBER HAS NOT BEEN ISSUED TO ME, AND EITHER (a) I HAVE MAILED OR DELIVERED AN APPLICATION TO RECEIVE A TAXPAYER IDENTIFICATION NUMBER TO THE APPROPRIATE INTERNAL REVENUE SERVICE CENTER OR SOCIAL SECURITY ADMINISTRATION OFFICE OR (b) I INTEND TO MAIL OR DELIVER AN APPLICATION IN THE NEAR FUTURE. I UNDERSTAND THAT, NOTWITHSTANDING THAT I HAVE CHECKED THE BOX IN PART 2 (AND COMPLETED THIS CERTIFICATE OF AWAITING TAXPAYER IDENTIFICATION NUMBER), ALL REPORTABLE CASH PAYMENTS MADE TO ME BEFORE THE TIME I PROVIDE THE EXCHANGE AGENT WITH A PROPERLY CERTIFIED TAXPAYER IDENTIFICATION NUMBER WILL BE SUBJECT TO A 31% BACKUP WITHHOLDING TAX.

SIGNATURE

DATE

NOTE: FAILURE TO COMPLETE AND RETURN THIS SUBSTITUTE FORM W-9 MAY RESULT IN BACKUP WITHHOLDING OF 31% OF ANY CASH PAYMENT MADE TO YOU PURSUANT TO THE EXCHANGE OFFER. PLEASE REVIEW THE ENCLOSED "GUIDELINES FOR CERTIFICATION OF TAXPAYER IDENTIFICATION NUMBER ON SUBSTITUTE FORM W-9" FOR ADDITIONAL DETAILS.



## INSTRUCTIONS

## FORMING PART OF THE TERMS AND CONDITIONS OF THE EXCHANGE OFFER

1. Guarantee of Signatures. Except as otherwise provided below, all signatures on this Letter of Transmittal must be guaranteed by a financial institution (including most banks, savings and loan associations, and brokerage houses) that is a participant in the Securities Transfer Agents Medallion Program, the New York Stock Exchange Medallion Signature Program or the Stock Exchanges Medallion Program (each such entity being hereinafter referred to as an "Eligible Institution"). Signatures on this Letter of Transmittal need not be guaranteed if (a) this Letter of Transmittal is signed by the registered owner of the Shares (which term, for purposes of this document, shall include any participant in the Book-Entry Transfer Facility whose name appears on a security position listing as the owner of Shares) tendered herewith and such owner has not completed either of the boxes entitled "Special Issuance Instructions" or "Special Delivery Instructions" on this Letter of Transmittal or (b) such Shares are tendered for the account of an Eligible Institution. See Instruction 5.

2. Delivery of Letter of Transmittal and Shares; Guaranteed Delivery Procedures. This Letter of Transmittal is to be used only if (a) certificates are being forwarded with it to the Exchange Agent or (b) unless an Agent's Message is utilized, delivery of Shares is to be made by book-entry transfer pursuant to the procedure set forth under "The Exchange Offer--Procedures for Tendering Shares" in the Offering Circular. Certificates for all physically delivered Shares, or a timely confirmation (a "Book-Entry Confirmation") of a book-entry transfer of all Shares delivered electronically into the Exchange Agent's account at the Book-Entry Transfer Facility, together in each case with a properly completed and duly executed Letter of Transmittal (or a facsimile thereof), with any required signature guarantees, or an Agent's Message in the case of a book-entry delivery, and any other documents required by this Letter of Transmittal, must be received by the Exchange Agent at one of its addresses set forth on the front page of this Letter of Transmittal before the Expiration Date (as defined in the Offering Circular). Delivery of documents to the Book-Entry Transfer Facility does not constitute delivery to the Exchange Agent.

Holders whose certificates are not immediately available (or who cannot follow the procedures for book-entry transfer on a timely basis) or who cannot transmit this Letter of Transmittal and all other required documents to reach the Exchange Agent before the Expiration Date, may nevertheless tender their Shares pursuant to the guaranteed delivery procedures set forth under "The Exchange Offer -- Procedures for Tendering Shares" in the Offering Circular. Pursuant to such procedures: (a) such tender must be made by or through an Eligible Institution, (b) the Exchange Agent must receive (by hand, mail or facsimile transmission), before the Expiration Date, a properly completed and duly executed Notice of Guaranteed Delivery substantially in the form the Company and the Trust have provided with the Offering Circular and (c) the certificates for all tendered Shares in proper form for transfer (or a Book-Entry Confirmation), together with a properly completed and duly executed Letter of Transmittal (or facsimile thereof), with any required signature guarantees, or an Agent's Message in the case of a book-entry delivery, and any other documents required by this Letter of Transmittal, must be received by the Exchange Agent within three New York Stock Exchange trading days after the date of execution of such Notice of Guaranteed Delivery, all as provided under "The Exchange Offer -- Procedures for Tendering Shares" in the Offering Circular.

Holders of Shares whose certificates for part or all of their Shares have been lost, stolen, misplaced or destroyed must so indicate in the box entitled "Description of Shares Tendered."

THE METHOD OF DELIVERY OF ALL DOCUMENTS, INCLUDING CERTIFICATES FOR SHARES, THIS LETTER OF TRANSMITTAL AND ANY OTHER REQUIRED DOCUMENTS, IS AT THE ELECTION AND RISK OF THE TENDERING HOLDER. IF DELIVERY IS BY MAIL, REGISTERED MAIL WITH RETURN RECEIPT REQUESTED, PROPERLY INSURED, IS RECOMMENDED.

No alternative, conditional or contingent tenders will be accepted, and no fractional Shares will be exchanged. By executing this Letter of Transmittal (or a facsimile thereof), each tendering holder waives any right to receive any notice of the acceptance of such holder's tender.

3. Inadequate Space. If the space provided in the box entitled "Description of Shares Tendered" is inadequate, the certificate numbers and/or the number of Shares should be listed on a separate signed schedule and attached to this Letter of Transmittal.

4. Partial Tenders and Unpurchased Shares. (Not applicable to holders who deliver Shares by book-entry transfer.) If fewer than all the Shares evidenced by any certificate delivered to the Exchange Agent are to be tendered, fill in the number of Shares that are to be tendered in the box entitled "Description of Shares Tendered". If such Shares are exchanged, a new certificate for the remainder of the Shares evidenced by the old certificate(s) will be sent to and in the name of the registered holder(s) (unless otherwise specified by such holder(s) having completed either or both of the boxes entitled "Special Delivery Instructions" or "Special Issuance Instructions" on this Letter of Transmittal) as soon as practicable following the expiration or termination of the Exchange Offer. All Shares represented by the certificate(s) listed and delivered to the Exchange Agent will be deemed to have been tendered unless otherwise indicated.

5. Signatures on Letter of Transmittal; Stock Powers; and Endorsements.

(a) If this Letter of Transmittal is signed by the registered holder(s) of the Shares tendered herewith, the signature(s) must correspond exactly with the name(s) as written on the face of the certificates without any change whatsoever.

(b) If any of the Shares tendered herewith are registered in the names of two or more joint owners, each such owner must sign this Letter of Transmittal.

(c) If any of the Shares tendered herewith are registered in different names on different certificates, it will be necessary to complete, sign and submit as many separate Letters of Transmittal as there are different registrations of certificates.

(d) If this Letter of Transmittal is signed by the registered holder(s) of the Shares tendered herewith, no endorsements of certificates or separate stock powers are required unless Preferred Securities are to be issued and/or certificates for Shares not tendered or not exchanged are to be issued to a person other than the registered holder(s). If this Letter of Transmittal is signed by a person other than the registered holder(s) of the Shares tendered herewith, however, the certificates must be endorsed or accompanied by appropriate stock powers, in either case, signed exactly as the name(s) of the registered holder(s) appear on the certificates for such Shares. Signatures on any such certificates or stock powers must be guaranteed by an Eligible Institution. See Instruction 1.

(e) If this Letter of Transmittal or any certificates or stock powers are signed by a trustee, executor, administrator, guardian, attorney-in-fact, agent, officer of a corporation or other person acting in a fiduciary or representative capacity, such person should so indicate when signing and proper evidence satisfactory to the Company and the Trust of the authority of such person so to act must be submitted.

6. Stock Transfer Taxes. The Company and the Trust will pay any stock transfer taxes with respect to the transfer of Shares to the Trust or its order pursuant to the Exchange Offer. If, however, Preferred Securities are to be issued to, or certificates for Shares not tendered or accepted for exchange are to be registered in the name of, any person other than the registered holder, or if tendered certificates are registered in the name of any person other than the person(s) signing this Letter of Transmittal, the amount of any stock transfer taxes (whether imposed on the registered holder or such person) payable on account of the transfer to such person will be payable by the tendering holder. If satisfactory evidence of payment of such taxes or exemption therefrom is not submitted herewith, the amount of such transfer taxes will be billed directly to such tendering holder.

7. Irregularities. All questions as to the number of Shares to be accepted and the validity, form, eligibility (including time of receipt) and acceptance for exchange of any tender of Shares will be determined by the Company and the Trust, in their sole discretion, which determination shall be final and binding on all parties. The Company and the Trust reserve the absolute right to reject any or all tenders determined by them not to be in proper form or the acceptance for exchange of which may, in the opinion of counsel to the Company and the Trust, be unlawful. The Company and the Trust also reserve the absolute right to waive any of the conditions of the Exchange Offer and any defect or irregularity in the tender of any particular Shares. The interpretation of the terms and conditions of the Exchange Offer (including these instructions) by the Company and the Trust shall be final and binding on all parties. No tender of Shares will be deemed properly made until all defects or irregularities have been cured or waived. None of the Company, the Trust, the Exchange Agent, the Information Agent or any other person is or will be obligated to give notice of any defects or irregularities in tenders, and none of them will incur any liability for failure to give any such notice.

8. Special Issuance and Delivery Instructions. If the Preferred Securities are to be issued, or any Shares not tendered or not exchanged are to be returned in the name of, a person other than the person(s) signing this Letter of Transmittal or if the

Preferred Securities or any certificates for Shares not tendered or not exchanged are to be mailed to someone other than the person(s) signing this Letter of Transmittal or to the person(s) signing this Letter of Transmittal at an address other than that shown in the box entitled "Description of Shares Tendered", the boxes entitled "Special Issuance Instructions" and/or "Special Delivery Instructions" on this Letter of Transmittal should be completed.

9. Request for Assistance or Additional Copies. Requests for assistance or additional copies of the Offering Circular, this Letter of Transmittal or the Notice of Guaranteed Delivery may be directed to the Information Agent at its addresses or telephone numbers set forth below.

10. Substitute Form W-9. Except as provided above under "Important Tax Information", each tendering holder is required to provide the Exchange Agent with a correct TIN on Substitute Form W-9 which is provided under "Important Tax Information" above. Failure to provide the information on the form may subject the tendering holder to a \$50 penalty and a 31% Federal back-up withholding tax may be imposed on the cash payments made to the holder or other payee with respect to Shares exchanged pursuant to the Exchange Offer.

11. Odd Lots. As described in the Offering Circular, if the Company and the Trust purchase fewer than all Shares tendered before the Expiration Date and not withdrawn, the Shares purchased first will consist of all Shares tendered by any holder who owns of record or owns beneficially an aggregate of fewer than 100 Shares, including any Shares held in the Dividend Reinvestment Plan (an "Odd Lot Holder"). This preference will not be available unless the box entitled "Odd Lots" is completed. If any Shares tendered by an Odd Lot Holder are held in the Dividend Reinvestment Plan, the box entitled "Dividend Reinvestment Plan Shares" must also be completed. Participants in the Dividend Reinvestment Plan should note that if at any time a participant's ownership of Capital Stock falls below 25 Shares, such participant will be automatically terminated from the Dividend Reinvestment Plan. Fractional Shares will not be accepted for exchange in the Exchange Offer. See Instruction 12.

12. Dividend Reinvestment Plan. If a holder of Shares desires to tender Shares credited to the holder's account under the Dividend Reinvestment Plan, the box entitled "Dividend Reinvestment Plan Shares" should be completed. A participant in the Dividend Reinvestment Plan may complete such box on only one Letter of Transmittal submitted by such participant. If such participant is an Odd Lot Holder and desires to have all of such participant's Shares purchased, the box entitled "Odd Lots" must also be completed. Participants in the Dividend Reinvestment Plan should note that if at any time a participant's ownership of Capital Stock falls below 25 Shares, such participant will be automatically terminated from the Dividend Reinvestment Plan. Fractional Shares will not be accepted for exchange in the Exchange Offer. See Instruction 11.

If a holder tenders Shares held in the Dividend Reinvestment Plan, all such Shares (except fractional Shares) credited to such holder's account(s) (including any Shares purchased after December 23, 1999 and credited to such account(s)), will be tendered, unless otherwise specified above in the box entitled "Dividend Reinvestment Plan Shares." In the event that the box entitled "Dividend Reinvestment Plan Shares" is not completed, no Shares held in the tendering holder's account will be tendered.

The Letter of Transmittal, certificates for Shares and any other required documents should be sent or delivered by each holder of Shares or such holder's broker, dealer, commercial bank, trust company or other nominee to the Exchange Agent at one of its addresses set forth below.

THE INFORMATION AGENT FOR THE EXCHANGE OFFER IS:

D.F. KING & CO., INC.  
 77 WATER STREET  
 NEW YORK, NEW YORK 10005  
 TELEPHONE: (800) 848-2998  
 FROM OUTSIDE THE U.S. OR CANADA, CALL COLLECT: (212) 269-5550

THE EXCHANGE AGENT FOR THE EXCHANGE OFFER IS:

NORWEST BANK MINNESOTA, N.A.

BY MAIL:	BY HAND OR OVERNIGHT COURIER:
NORWEST BANK MINNE	NORWEST BANK MINNESOTA, N.A.
P.O. BOX 64	161 NORTH CONCORD EXCHANGE STREET
ST. PAUL, MINNESOTA	SOUTH ST. PAUL, MINNESOTA 55075-1139
ATTENTION: REORGANIZATION	ATTENTION: REORGANIZATION DEPARTMENT

TELEPHONE: (800) 380-1372

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 ANY QUESTIONS OR REQUESTS FOR ASSISTANCE OR FOR ADDITIONAL COPIES OF THE OFFERING CIRCULAR, THIS LETTER OF TRANSMITTAL OR THE NOTICE OF GUARANTEED DELIVERY MAY BE DIRECTED TO THE INFORMATION AGENT. HOLDERS MAY ALSO CONTACT THEIR BROKER, DEALER, COMMERCIAL BANK, TRUST COMPANY OR OTHER NOMINEE FOR ASSISTANCE CONCERNING THE EXCHANGE OFFER.  
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GUIDELINES FOR CERTIFICATION OF TAXPAYER IDENTIFICATION  
NUMBER ON SUBSTITUTE FORM W-9

GUIDELINES FOR DETERMINING THE PROPER IDENTIFICATION NUMBER TO GIVE THE PAYOR Social Security numbers have nine digits separated by two hyphens: i.e., 000-00-0000. Employer identification numbers have nine digits separated by only one hyphen, i.e., 00-0000000. The table below will help determine the number to give the payer.

FOR THIS TYPE OF ACCOUNT	GIVE THE SOCIAL SECURITY NUMBER OF --	FOR THIS TYPE OF ACCOUNT	GIVE THE EMPLOYER IDENTIFICATION NUMBER OF --
1. An individual's account	The individual		
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, any one of the individuals on the account(1)		
3. Husband and wife (joint account)	The actual owner of the account or, if joint funds, either person(1)		
4. Custodian account of a minor (Uniform Gift to Minors Act)	The minor(2)		
5. Adult and minor (joint account)	The adult or, if the minor is the only contributor, the minor(3)		
6. Account in the name of guardian or committee for a designated ward, minor, or incompetent person	The ward, minor, or incompetent person(4)		
7. a. The usual revocable savings trust account (grantor is also trustee)	The grantor- trustee(3)		
b. So-called trust account that is not a legal or valid trust under State law	The actual owner(3)		
8. Sole proprietorship account	The owner(5)		
9. A valid trust, estate, or pension trust	The legal entity (do not furnish the identifying number of the personal representative or trustee unless the legal entity itself is not designated in the account title.)(3)		
10. Corporate account	The corporation		
11. Religious, charitable, or educational organization account	The organization		
12. Partnership account held in the name of the business	The partnership		
13. Association, club or other tax-exempt organization	The organization		
14. A broker or registered nominee	The broker or nominee		
15. Account with the Department of Agriculture in the name of a public entity (such as a State or local government, school district, or prison) that receives agricultural program payments	The public entity		

(1) List first and circle the name of the person whose number you furnish.

(2) Circle the minor's name and furnish the minor's social security number.

(3) List first and circle the name of the legal trust, estate or pension trust.

(4) Circle the ward's, minor's or incompetent person's name and furnish such person's social security number.

(5) Show the name of the owner.

NOTE: If no name is circled when there is more than one name, the number will be considered to be that of the first name listed.

GUIDELINES FOR CERTIFICATION OF TAXPAYER IDENTIFICATION  
NUMBER ON SUBSTITUTE FORM W-9

OBTAINING A NUMBER

If you don't have a taxpayer identification number or you don't know your number, obtain Internal Revenue Service Form SS-5, Application for Social Security Number Card or Form SS-4, Application for Employer Identification Number at your local office of the Social Security Administration or the Internal Revenue Service and apply for a number.

PAYEES EXEMPT FROM BACKUP WITHHOLDING

Payees specifically exempted from backup withholding on ALL payments include the following:

- A corporation.
- A financial institution.
- An organization exempt from tax under Section 501(A), or an individual retirement plan.
- The United States or any agency or instrumentality thereof.
- A state, the District of Columbia, a possession of the United States or any subdivision or instrumentality thereof.
- A foreign government, a political subdivision of a foreign government or any agency or instrumentality thereof.
- An international organization or any agency or instrumentality thereof.
- A registered dealer in securities or commodities registered in the U.S. or a possession of the U.S.
- A real estate investment trust.
- A common trust fund operated by a bank under Section 584(a).
- An exempt charitable remainder trust, or a non-exempt trust described in Section 4947(a)(1).
- An entity registered at all times under the Investment Company Act of 1940.
- A foreign central bank of issue.

Payments of dividends and patronage dividends not generally subject to backup withholding include the following:

- Payments to nonresident aliens subject to withholding under section 1441.
- Payments to partnerships not engaged in a trade or business in the U.S. and which have at least one nonresident partner.
- Payments of patronage dividends where the amount received is not paid in money.
- Payments made by certain foreign organizations.
- Payments made to a nominee.

Payments of interest not generally subject to backup withholding include the following:

- Payments of interest on obligations issued by individuals.  
Note: You may be subject to backup withholding if this interest is \$600 or more and is paid in the course of the payer's trade or business and you have not provided your correct taxpayer identification number to the payer.
- Payments of tax-exempt interest (including exempt interest dividends under Section 852).
- Payments described in Section 6049(b)(5) to nonresident aliens.
- Payments on tax-free covenant bonds under Section 1451.
- Payments made by certain foreign organizations.
- Payments made to a nominee.

Exempt payees described above should file Substitute Form W-9 to avoid possible erroneous backup withholding. FILE THIS FORM WITH THE PAYER, FURNISH YOUR TAXPAYER IDENTIFICATION NUMBER, WRITE "EXEMPT" ON THE FACE OF THE FORM AND RETURN IT TO THE PAYER. IF THE PAYMENTS ARE INTEREST, DIVIDENDS, OR PATRONAGE DIVIDENDS, ALSO SIGN AND DATE THE FORM.

Certain payments other than interest, dividends, and patronage dividends that are not subject to information reporting are also not subject to backup withholding. For details, see Sections 6041, 6041A(a), 6045, and 6050A.

PRIVACY ACT NOTICE. -- Section 6109 requires most recipients of dividend, interest or other payments to give taxpayer identification numbers to payers who must report the payments to the IRS. The IRS uses the numbers for identification purposes. Payers must be given the numbers whether or not recipients are

required to file tax returns. Beginning January 1, 1993, payers must generally withhold 31% of taxable interest, dividend, and certain other payments to a payee who does not furnish a taxpayer identification number to a payer. Certain penalties may also apply.

#### PENALTIES

(1) PENALTY FOR FAILURE TO FURNISH TAXPAYER IDENTIFICATION NUMBER -- If you fail to furnish your taxpayer identification number to a payer, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

(2) FAILURE TO REPORT CERTAIN DIVIDEND AND INTEREST PAYMENTS -- If you fail to properly include any portion of an includible payment for interest, dividends, or patronage dividends in gross income, such failure will be treated as being due to negligence and will be subject to a penalty of 5% on any portion of an underpayment attributable to that failure unless there is clear and convincing evidence to the contrary.

(3) CIVIL PENALTY FOR FALSE INFORMATION WITH RESPECT TO WITHHOLDING -- If you make a false statement with no reasonable basis which results in no imposition of backup withholding, you are subject to a penalty of \$500.

(4) CRIMINAL PENALTY FOR FALSIFYING INFORMATION -- Falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

FOR ADDITIONAL INFORMATION CONTACT YOUR TAX  
CONSULTANT OR THE INTERNAL REVENUE SERVICE.

NOTICE OF GUARANTEED DELIVERY  
FOR SHARES OF CAPITAL STOCK  
OF  
CHEMED CORPORATION

This form or a facsimile hereof must be used to accept the Exchange Offer (as defined below) if:

- (a) certificates for shares of Capital Stock (the "Shares") of Chemed Corporation, a Delaware corporation (the "Company"), are not immediately available; or
- (b) the procedure for book-entry transfer (set forth under "The Exchange Offer--Procedures for Tendering Shares" in the Offering Circular dated December 23, 1999 (the "Offering Circular")) cannot be followed on a timely basis; or
- (c) time will not permit the Letter of Transmittal and all other required documents to be delivered to the exchange agent for the Exchange Offer (the "Exchange Agent") before the Expiration Date (as defined in the Offering Circular).

This form, properly completed and duly executed, may be delivered by hand, mail or facsimile transmission to the Exchange Agent. See "The Exchange Offer -- Procedures for Tendering Shares" in the Offering Circular.

TO: NORWEST BANK MINNESOTA, N.A., EXCHANGE AGENT

BY MAIL:  
NORWEST BANK MINNESOTA, N.A.  
P.O. BOX 64858  
ST. PAUL, MINNESOTA 55164-0858  
ATTENTION: REORGANIZATION DEPARTMENT

BY HAND OR OVERNIGHT COURIER:  
NORWEST BANK MINNESOTA, N.A.  
161 NORTH CONCORD EXCHANGE STREET  
SOUTH ST. PAUL, MINNESOTA 55075-1139  
ATTENTION: REORGANIZATION DEPARTMENT

FACSIMILE TRANSMISSION:  
(FOR ELIGIBLE INSTITUTIONS ONLY)

(651) 450-4163

TO CONFIRM RECEIPT OF  
NOTICE OF GUARANTEED DELIVERY:

(651) 450-4110

DELIVERY OF THIS INSTRUMENT TO AN ADDRESS OTHER THAN AS SET FORTH ABOVE OR TRANSMISSION OF INSTRUCTIONS TO A FACSIMILE NUMBER OTHER THAN THE ONES LISTED ABOVE WILL NOT CONSTITUTE A VALID DELIVERY.

This form is not to be used to guarantee signatures. If a signature on a Letter of Transmittal is required to be guaranteed by an "Eligible Institution" (as defined in the Offering Circular) under the instructions thereto, such signature guarantee must appear in the applicable space provided in the signature box on the Letter of Transmittal.



Ladies and Gentlemen:

I hereby tender to the Company and Chemed Capital Trust, upon the terms and subject to the conditions set forth in the Offering Circular and the related Letter of Transmittal (which together constitute the "Exchange Offer"), receipt of which I hereby acknowledge, Shares pursuant to the guaranteed delivery procedure set forth under "The Exchange Offer--Procedures for Tendering Shares" in the Offering Circular.

No. of Shares tendered:

-----  
Certificate Nos.(if available):

-----  
If Shares will be delivered by book-entry transfer:

Name of Tendering Institution:  
-----

Account No. at the Book-Entry Transfer Facility:  
-----

SIGN HERE

-----  
(Signature(s))

-----  
(Signature(s))

-----  
(Name(s)) (Please Print)

-----  
(Address)

-----  
(Zip Code)

-----  
(Area Code and Telephone No.)

ODD-LOTS

This section is to be completed ONLY if Shares are being tendered by or on behalf of a person owning beneficially and of record an aggregate of fewer than 100 Shares.

Check one:

- I am the owner beneficially and of record of fewer than 100 Shares in the aggregate, all of which are being tendered, or
- I am a broker, dealer, commercial bank, trust company or other nominee who (1) is tendering for the beneficial owners thereof, Shares with respect to which I am the record owner, and (2) believe, based upon representations made to me by each such beneficial owner, that such owner owns beneficially and of record fewer than 100 Shares, and is tendering all such Shares.

GUARANTEE  
(Not to be used for signature guarantee)

The undersigned, an "Eligible Institution," guarantees that (a) the above named person(s) "own(s)" the Shares tendered hereby within the meaning of Rule 14e-4 under the Securities Exchange Act of 1934, as amended, (b) such tender of Shares complies with Rule 14e-4 and (c) the Exchange Agent will receive either the certificates representing the Shares tendered hereby, in proper form for transfer, or confirmation of the book-entry transfer of such Shares into the Exchange Agent's account at the Book-Entry Transfer Facility, in any such case together with a properly completed and duly executed Letter of Transmittal (or a facsimile thereof), with any required signature guarantees, or an Agent's Message (as defined in the Offering Circular in the case of a book-entry delivery), and any other required documents, all within three New York Stock Exchange trading days after the date of execution of this notice.

Name of Firm:

Address:

-----  
Authorized Signature

-----  
Zip Code

Name:

Area Code and  
Telephone No:

-----  
Please Print

Title:

-----  
Dated:

DO NOT SEND SHARE CERTIFICATES WITH THIS FORM. YOUR SHARE CERTIFICATES MUST BE SENT WITH THE LETTER OF TRANSMITTAL.

CONTACT: Timothy S. O'Toole  
(513) 762-6702

FOR IMMEDIATE RELEASE

Chemed Announces Offer to Exchange  
Convertible Trust Preferred Securities  
for Up to Two Million Common Shares

CINCINNATI, December 23, 1999--Chemed Corporation (NYSE:CHE) today announced the commencement of an exchange offer whereby Convertible Trust Preferred Securities will be offered to Chemed's common shareholders in exchange for up to two million outstanding common shares. The offering documents relating to the exchange offer are being mailed to shareholders today. The exchange offer is scheduled to expire at midnight on January 24, 2000.

The preferred securities will be exchanged for Chemed common shares on a one-to-one ratio and will have a liquidation value of \$27.00 per preferred security. The preferred securities will be convertible, at the option of holders, into Chemed common shares at a conversion price equivalent to \$37.00 per common share. Each preferred security will have an annual cash distribution of \$2.00, which is payable quarterly. The offering circular and ancillary documents contain numerous additional important terms relating to the preferred securities and the exchange offer.

On November 3, 1999, the new Chemed dividend policy was announced for the Year 2000 and beyond. Under the new dividend policy, quarterly dividends

- more -

beginning with the March 2000 quarter are expected to be in the range of 10 cents per common share, down from the current rate of 53 cents.

Commenting on the plan, Chemed Chairman and Chief Executive Officer Edward L. Hutton said, "We look forward to completing the exchange offer. With Chemed's new dividend policy, the company is solidifying its position as a growth company and is increasing its commitment to an already-successful growth strategy. At the same time, the new preferred security gives our current yield-oriented stockholders an opportunity to maintain a high-yielding security, along with an appropriate participation in the upside potential of our various businesses."

The information agent for the offer is D. F. King & Co., Inc. (telephone: 800-848-2998). Additional copies of the offering documents, if required, may be obtained from D. F. King. The exchange agent is Norwest Bank Minnesota, N. A.

Chemed Corporation ([www.chemed.com](http://www.chemed.com)), headquartered in Cincinnati, is a New York Stock Exchange-listed corporation with strategic positions in plumbing and drain cleaning; home healthcare services; and residential appliance and air-conditioning repair.

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CHEMED CORPORATION  
CHEMED CAPITAL TRUST

## OFFER TO EXCHANGE

CHEMED CAPITAL TRUST CONVERTIBLE TRUST PREFERRED SECURITIES  
FOR UP TO 2,000,000 OUTSTANDING SHARES OF  
CAPITAL STOCK OF CHEMED CORPORATION

To Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees:

Chemed Corporation, a Delaware corporation (the "Company"), and Chemed Capital Trust, a Delaware statutory business trust (the "Trust"), are offering to exchange Convertible Trust Preferred Securities representing preferred undivided beneficial interests in the assets of the Trust (the "Preferred Securities"), for up to 2,000,000 of the outstanding shares (the "Shares") of Capital Stock, par value \$1 per share (the "Capital Stock"), of the Company, upon the terms and subject to the conditions set forth in the Offering Circular dated December 23, 1999 (the "Offering Circular"), and in the related Letter of Transmittal (which together constitute the "Exchange Offer"). Shares not accepted for exchange because of proration will be returned. The Company and the Trust enclose herewith the materials listed below relating to the Exchange Offer.

THE EXCHANGE OFFER IS SUBJECT TO CERTAIN CONDITIONS. SEE "THE EXCHANGE OFFER--CERTAIN CONDITIONS OF THE EXCHANGE OFFER" IN THE OFFERING CIRCULAR.

For your information and for forwarding to your clients for whom you hold Shares registered in your name or in the name of your nominee, we are enclosing the following documents:

- (1) Offering Circular dated December 23, 1999;
- (2) Letter of Transmittal for your use and for the information of your clients, together with Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9 providing information relating to backup federal income tax withholding;
- (3) Notice of Guaranteed Delivery to be used to accept the Exchange Offer if certificates for Shares are not immediately available (or the procedure for book-entry transfer cannot be followed on a timely basis) or time will not permit the Letter of Transmittal and all other required documents to reach the exchange agent for the Exchange Offer (the "Exchange Agent") before the Expiration Date (as defined in the Offering Circular);
- (4) Letter to Clients which may be sent to your clients for whose accounts you hold Shares registered in your name (or in the name of your nominee), with space provided for obtaining such clients' instructions with regard to the Exchange Offer; and
- (5) Return envelope addressed to Norwest Bank Minnesota, N.A., the Exchange Agent.

PLEASE BRING THE EXCHANGE OFFER TO THE ATTENTION OF YOUR CLIENTS AS PROMPTLY AS POSSIBLE. THE EXCHANGE OFFER, THE PRORATION PERIOD AND WITHDRAWAL RIGHTS WILL EXPIRE AT 12:00 MIDNIGHT, NEW YORK CITY TIME, ON MONDAY, JANUARY 24, 2000, UNLESS THE EXCHANGE OFFER IS EXTENDED.

NONE OF THE COMPANY, THE BOARD OF DIRECTORS OF THE COMPANY, THE TRUST NOR THE ISSUER TRUSTEES (AS DEFINED IN THE OFFERING CIRCULAR) MAKES ANY RECOMMENDATION AS TO WHETHER ANY HOLDER OF CAPITAL STOCK SHOULD TENDER ANY OR ALL OF SUCH HOLDER'S SHARES PURSUANT TO THE EXCHANGE OFFER. EACH HOLDER OF CAPITAL STOCK MUST MAKE SUCH HOLDER'S OWN DECISION WHETHER OR NOT TO TENDER SHARES AND, IF SO, HOW MANY SHARES TO TENDER. AS OF THE DATE OF THIS OFFERING CIRCULAR, EXECUTIVE OFFICERS AND DIRECTORS OF THE COMPANY DO NOT INTEND TO TENDER SHARES IN THE EXCHANGE OFFER.

No fees or commissions will be payable to brokers, dealers or other persons for soliciting tenders of Shares pursuant to the Exchange Offer. The Company and the Trust will, however, upon request, reimburse you for customary mailing and handling expenses incurred by you in forwarding any of the enclosed materials to your clients. The Company and the Trust will pay any stock transfer taxes with respect to the transfer and sale of Shares to the Company and the Trust or their order pursuant to the Exchange Offer, except as otherwise provided in Instruction 6 of the Letter of Transmittal.

In order to take advantage of the Exchange Offer, a duly executed and properly completed Letter of Transmittal and any other required documents should be sent to the Exchange Agent with either certificate(s) representing the tendered Shares or confirmation of their book-entry transfer, all in accordance with the instructions set forth in the Letter of Transmittal and the Offering Circular.

As described under "The Exchange Offer--Procedures for Tendering Shares" in the Offering Circular, tenders may be made even though certificates are not immediately available (or the procedure for book-entry transfer cannot be followed on a timely basis) or time will not permit the Letter of Transmittal and all other required documents to reach the Exchange Agent before the Expiration Date, if such tenders are made by or through an "Eligible Institution" (as defined in the Offering Circular). Certificates for Shares so tendered in proper form for transfer (or a confirmation of a book-entry transfer of such Shares into the Exchange Agent's account at the "Book-Entry Transfer Facility" described in the Offering Circular), together with a properly completed and duly executed Letter of Transmittal (or a facsimile thereof), with any required signature guarantees, or an Agent's Message (as defined in the Offering Circular) in the case of a book-entry delivery, and any other documents required by the Letter of Transmittal, must be received by the Exchange Agent within three New York Stock Exchange trading days after the date of execution of a properly completed and duly executed Notice of Guaranteed Delivery.

Any questions you have or requests for additional copies of the enclosed material may be directed to the Information Agent at its addresses and telephone numbers set forth on the back cover of the enclosed Offering Circular.

Very truly yours,

Chemed Corporation  
Chemed Capital Trust

NOTHING CONTAINED HEREIN OR IN THE ENCLOSED DOCUMENTS SHALL CONSTITUTE YOU OR ANY OTHER PERSON THE AGENT OF THE COMPANY, THE TRUST, THE EXCHANGE AGENT OR THE INFORMATION AGENT OR AUTHORIZE YOU OR ANY OTHER PERSON TO MAKE ANY STATEMENTS OR USE ANY MATERIAL ON BEHALF OF ANY OF THEM WITH RESPECT TO THE EXCHANGE OFFER, OTHER THAN THE MATERIAL ENCLOSED HERewith AND THE STATEMENTS SPECIFICALLY CONTAINED IN SUCH MATERIAL.

CHEMED CORPORATION  
CHEMED CAPITAL TRUST

## OFFER TO EXCHANGE

CONVERTIBLE TRUST PREFERRED SECURITIES OF CHEMED CAPITAL TRUST  
FOR UP TO 2,000,000 OUTSTANDING SHARES OF  
CAPITAL STOCK OF CHEMED CORPORATION

To Our Clients:

Enclosed for your consideration are the Offering Circular dated December 23, 1999 (the "Offering Circular"), and the related Letter of Transmittal (which together constitute the "Exchange Offer") in connection with the offer by Chemed Corporation, a Delaware corporation (the "Company"), and Chemed Capital Trust, a Delaware statutory business trust (the "Trust"), to exchange Convertible Trust Preferred Securities representing preferred undivided beneficial interests in the assets of the Trust (the "Preferred Securities"), for up to 2,000,000 of the outstanding shares (the "Shares") of Capital Stock, par value \$1 per share (the "Capital Stock"), of the Company, upon the terms and subject to the conditions of the Exchange Offer. In connection with the Exchange Offer, the Company will deposit in the Trust as trust assets its Convertible Junior Subordinated Debentures due 2030 as set forth in the Offering Circular.

Pursuant to the Exchange Offer, exchanges will be made on the basis of one Preferred Security for each Share validly tendered and accepted for exchange in the Exchange Offer. Shares not accepted for exchange because of proration will be returned.

The Company and the Trust will accept for exchange up to 2,000,000 Shares validly tendered and not withdrawn, upon the terms and subject to the conditions of the Exchange Offer, including the provisions thereof relating to proration described in the Offering Circular.

We are the holder of record of Shares held for your account. As such, we are the only ones who can tender your Shares, and then only pursuant to your instructions. THE LETTER OF TRANSMITTAL IS FOR YOUR INFORMATION ONLY AND CANNOT BE USED BY YOU TO TENDER SHARES WE HOLD FOR YOUR ACCOUNT.

Please instruct us as to whether you wish us to tender any of or all the Shares we hold for your account upon the terms and subject to the conditions of the Exchange Offer.

We call your attention to the following:

1. You may tender any portion of or all your Shares.
2. The Exchange Offer is subject to certain conditions. See "The Exchange Offer-- Conditions to the Exchange Offer" in the Offering Circular.
3. The Exchange Offer, the proration period and withdrawal rights will expire at 12:00 midnight, New York City time, on Monday, January 24, 2000, unless the Exchange Offer is extended.
4. The Trust and the Company expressly reserve the right, in their sole discretion, subject to applicable law, to (i) terminate the Exchange Offer, and not accept for exchange any Shares and promptly return all Shares upon the failure of any of the conditions specified in "The Exchange Offer--Conditions to the Exchange Offer" in the Offering Circular, (ii) waive any condition to the Exchange Offer and accept Shares previously tendered pursuant to the Exchange Offer, (iii) extend the Expiration Date (as defined in the Offering Circular) of the Exchange Offer and retain all Shares tendered pursuant to such Exchange Offer until the Expiration Date, subject, however, to all withdrawal rights of holders, (iv) amend the terms of the Exchange Offer, (v) modify the form of the consideration to be paid pursuant to the Exchange Offer or (vi) not accept for exchange the Shares at any time on or prior to the Expiration Date, for any reason. Any amendment applicable to the Exchange Offer will apply to all Shares tendered pursuant to the Exchange Offer. During any extension of the Exchange Offer, all Shares previously tendered pursuant to the Exchange Offer and not withdrawn will remain subject to the Exchange Offer.

5. Tendering holders will not be obligated to pay any brokerage commissions, solicitation fees, or, subject to Instruction 6 of the Letter of Transmittal, any stock transfer taxes with respect to the transfer of Shares to the Company and the Trust pursuant to the Exchange Offer.

If you wish to have us tender any of or all your Shares, please so instruct us by completing, executing and returning to us the attached instruction form. An envelope to return your instruction form to us is enclosed. If you authorize us to tender your Shares, we will tender all such Shares unless you specify otherwise on the instruction form.

YOUR INSTRUCTIONS SHOULD BE FORWARDED TO US IN AMPLE TIME TO PERMIT US TO SUBMIT A TENDER ON YOUR BEHALF BEFORE THE EXPIRATION DATE. THE EXCHANGE OFFER, THE PRORATION PERIOD AND WITHDRAWAL RIGHTS WILL EXPIRE AT 12:00 MIDNIGHT, NEW YORK CITY TIME, ON MONDAY, JANUARY 24, 2000, UNLESS THE EXCHANGE OFFER IS EXTENDED.

THE EXCHANGE OFFER IS NOT BEING MADE TO, NOR WILL THE COMPANY AND THE TRUST ACCEPT TENDERS FROM OR ON BEHALF OF, OWNERS OF SHARES RESIDING IN ANY JURISDICTION IN WHICH THE MAKING OF THE EXCHANGE OFFER OR ITS ACCEPTANCE WOULD NOT BE IN COMPLIANCE WITH THE LAWS OF SUCH JURISDICTION.



INSTRUCTIONS  
WITH RESPECT TO THE

OFFER TO EXCHANGE CONVERTIBLE TRUST PREFERRED SECURITIES OF CHEMED CAPITAL TRUST

FOR UP TO 2,000,000 OUTSTANDING SHARES OF  
CAPITAL STOCK OF CHEMED CORPORATION

The undersigned acknowledge(s) receipt of your letter and the enclosed Offering Circular dated December 23, 1999 and the related Letter of Transmittal (which together constitute the "Exchange Offer"), in connection with the offer by Chemed Corporation, a Delaware corporation (the "Company"), and Chemed Capital Trust, a Delaware statutory business trust (the "Trust"), to exchange Convertible Trust Preferred Securities representing preferred undivided beneficial interests in the assets of the Trust, for up to 2,000,000 of the outstanding shares (the "Shares") of Capital Stock, par value \$1 per share, of the Company.

The undersigned hereby instruct(s) you to tender to the Company and the Trust the number of Shares indicated below or, if no number is indicated, all Shares you hold for the account of the undersigned, upon the terms and subject to the conditions of the Exchange Offer.

AGGREGATE NUMBER OF SHARES TO BE TENDERED BY YOU FOR THE ACCOUNT OF THE UNDERSIGNED:\*

\_\_\_\_\_ SHARES

\*Unless otherwise indicated, all the Shares held for the account of the undersigned will be tendered.

SIGNATURE BOX

Signature(s)

-----

Dated \_\_\_\_\_

Name(s) and Address(es) \_\_\_\_\_  
(Please Print)

-----

-----

Area Code and Telephone Number \_\_\_\_\_

Taxpayer Identification or  
Social Security Number \_\_\_\_\_

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM T-1

STATEMENT OF ELIGIBILITY  
UNDER THE TRUST INDENTURE ACT OF 1939  
OF A CORPORATION DESIGNATED TO ACT AS TRUSTEE  
PURSUANT TO SECTION 305(b) (2) / X /

FIRSTAR BANK, NATIONAL ASSOCIATION  
(Exact name of trustee as specified in its charter)  
A National Banking Association 31-0841368  
(IRS Employer Identification No.)

425 Walnut Street  
Cincinnati, Ohio 45202  
(Address of Principal Executive Offices) (Zip Code)

KEITH A. MAURMEIER  
VICE PRESIDENT AND TRUST OFFICER  
Firststar Bank, National Association  
425 Walnut Street  
Cincinnati, Ohio 45202  
(513) 632-4843  
(Name, address, and telephone number of agent for services)

CHEMED CORPORATION  
CHEMED CAPITAL TRUST

(Exact name of obligor as specified in its charter)

DELAWARE 31-0791746  
(State of Incorporation) (IRS Employer Identification No.)

2600 CHEMED CENTER, 225 EAST FIFTH STREET, CINCINNATI, OH 45202-4726  
(Address of principal executive offices) (Zip Code)

JUNIOR SUBORDINATED DEBENTURES OF CHEMED CORPORATION  
CONVERTIBLE TRUST PREFERRED SECURITIES OF CHEMED CAPITAL TRUST  
GUARANTEE OF CONVERTIBLE TRUST PREFERRED SECURITIES OF CHEMED CAPITAL TRUST

(Title of the Indenture securities)

1. General Information.           Furnish the following information as Trustee --
  - (a) Name and address of each examining or supervising authority to which it is subject.  
      COMPTRROLLER OF THE CURRENCY, WASHINGTON, D.C.  
      FEDERAL RESERVE BANK OF CLEVELAND, OHIO  
      FEDERAL DEPOSIT INSURANCE CORPORATION, WASHINGTON, D.C.
  - (b) Whether it is authorized to exercise corporate trust powers.  
      THE TRUSTEE IS AUTHORIZED TO EXERCISE CORPORATE TRUST POWERS.
2. Affiliations with obligor.       If the obligor is an affiliate of the trustee, describe each such affiliation.  
  
      THE OBLIGOR IS NOT AN AFFILIATE OF THE TRUSTEE (INCLUDING ITS PARENT AND ANY AFFILIATES).
- 3.- 15. N/A
16. List of Exhibits. List below all exhibits filed as part of this statement of eligibility.
  1. Office of the Comptroller of the Currency Amendment Letter
  2. A copy of the Articles of Association of Firststar Bank, National Association, as now in effect
  3. A copy of the certificate of authority of The First National Bank of Cincinnati (now Firststar Bank, National Association) to commence business dated September 1, 1922.
  4. A copy of the authorization of The First National Bank of Cincinnati (now Firststar Bank, National Association) to exercise corporate trust powers.
  5. A copy of existing By-Laws to Star Bank, National Association (now Firststar Bank, National Association)
  6. The consent of the Trustee required by section 321 (b) of the Trust Indenture Act of 1939.
  7. A copy of the latest report of condition of Firststar Bank, National

Association, published pursuant to law or the requirements of its supervising or examining authority.

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, the Trustee, Firststar Bank, National Association, a national banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Cincinnati and State of Ohio on the 21ST DAY OF DECEMBER, 1999.

FIRSTSTAR BANK, NATIONAL ASSOCIATION

By: /S/ KEITH A. Maurmeier  
-----  
KEITH A. MAURMEIER  
VICE PRESIDENT & TRUST OFFICER

Comptroller of the Currency  
Administrator of National Banks

Central District Office  
One Financial Place, Suite 2700  
440 South LaSalle Street  
Chicago, Illinois 60605

February 11, 1999

Mr. Richard J. Hidy  
Vice president and  
Deputy General Counsel  
StarBanc Corporation  
425 Walnut Street  
P.O. Box 1038, ML 9140  
Cincinnati, OH 45201-1038

Dear Mr. Hidy:

The Office of the Comptroller of the Currency has received your letter concerning the title change and the appropriate amendment to the bank's articles of association. The Office has recorded that as of FEBRUARY 12, 1999, the title of STAR BANK, NATIONAL ASSOCIATION, CINCINNATI, OHIO, Charter No. 24, was changed to "FIRSTAR BANK, NATIONAL ASSOCIATION."

As a result of the Garn-St. Germain Depository Institutions Act of 1982, the OCC is no longer responsible for the approval of national bank name changes nor does it maintain official records on the use of alternate titles. The use of other titles or the retention of the rights to any previously used title is the responsibility of the bank's board of directors. Legal counsel should be consulted to determine whether or not the new title, or any previously used title, could be challenged by competing institutions under the provisions of federal and state law.

Sincerely,

/S/ David J. Rogers

-----  
National Bank Examiner

## FIRSTSTAR BANK, NATIONAL ASSOCIATION

## CHARTER NO. 24

## ARTICLES OF ASSOCIATION

FIRST: The title of this Association shall be "Firststar Bank, National Association".

SECOND: The main office of the Association shall be in the city of Cincinnati, County of Hamilton, State of Ohio. The general business of the Association shall be conducted at its main office and its branches.

THIRD: The Board of Directors of this Association shall consist of not less than five (5) nor more than twenty-five (25) shareholders, the exact number of Directors within such minimum and maximum limits to be fixed and determined from time to time by resolution of a majority of the full Board of Directors or by resolution of the shareholders at any annual or special meeting thereof. Unless otherwise provided by the laws of the United States, any vacancy in the Board of Directors for any reason, including an increase in the number thereof, may be filled by action of the Board of Directors.

FOURTH: The annual meeting of the shareholders for the election of Directors and the transaction of whatever other business may be brought before said meeting shall be held at the main office or such other place as the Board of Directors may designate, on the day of each year specified thereof by the Bylaws, but if no election is held on that day, it may be held on any subsequent day according to the provisions of law; and all elections shall be held according to the provisions of law; and all elections shall be held according to such lawful regulations as may be prescribed by the Board of Directors.

FIFTH: The authorized amount of capital stock of this Association shall be 3,640,000 shares of common stock of the par value of five dollars (\$5.00) each, but said capital stock may be increased or decreased from time to time, in accordance with the provisions of the laws of the United States.

No holder of shares of the capital stock of any class of the Association shall have any pre-emptive or preferential right of subscription to any shares of any class of stock of the Association, whether now or hereafter authorized, or to any obligations convertible into stock of the Association issued or sold, nor any right of subscription to any thereof other than such, if any, as the Board of Directors, in its discretion, may from time to time determine and at such price as the Board of Directors may from time to time fix.

The Association, at any time and from time to time, may authorize and issue debt obligations,

whether or not subordinated, without the approval of the shareholders.

SIXTH: The Board of Directors shall appoint one of its members President of this Association, who shall be Chairman of the Board, unless the Board appoints another Director to be the Chairman. The Board of Directors shall have the power to appoint one or more Vice Presidents; and to appoint a Cashier and such other officers and employees as may be required to transact the business of this Association. The Board of Directors shall have the power to define the duties of the officers and employees of the Association; to fix the salaries to be paid to them; to dismiss them; to require bonds from them and to fix the penalty thereof; to regulate the manner in which any increase of the capital of the Association shall be made; to manage and administer the business and affairs of the Association; to make all bylaws that it may be lawful for them to make and generally to do and perform all acts that it may be legal for a Board of Directors to do and perform.

SEVENTH: The Board of Directors, without need for approval of shareholders, shall have the power to change the location of the main office of this Association, subject to such limitations as from time to time may be provided by law; and shall have the power to establish or change the location of any branch or branches of the Association to any other location, without the approval of the shareholders, but subject to the approval of the Comptroller of the Currency.

EIGHTH: The corporate existence of this Association shall continue until terminated in accordance with the laws of the United States.

NINTH: The Board of Directors of this Association, the Chairman of the Board, the President, or any three or more shareholders owning, in the aggregate, not less than twenty-five percent of the stock of this Association, may call a special meeting of shareholders at any time. Unless otherwise provided by the laws of the United States, a notice of the time, place, and purpose of every annual and special meeting of the shareholders shall be given by first-class mail, postage prepaid, mailed at least ten days prior to the date of such meeting to each shareholder of record at his address as shown upon the books of this Association.

TENTH: Any person, his heirs, executors, or administrators, may be indemnified or reimbursed by the Association for reasonable expenses actually incurred in connection with any action, suit, or proceeding, civil or criminal, to which he or they shall be made a party by reason of his being or having been a director, officer, or employee of the Association or of any firm, corporation, or organization which he served in any such capacity at the request of the Association. Provided, however, that no person shall be so indemnified or reimbursed in relation to any matter in such action, suit, or proceeding as to which he shall finally be adjudged to have been guilty of or liable for gross negligence, willful misconduct or criminal acts in the performance of his duties to the Association. And, provided further, that no person shall be so indemnified or reimbursed in relation to any matter in such action, suit, or proceeding which has been made the subject of a compromise settlement except with the approval of a court of competent jurisdiction, or the holders of record of a majority of the outstanding shares of the Association, or the Board of Directors, acting by vote of Directors not parties to the same or substantially the same action, suit or proceeding, constituting a majority of the whole number of Directors. And, provided further, that no director, officer or employee shall be so indemnified or reimbursed for expenses,

penalties or other payments incurred in an administrative proceeding or action instituted by an appropriate bank regulatory agency where said proceeding or action results in a final order TENTH (continued) assessing civil money penalties or requiring affirmative action by an individual or individuals in the form of payments to this Association. The foregoing right of indemnification shall not be exclusive of other rights to which such person, his heirs, executors, or administrators, may be entitled as a matter of law. The Association may, upon the affirmative vote of a majority of its Board of Directors, purchase insurance for the purpose of indemnifying its directors, officers and other employees to the extent that such indemnification is allowed in the preceding paragraph. Such insurance may, but need not, be for the benefit of all directors, officers, or employees.

ELEVENTH: These Articles of Association may be amended at any regular or special meeting of the shareholders by the affirmative vote of the holders of a majority of the stock of this Association, unless the vote of the holders of a greater amount of stock is required by law and in that case by the vote of the holders of such greater amount.



COPY OF THE CERTIFICATE OF AUTHORITY OF THE TRUSTEE TO COMMENCE  
BUSINESS:

NO. 24

E Pluribus Unum

TREASURY DEPARTMENT

Office of Comptroller of the Currency

Washington, D.C., September 1, 1992

WHEREAS, the Act of Congress of the United States, entitled, "An Act to amend section 5136, Revised Statutes of the United States, relating to corporate powers of associations, so as to provide succession thereof for a period of ninety-nine years or until dissolved, and to apply said section as so amended to all national banking association", approved by the President on July 1, 1922, provided that all national banking associations organized and operating under any law of the United States on July 1, 1922 should have succession until ninety-nine years from that date, unless such association should be sooner dissolved by the act of its shareholders owning two-thirds of its stock, or unless its franchise should become forfeited by reason of violation of law, or unless it should be terminated by an Act of Congress hereinafter enacted;

NOW THEREFORE, I, D. R. Crissinger Comptroller of the Currency, do hereby certify that The First National Bank of Cincinnati and State of Ohio, was organized and operating under the laws of the United States on July 1, 1922, and that its corporate existence was extended for the period of ninety-nine years from that date in accordance with and subject to the condition in the Act of Congress hereinbefore recited.

(SEAL)

IN TESTIMONY WHEREOF, witness my hand  
& seal of office this first day of  
September, 1922

(Signed) D. R. Crissinger  
Comptroller of the Currency

## THE AUTHORIZATION OF THE TRUSTEE TO EXERCISE CORPORATE TRUST POWERS:

FEDERAL RESERVE BOARD  
Washington, D.C.

October 9, 1919

Pursuant to authority vested in the Federal Reserve Board by the Act of Congress approved December 23, 1913, known as the Federal Reserve Act, as amended by the Act of September 26, 1918, the

## FIRST NATIONAL BANK OF CINCINNATI

has been granted the right to act, when not in contravention of State or local law, as TRUSTEE, EXECUTOR, ADMINISTRATOR, REGISTRAR OF STOCKS AND BONDS, GUARDIAN OF ESTATES, ASSIGNEE, RECEIVER OR IN ANY OTHER FIDUCIARY CAPACITY IN WHICH STATE BANKS, TRUST COMPANIES OR OTHER CORPORATIONS WHICH COME INTO COMPETITION WITH NATIONAL BANKS ARE PERMITTED TO ACT UNDER THE LAWS OF THE STATE OF OHIO. The exercise of such rights shall be subject to regulations prescribed by the Federal Reserve Board.

Federal Reserve Board,

By W. P. G. Harding  
Governor.

ATTEST:  
W. T. Chapman  
Secretary.

STATE OF OHIO  
DEPARTMENT OF BANKS AND BANKING  
Certificate of Authority No. 17  
NATIONAL BANKS

I, Philip C. Berg, Superintendent of Banks, do hereby certify that the First National Bank of Cincinnati, Hamilton County, Ohio has complied with all the requirements provided by law and is authorized to transact the business of a trust company and to perform all the functions granted to such companies by the laws of this state.

Given under my hand and official Seal at Columbus,  
Ohio, this twenty-fifth day of November, A.D. 1919

Philip C. Berg,  
Superintendent of Banks.

(SEAL)

## BY-LAWS

STAR BANK, N.A.

## ARTICLE I

## MEETINGS OF SHAREHOLDERS

## SECTION 1. ANNUAL MEETING

The annual meeting of shareholders shall be held in the main banking house of the Association at 11:00 a.m. on the second Tuesday in February of each year. Notice of such meeting shall be mailed to shareholders not less than ten (10) nor more than sixty (60) days prior to the meeting date.

## SECTION 2. SPECIAL MEETINGS

Special meetings of shareholders may be called and held at such times and upon such notice as is specified in the Articles of Association.

## SECTION 3. QUORUM

A majority of the outstanding capital stock represented in person or by proxy shall constitute a quorum of any meeting of the shareholders, unless otherwise provided by law, but less than a quorum may adjourn any meeting, from time to time, and the meeting may be held as adjourned without further notice.

## SECTION 4. INSPECTORS

The Board of Directors may, and in the event of its failure so to do, the Chairman of the Board shall appoint Inspectors of Election who shall determine the presence of a quorum, the validity of proxies, and the results of all elections and all other matters voted upon by shareholders at all annual and special meetings of shareholders.

## SECTION 5. VOTING

In deciding on questions at meetings of shareholders, except in the election of directors, each shareholder shall be entitled to one vote for each share of stock held. A majority of votes cast shall decide each matter submitted to the shareholders, except where by law a larger vote is required. In all elections of directors, each shareholder shall have the right to vote the number of shares owned by him for as many persons as there are directors to be elected, or to cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number of his shares equal, or to distribute them on the same principle among as many candidates as he shall think fit.

## SECTION 6. WAIVER AND CONSENT

The shareholders may act without notice and/or a meeting by a unanimous written consent by all shareholders.

## ARTICLE II

## SECTION 1. TERM OF OFFICE

The directors of this Association shall hold office for one year and until their successors are duly elected and qualified.

## SECTION 2. REGULAR MEETINGS

The organization meeting of the Board of Directors shall be held as soon as practical following the annual meeting of shareholders at the main banking house. Other regular meetings of the Board of Directors shall be held without notice at 11:00 a.m. on the second Tuesday of each month except February, at the main banking house, or, provided notice is given by telegram, letter, telephone or in person to every Director, at such time and place as may be designated in the notice of the meeting. When any regular meeting of the Board falls on a holiday, the meeting shall be held on the next banking business day, unless the Board shall designate some other day.

## SECTION 3. SPECIAL MEETINGS

Special meetings of the Board of Directors may be called by the Chairman of the Board of the Association, or at the request of three or more Directors. Notice of the time, place and purposes of such meetings shall be given by telegram, letter, telephone or in person to every Director.

## SECTION 4. QUORUM

A majority of the entire membership of the Board shall constitute a quorum at any meeting of the Board.

## SECTION 5. NECESSARY VOTE

A majority of those Directors present and voting at any meeting of the Board of Directors shall decide each matter considered, except where otherwise required by law or the Articles or By-Laws of this Association.

## SECTION 6. COMPENSATION

Directors, excluding full-time employees of the Bank, shall receive such reasonable compensation as may be fixed from time to time by the Board of Directors.

## SECTION 7. ELECTION-AGE LIMITATION

No person shall be elected or reelected a Director after reaching his seventieth (70th) birthday, provided that any person who is a Director on December 10, 1985, may continue to be reelected

## SECTION 7. ELECTION-AGE LIMITATION (continued)

a Director until he reaches his seventy-fifth (75th) birthday.

## SECTION 8 RETIREMENT-AGE LIMITATION

Every Director of the Bank shall retire no later than the first month next following his seventieth (70th) birthday, except for any person who was a Director on December 10, 1985, who shall retire not later than the first of the next month following his seventy-fifth (75th) birthday.

## SECTION 9 DIRECTORS EMERITUS

The Board shall have the right from time to time to choose as Directors Emeritus persons who have had prior service as members of the Board and who may receive such compensation as shall be fixed from time to time by the Board of Directors.

## ARTICLE III

## OFFICERS

## SECTION 1 WHO SHALL CONSTITUTE

The Officers of the Association shall be a Chairman of the Board, a President, a Secretary, and other officers such as Chairman of the Executive Committee, Vice Chairman of the Board, Executive Vice Presidents, Senior Vice Presidents, Vice Presidents, Assistant Secretaries, Trust Officers, Trust Investment Officers, Trust Real Estate Officers, Assistant Trust Officers, a Controller, Assistant Controller, an Auditor and Assistant Auditors, as the Board may appoint from time to time. Any person may hold two offices. The Chairman of the Board, all Vice Chairmen of the Board and the President shall at all times be members of the Board of Directors.

## SECTION 2 TERM OF OFFICE

All officers shall be elected for and shall hold office for one year and until their successors are elected and qualified, subject to the right in the Board of Directors by a majority vote of the entire membership to discharge any officer at any time.

## SECTION 3. CHAIRMAN OF THE BOARD

The Chairman of the Board shall have general executive powers and duties and shall perform such other duties as may be assigned from time to time by the Board of Directors. In addition, unless the Board of Directors shall have designated the President to be the Chief Executive Officer, the Chairman of the Board shall be the Chairman Executive Officer and shall have all the powers and duties of the Chief Executive Officer. He shall, when present, preside at all meetings of shareholders and directors and shall be ex officio a member of all committees of the Board. He shall name all members of the committees of the Board, subject to the confirmation thereof by the Board.

## SECTION 3. CHAIRMAN OF THE BOARD (continued)

If he is Chief Executive Officer, in the event that there is a vacancy in the position of President or in the event of the absence or incapacity of the President, the Chairman may appoint, or in the event of his failure to do so, the Board of Directors or the Executive Committee thereof may designate any Vice Chairman of the Board, any Executive Vice President or any Senior Vice President of the Association temporarily to exercise the powers and perform the duties of the Chairman as Chief Executive Officer when the Chairman is absent or incapacitated.

If the President has been designated Chief Executive Officer by the Board of Directors, in the event that there is a vacancy in the position of the President or in the event of the absence or incapacity of the President, the Chairman shall be the Chief Executive Officer of the Association and shall have all the powers and perform all the duties of the President, including the powers to name temporarily a Chief Executive Officer to serve in the absence of the Chairman.

## SECTION 4 PRESIDENT

The President shall have general executive powers and duties and shall perform such other duties as may be assigned from time to time by the Board of Directors. In addition, if designated by the Board of Directors, the President shall be the Chief Executive Officer and shall have all the powers and duties of the Chief Executive Officer, including the same power to name temporarily a Chief Executive Officer to serve in the absence of the president if there is a vacancy in the position of the Chairman or in the event of the absence or incapacity of the Chairman.

If the Chairman has been designated Chief Executive Officer by the Board of Directors, in the event that there is a vacancy in the position of the Chairman of the Board or in the event of the absence or incapacity of the Chairman of the Board, the President shall be the Chief Executive Officer of the Association and shall have all the powers and perform all the duties of the Chairman of the Board, including the same power to name temporarily a Chief Executive Officer to serve in the absence of the President.

## SECTION 5 CHAIRMAN OF THE EXECUTIVE COMMITTEE

The Board of Directors shall have the power to elect a Chairman of the Executive Committee. Any such Chairman of the Executive Committee shall participate in the formation of the policies of the Association and shall have such other duties as may be assigned to him from time to time by the President or by the Board of Directors.

## SECTION 6 VICE CHAIRMEN OF THE BOARD

The Board of Directors shall have the power to elect one or more Vice Chairmen of the Board of Directors. Any such Vice Chairmen of the Board shall participate in the formation of the policies of the Association and shall have such other duties as may be assigned to him from time to time by the Chairman of the Board or by the Board of Directors.

## SECTION 7 OTHER OFFICERS

The Secretary and all other officers appointed by the Board of Directors shall have such duties as defined by law and as may from time to time be assigned to them by the Chief Executive Officer or the Board of Directors.

## SECTION 8 RETIREMENT

Every officer of the Association shall retire not later than the first of the month next following his sixty-fifth (65th) birthday. The Board of Directors may, in its discretion, set the retirement date and terms of retirement of an officer at a date later than provided above.

## ARTICLE IV

## COMMITTEES

## SECTION 1 EXECUTIVE COMMITTEE

There shall be a standing committee of Directors in this Association to be known as the Executive Committee. This Committee shall meet at 11:00 a.m. on the first and fourth Tuesday of each month. It shall have all of the powers of the Board of Directors between meetings of the Board, except as the Board only by law is authorized to perform or exercise. All actions of the Executive Committee shall be reported to the Board of Directors.

In the event that any member of the Executive Committee is unable to attend a meeting of that committee, the Chairman of the Board or the President may, at his discretion, appoint another Director to attend said meeting of the Executive Committee and for that meeting to serve as a member of the Executive Committee with full power to act in place of the absent regular member of the committee.

## SECTION 2 COMPENSATION COMMITTEE

There shall be a standing committee of directors of this Association to be known as the Compensation Committee who shall review the compensation of all Executive Officers and those officers who participate in the Profit Sharing Pool as well as fees for directors of the Association. They will recommend specific compensation arrangements to the Board of Directors for their confirmation.

## SECTION 3 COMMITTEE ON AUDIT

There shall be a standing committee of Directors of this Association to be known as the Committee on Audit, none of whose members shall be active officers of the Association. This Committee shall make or cause to be made a suitable examination of the affairs of the

## SECTION 3. COMMITTEE ON AUDIT (continued)

Association and the Trust Department at least once during each period of twelve months. The results of such examination shall be reported in writing to the Board at the next regular meeting thereafter stating whether the Association and/or Trust Department is in a sound solvent condition, whether adequate internal audit controls and procedures are being maintained and make such recommendations as it deems advisable.

## SECTION 4 TRUST COMMITTEE

There shall be a standing committee of Directors of this Association to be known as the Trust Committee. The Trust Committee shall determine policies of the Department and review actions of the Trust Investment Committee. All actions of the Trust Committee shall be reported to the Board of Directors.

## SECTION 5 TRUST INVESTMENT COMMITTEE

There shall be a standing committee of this Association to be known as the Trust Investment Committee composed of officers of the Association. The Trust Investment Committee or such officers as may be duly designated by the Trust Investment Committee, shall pass upon the acceptance of all trusts, the closing out or relinquishment of all trusts and the making, retention, or disposition of all investments of trust funds in conformity with policies established by the Trust Committee. Actions of the Trust Investment Committee shall be reported to the Trust Committee.

## SECTION 6 PENSION COMMITTEE

There shall be a standing committee of directors or officers of this Association to be known as the Pension Committee, who shall have the powers and duties as set forth in the Association's Employees' Pension Plan. A report of the condition of the pension fund shall be submitted annually to the Board of Directors.

## SECTION 7 OTHER COMMITTEES

The Chairman may appoint, from time to time, other committees for such purposes and with such powers as he or the Board may direct.



ARTICLE V

SEAL

SECTION 1 IMPRESSION

The following is an impression of the seal of this Association.

February 27, 1992

RESOLVED, That Article I, Section 1, Article II, Section 2 and Article IV, Section 5 of the By-Laws of the Association be amended to state as follows:

ARTICLE I

SECTION 1 ANNUAL MEETING

The annual meeting of the shareholders shall be held in the main banking house of the Association at 11:00 a.m. on the second Tuesday in March of each year. Notice of such meeting shall be mailed to shareholders not less than ten (10) nor more than sixty (60) days prior to the meeting date.

ARTICLE II

SECTION 2. REGULAR MEETINGS

The organizational meeting of the Board of directors shall be held on the same date as soon as practical following the annual meeting of shareholders at the main banking house. Other regular meetings of the Board of Directors shall be held without notice at 11:00 a.m. on the second Tuesday of June, September, and December, at the main banking house, or, provided notice given by telegram, letter, telephone or in person to every Director, at such time and place as may be designated in the notice of the meeting. When any regular meeting of the Board falls on a holiday, the meeting shall be held on the next banking business day, unless the Board shall designate some other day.

ARTICLE IV

SECTION 5. TRUST POLICY COMMITTEE

There shall be a standing committee of this association to be known as the Trust Policy Committee composed of officers of the Association. The Trust Policy Committee or such officers as may be duly designated by the Trust Policy Committee, shall pass upon the acceptance of all trusts, the closing out or relinquishment of all trusts and the making, retention, or disposition of all investments of trust funds in conformity with policies established by the Trust Committee. Actions of the Trust policy committee shall be reported to the Trust Committee.

THE CONSENT OF THE TRUSTEE  
REQUIRED BY 321 (b) OF THE ACT

Firststar Bank, National Association, the Trustee executing the statement of eligibility and qualification to which this Exhibit is attached does hereby consent that reports of examinations of the undersigned by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon request therefor in accordance with the provisions of 321 (b) of the Trust Indenture Act of 1939.

FIRSTAR BANK, NATIONAL ASSOCIATION

DECEMBER 21, 1999

Date

BY: /S/ KEITH A. MAURMEIER

-----  
KEITH A. MAURMEIER  
VICE PRESIDENT & TRUST OFFICER

CONSOLIDATED REPORT OF CONDITION  
FIRSTSTAR BANK, N. A.  
FOR SEPTEMBER 30, 1999

All schedules are to be reported in thousands of dollars.  
Unless otherwise indicated, report the amount outstanding  
as of the last business day of the quarter.

BALANCE SHEET

	Dollar Amounts in Thousands
ASSETS	
1. Cash and balances due from depository institutions	
a. Noninterest-bearing balances and currency and coin	\$1,164,811
b. Interest-bearing balances	51,863
2. Securities:	
a. Held-to-maturity securities	190,980
b. Available-for-sale securities	4,712,612
3. Federal funds sold and securities purchased under agreements to resell	71,546
4. Loans and lease financing receivables:	
a. Loans and leases, net of unearned income	21,913,767
b. LESS: Allowance for loan and lease losses	285,966
c. LESS: Allocated transfer risk reserve	0
d. Loans and leases, net of unearned income, allowance, and reserve	21,627,801
5. Trading assets	1,713
6. Premises and fixed assets (including capitalized leases)	472,286
7. Other real estate owned	8,792
8. Investments in unconsolidated subsidiaries and associated companies	9,6295
9. Customers' liability to this bank on acceptances outstanding	6,323
10. Intangible assets	890,838
11. Other assets	1,109,245
12. Total assets	\$30,318,105

## EXHIBIT 7 CONTINUED

CONSOLIDATED REPORT OF CONDITION  
 FIRSTSTAR BANK, N. A.  
 FOR SEPTEMBER 30, 1999 CONTINUED

		Dollar Amounts in Thousands
<b>LIABILITIES</b>		
13. Deposits:		
a. In domestic offices		\$22,173,677
(1) Noninterest-bearing	4,073,715	
(2) Interest-bearing	18,099,962	
b. In foreign offices, Edge and Agreement subsidiaries, and IBFs		203,022
(1) Noninterest-bearing	0	
(2) Interest-bearing	203,022	
14. Federal funds purchased and securities sold under agreements to repurchase		3,235,634
15. a. Demand notes issued to the U.S. Treasury		128
b. Trading liabilities		0
16. Other borrowed money:		
a. With a remaining maturity of one year or less		403,771
b. With a remaining maturity of more than one year through three years		360,998
c. With a remaining maturity of more than three years		
17. Not applicable		
18. Bank's liability on acceptances executed and outstanding		6,323
19. Subordinated notes and debentures		654,160
20. Other liabilities		499,183
21. Total liabilities		27,536,896
22. Not applicable		
23. Perpetual preferred stock and related surplus		0
24. Common Stock		18,200
25. Surplus [exclude all surplus related to preferred stock]		1,732,771
26. a. Undivided profits and capital reserves		1,021,593
b. Net unrealized holding gains (losses) on available-for-sale securities		8,645
b. Net unrealized holding gains (losses) on available-for-sale securities		0
27. Cumulative foreign currency translation adjustments		0
28. Total equity capital		2,781,209
29. Total liabilities, limited-life preferred stock, and equity capital		\$30,318,105

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM T-1

STATEMENT OF ELIGIBILITY AND QUALIFICATION  
UNDER THE TRUST INDENTURE ACT OF 1939, AS AMENDED, OF A  
CORPORATION DESIGNATED TO ACT AS TRUSTEE

CHECK IF AN APPLICATION TO DETERMINE ELIGIBILITY OF A TRUSTEE  
PURSUANT TO SECTION 305(b)(2)

FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION  
(Exact name of trustee as specified in its charter)

United States National Banking Association (State of incorporation if not a national bank)	56-1989961 (I.R.S. employer identification no.)
--	---

First Union Trust Company, National Association Edward L. Truitt Jr., Vice President One Rodney Square, Suite 102 920 King St. Wilmington, DE 302-888-7539 (Address of principal executive offices)	19801 (Zip Code)
--	---------------------

same as above  
(Name, address and telephone number, including  
area code, of trustee's agent for service)

Chemed Corporation  
Chemed Capital Trust  
(Exact name of obligor as specified in its charter)

The State of Delaware  
(State or other jurisdiction of incorporation or organization)

31-0791746  
(I.R.S. employer identification no.)

2600 Chemed Center  
225 East Fifth Street  
Cincinnati, OH 45202-4726  
(Address, including zip code, of principal executive offices)

CONVERTIBLE TRUST PREFERRED SECURITIES OF CHEMED CAPITAL TRUST  
(Title of the Indenture securities)

1. General information. Furnish the following information as to the trustee:

(a) Name and address of each examining or supervising authority to which it is subject

Name	Address
Federal Reserve Bank of Richmond, VA	Richmond, VA
Comptroller of the Currency	Washington, D.C.
Securities and Exchange Commission Division of Market Regulation	Washington, D.C.
Federal Deposit Insurance Corporation	Washington, D.C.

(b) Whether it is authorized to exercise corporate trust powers.

The trustee is authorized to exercise corporate trust powers.

2. Affiliations with obligor and underwriters. If the obligor or any underwriter for the obligor is an affiliate of the trustee, describe each such affiliation.

None.

(See Note 1 on Page 4.)

Because the obligor is not in default on any securities issued under indentures under which the applicant is trustee, Items 3 through 15 are not required herein.

## 16. List of Exhibits.

All exhibits identified below are filed as a part of this statement of eligibility.

1. A copy of the Articles of Association of First Union Trust Company, National Association, as now in effect, which contain the authority to commence business and a grant of powers to exercise corporate trust powers.
2. A copy of the certificate of authority of the trustee to commence business, if not contained in the Articles of Association.
3. A copy of the authorization of the trustee to exercise corporate trust powers, if such authorization is not contained in the documents specified in exhibits (1) or (2) above.
4. A copy of the existing By-laws of First Union Trust Company, National Association, or instruments corresponding thereto.
5. Inapplicable.
6. The consent of the trustee required by Section 321(b) of the Trust Indenture Act of 1939 is included at Page 4 of this Form T-1 Statement.
7. A copy of the latest report of condition of the trustee published pursuant to law or to the requirements of its supervising or examining authority is attached hereto.
8. Inapplicable.
9. Inapplicable.

## NOTE

Note 1: Inasmuch as this Form T-1 is filed prior to the ascertainment by the Trustee of all facts on which to base a responsive answer to Item 2, the answer to said Item is based on incomplete information. Item 2 may, however, be considered correct unless amended by an amendment to this Form T-1.

## SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, First Union Trust Company, National Association, a national banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility and qualification to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Wilmington, and State of Delaware, on the 21st day of December, 1999.

FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION  
(trustee)

By: \s\ Edward L. Truitt, Jr.  
-----

Name: Edward L. Truitt, Jr.  
Title: Vice President

## CONSENT OF TRUSTEE

Under section 321(b) of the Trust Indenture Act of 1939, as amended, and in connection with the proposed issuance by Chemed Corporation, Chemed Capital Trust of Convertible Trust Preferred Securities of Chemed Capital Trust, First Union Trust Company, National Association, as the trustee herein named, hereby consents that reports of examinations of said Trustee by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon requests therefor.

FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION

By: \s\ Edward L. Truitt, Jr.  
-----

Name: Edward L. Truitt, Jr.  
Title: Vice President

Dated: December 21, 1999



Legal Title of Bank: First Union Trust Company, National Association  
 Address: One Rodney Square, 1st Floor  
 City, State, Zip: Wilmington, DE 19801  
 FDIC Certificate #: 34465

Call Date: 12/31/98 FFIEC 032  
 Page RC-1

CONSOLIDATED REPORT OF CONDITION FOR JUNE 30, 1999

All schedules are to be reported in thousands of dollars. Unless otherwise indicated, report the amount outstanding as of the last business day of the quarter.

SCHEDULE RC--BALANCE SHEET

C400  
 Dollar Amount in Thousands RCFD Bil Mil Thou

ASSETS			
1. Cash and balances due from depository institutions (from Schedule RC-A):			
a. Noninterest-bearing balances and currency and coin (1).....	0081	41	1.a.
b. Interest-bearing balances (2).....	0071	0	1.b.
2. Securities:			
a. Held-to-maturity securities (from Schedule RC-B, column A).....	1754	0	2.a.
b. Available-for-sale securities (from Schedule RC-B, column D).....	1773	7	2.b.
3. Federal funds sold and securities purchased under agreements to resell.....	1350	0	3.
4. Loans and lease financing receivables			
a. Loans and leases, net of unearned income (from Schedule RC-C)RCFD 2122	258,689		4.a.
b. LESS: Allowance for loan and lease losses.....RCFD 3123	0		4.b.
c. LESS: Allocated transfer risk reserve.....RCFD 3128	0		4.c.
d. Loans and leases, net of unearned income, allowance, and reserve (item 4.a minus 4.b and 4.c).....	2125	258,689	4.d.
5. Trading assets (from Schedule RC-D).....	3545	0	5.
6. Premises and fixed assets (including capitalized leases).....	2145	0	6.
7. Other real estate owned (from Schedule RC-M).....	2150	0	7.
8. Investments in unconsolidated subsidiaries and associated companies (from Schedule RC-M).....	213	0	8.
9. Customers' liability to this bank on acceptances outstanding.....	2155	0	9.
10. Intangible assets (from Schedule RC-M).....	2143	0	10.
11. Other assets (from Schedule RC-F).....	2160	3,648	11.
12. Total assets (sum of items 1 through 11).....	2170	262,385	12.

-----  
 (1) Includes cash items in process of collection and unposted debits.  
 (2) Includes time certificates of deposit not held for trading.

Legal Title of Bank: First Union Trust Company, National Association  
 Address: One Rodney Square, 1st Floor  
 City, State, Zip: Wilmington, DE 19801  
 FDIC Certificate #: 34465

Call Date: 12/31/98 FFIEC 032  
 Page RC-1

Schedule RC--Continued

	Dollar Amount in Thousands	Bil Mil Thou	
<b>LIABILITIES</b>			
13. Deposits:			
a. In domestic offices (sum of totals of columns A and C from Schedule RC-E, part I).....	RCON 2200	0	13.a.
(1) Noninterest-bearing (1).....	RCON 6631	0	13.a.(1)
(2) Interest-bearing.....	RCON 6636	0	13.a.(2)
b. In foreign offices, Edge and Agreement subsidiaries, and IBFs (from Schedule RC-E, part II).....	RCFN 2200	0	13.b.
(1) Noninterest-bearing.....	RCFN 6631	0	13.b.(1)
(2) Interest-bearing.....	RCFN 6636	0	13.b.(2)
14. Federal funds purchased and securities sold under agreements to repurchase.....	RCFD 2800	0	14.
15. a. Demand notes issued to the U.S. Treasury.....	RCON 2840	0	15.a.
b. Trading liabilities (from Schedule RC-D).....	RCFD 3548	0	15.b.
16. Other borrowed money (includes mortgage indebtedness and obligations under capitalized leases):.....			
a. With a remaining maturity of one year or less.....	RCFD 2332	1,517	16.a.
b. With a remaining maturity of more than one year through three years.....	RCFD A547	0	16.b.
c. With a remaining maturity of more than three years.....	RCFD A548	0	16.c.
17. Not applicable.....			
18. Bank's liability on acceptances executed and outstanding.....	RCFD 2920	0	18.
19. Subordinated notes and debentures (2).....	RCFD 3200	0	19.
20. Other liabilities (from Schedule RC-G).....	RCFD 2930	10,929	20.
21. Total liabilities (sum of items 13 through 20).....	RCFD 2948	12,446	21.
22. Not applicable.....			
<b>EQUITY CAPITAL</b>			
23. Perpetual preferred stock and related surplus.....	RCFD 3838	0	23.
24. Common stock.....	RCFD 3230	200	24.
25. Surplus (exclude all surplus related to preferred stock).....	RCFD 3839	413,719	25.
26. a. Undivided profits and capital reserves.....	RCFD 3632	(163,980)	26.a.
b. Net unrealized holding gains (losses) on available-for-sale securities.....	RCFD 8434	0	26.b.
27. Cumulative foreign currency translation adjustments.....	RCFD 3284	0	27.
28. Total equity capital (sum of items 23 through 27).....	RCFD 3210	249,939	28.
29. Total liabilities and equity capital (sum of items 21 and 28).....	RCFD 3300	262,385	29.

Memorandum

To be reported only with the March Report of Condition.

1. Indicate in the box at the right the number of the statement below that best describes the most comprehensive level of auditing work performed for the bank by independent external auditors as of any date during 1996.....

	RCFD 6724	N/A	Number M.1.
--	-----------	-----	----------------

- 1 = Independent audit of the bank conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the bank
- 2 = Independent audit of the bank's parent holding company conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the consolidated holding company (but not on the bank separately)
- 3 = Directors' examination of the bank conducted in accordance with generally accepted auditing standards by a certified public accounting firm (may be required by state chartering authority)
- 4 = Directors' examination of the bank performed by other external auditors (may be required by state chartering authority)
- 5 = Review of the bank's financial statements by external auditors
- 6 = Compilation of the bank's financial statements by external auditors
- 7 = Other audit procedures (excluding tax preparation work)
- 8 = No external audit work

(1) Includes total demand deposits and noninterest-bearing time and savings deposit.

(2) Includes limited-life preferred stock and related surplus.



COMPTRROLLER OF THE CURRENCY  
Administrator of National Banks

Multinational Banking Division  
250 E Street, SW  
Washington, D.C. 20219-0001

CHARTER CERTIFICATE

Whereas, satisfactory evidence has been presented to the Office of the Comptroller of the Currency that FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION, located in WILMINGTON, State of DELAWARE, has complied with all provisions of the statutes of the United States required to be complied with before being authorized to commence the business of banking as a National Banking Association;

Now, therefore, I hereby certify that the above-named association is authorized to commence the business of banking as a National Banking Association.

In testimony whereof, witness my signature and Seal of office this fifteenth day of January 1997.

-----  
Deputy Comptroller for Multinational Banking

Charter Number 23201

## BYLAWS

AS AMENDED AND RESTATED MAY 27, 1997

## ARTICLE I

## Meetings of Shareholders

Section 1.1. Annual Meeting. The regular annual meeting of the shareholders for the election of directors and transaction of whatever other business may properly come before the meeting, shall be held at the Main Office of the Association, or such other place as the Board of Directors may designate, at 10:00 A.M., on the third Tuesday of February in each year, commencing with the year 1997 or such other time within 90 days as may be set by the Board of Directors. If, from any cause, an election of directors is not made on the said day, the Board of Directors shall order the election to be held on some subsequent day, as soon thereafter as practicable, according to the provisions of the law; and notice thereof shall be given in the manner herein.

Section 1.2. Special Meetings. Except as otherwise specifically provided by statute, special meetings of the shareholders may be called for any purpose at any time by the Board of Directors or by any one or more shareholders owning, in the aggregate, not less than twenty-five percent of the stock of the Association.

Section 1.3. Notice of Meetings. Notice of Annual and Special meetings shall mailed, postage prepaid, at least ten days prior to the date thereof provided for the annual meeting, addressed to each shareholder at his address appearing on the books of the Association; but any failure to mail such notice, or any irregularity therein, shall not affect the validity of such meeting, or of any

of the proceedings thereat. A shareholder may waive any such notice.

Section 1.4. Organization of Meetings. The Chairman shall preside at all meetings of shareholders. In his absence, the President, or a director designated by the Chairman shall preside at such meeting.

Section 1.5. Proxies. Shareholders may vote at any meeting of the shareholders by proxies duly authorized in writing. Proxies shall be valid only for one meeting to be specified therein, and any adjournments of such meeting. Proxies shall be dated and shall be filed with the records of the meeting.

Section 1.6. Quorum. A majority of the outstanding capital stock, represented in person or by proxy, shall constitute a quorum at any meeting of shareholders, unless otherwise provided by law. A majority of the votes cast shall decide every question or matter submitted to the shareholders at any meeting, unless otherwise provided by law or by the Articles of Association.

## ARTICLE II

### Directors

Section 2.1. Board of Directors. The Board of Directors (hereinafter referred to as the "Board"), shall have power to manage and administer the business and affairs of the Association. Except as expressly limited by law, all corporate powers of the Association shall be vested in and may be exercised by said Board.

Section 2.2. Number. The Board shall consist of not less than five nor more than twenty-five persons, the exact number within such minimum and maximum limits to be fixed and determined from time to time by resolution of a majority of the full Board or by resolution of the shareholders at any

meeting thereof; provided, however, that a majority of the full Board may not increase the number of directors to a number which: (a) exceeds by more than two the number of directors last elected by shareholders where such number was fifteen or less; and (b) to a number which exceeds by more than four the number of directors last elected by shareholders where such number was sixteen or more, but in no event shall the number of directors exceed twenty-five.

Section 2.3. Organization Meeting. A meeting shall be held for the purpose of organizing the new Board and electing and appointing officers of the Association for the succeeding year on the day of the Annual Meeting of Shareholders or as soon thereafter as practicable, and, in any event, within thirty days thereof. If, at the time fixed for such meeting, there shall not be a quorum present, the directors present may adjourn the meeting, from time to time, until a quorum is obtained.

Section 2.4. Regular Meetings. The regular meetings of the Board shall be held on such days and time as the directors may, by resolution, designate; and written notice of any change thereof shall be sent to each member. When any regular meeting of the Board falls upon a legal holiday, the meeting shall be held on such other day as the Board may designate.

Section 2.5. Special Meetings. Special meetings of the Board may be called by the Chairman of the Board, or President, or at the request of three or more directors. Each director shall be given notice of each special meeting, except the organization meeting, at least one day before it is to be held by facsimile, telephone, telegram, letter or in person. Any director may waive any such notice.

Section 2.6. Quorum. A majority of the directors shall constitute a quorum at any meeting, except when otherwise provided by law; but a less number may adjourn any meeting, from time to time, and the meeting may be held, as adjourned without further notice.

Section 2.7. Term of Office and Vacancy. Directors shall hold office for one year and

until their successors are elected and have qualified. No person shall stand for election as a director of this Association if at the date of his election he will have passed his seventieth birthday; provided, however, this prohibition shall not apply to persons who are active officers of this Association, an affiliate bank, or its parent corporation, or a former chief executive officer of the Association. No person, who is not an officer or former officer of this Association, an affiliate bank, or its parent corporation and who has discontinued the principal position or activity the person held when initially elected, shall be recommended to the shareholders for reelection; provided, however, that exceptions may be made because of a change in principal position or activity which would be compatible with continued service to this Association. No person elected as a director may exercise any of the powers of his office until he has taken the oath of office as prescribed by law. When any vacancy occurs among the directors, the remaining members of the Board, in accordance with the laws of the United States, may appoint a director to fill such vacancy at any regular meeting of the Board, or at a special meeting called for that purpose.

Section 2.8. Nominations. Nominations for election to the Board may be made by the Executive Committee or by any stockholder of any outstanding class of capital stock of the Association entitled to vote for the election of directors.

Section 2.9. Communications Equipment. Any or all directors may participate in a meeting of the Board by means of conference telephone or any means of communication by which all persons participating in the meeting are able to hear each other.

Section 2.10. Action Without Meeting. Any action required or permitted to be taken by the Board or committee thereof by law, the Association's Articles of Association, or these Bylaws may be taken without a meeting, if, prior or subsequent to the action, all members of the Board or



committee shall individually or collectively consent in writing to the action. Each written consent or consents shall be filed with the minutes of the proceedings of the Board or committee. Action by written consent shall have the same force and effect as a unanimous vote of the directors, for all purposes. Any certificate or other documents which relates to action so taken shall state that the action was taken by unanimous written consent of the Board or committee without a meeting.

### ARTICLE III

#### Committees of the Board

Section 3.1. Executive Committee. The Board may by resolution adopted by a majority of the entire Board designate an Executive Committee consisting of the Chairman of the Board, the President, and not less than two other directors. Subject to the national banking laws and the Association's Articles of Association, the Executive Committee may exercise all the powers of the Board of Directors with respect to the affairs of the Association, except that the Executive Committee may not:

1. (a) exercise such powers while a quorum of the Board of Directors is actually convened for the conduct of business,
- (b) exercise any power specifically required to be exercised by at least a majority of all the directors,
- (c) act on matters committed by the Bylaws or resolution of the Board of Directors to another committee of the board, or
- (d) amend or repeal any resolution theretofore adopted by the Board of Directors which by its terms is amendable or repealable only by the Board;

2. amend the Articles of Association or make, alter or repeal any Bylaw of the Association;
3. elect or appoint any director, create or fill any vacancies in the Board of Directors or remove any director, or authorize or approve any change in the compensation of any officer of the Association who is also a director of the Association;
4. authorize or approve issuance or sale or contract for sale of shares of stock of the Association, or determine the designation and relative rights, preferences and limitations of a class or series of shares;
5. adopt an agreement of merger or consolidation, or submit to shareholders any action that requires shareholder approval, including any recommendation to the shareholders concerning the sale, lease or exchange of all or substantially all the Association's property and assets, a dissolution of the Association or a revocation of a previously approved dissolution; or
6. authorize an expenditure by the Association in excess of \$10 million for any one item or group of related items.

The committee shall hold regular meetings at such times as the members shall agree and whenever called by the chairman of the committee. A majority of the committee shall constitute a quorum for the transaction of business. The committee shall keep a record of its proceedings and shall report these proceedings to the Board at the regular meetings thereof. The committee shall serve as the nominating committee for nominations to the Board.

Section 3.2. Chairman of the Executive Committee. The Board may designate one of its members to be Chairman of the Executive Committee who shall preside at the meetings thereof and

shall perform such duties as the Board shall assign to him from time to time.

Section 3.3. Audit Committee. The Board shall appoint a committee of three or more persons exclusive of the officers of this Association which committee shall be known as the Audit Committee. It shall be the duty of this committee at least once in every twelve months to examine the affairs of the Association, and determine whether it is in a sound and solvent condition and to recommend to the Board such changes in the manner of doing business, etc., as may seem to be desirable. The committee may cause such examination to be made in its behalf and under its supervision by outside accountants and may also use the services of any other persons either inside or outside the Association to assist in its work. The results of each examination shall be reported in writing to the Board.

Section 3.4. Audit of Trust Department. The Audit Committee shall, at least once during each calendar year and within fifteen months of the last such audit make suitable audits of the Trust Department or cause suitable audits to be made by auditors responsible only to the Board, and at such time shall ascertain whether the department has been administered in accordance with law, Part 9 of the Regulations of the Comptroller of the Currency, and sound fiduciary principles. In lieu of such periodic audit the Audit Committee, at the election of the Board, may conduct or cause to be conducted by auditors responsible only to the Board an adequate continuous audit system adopted by the Board. A written report of such periodic or continuous audit shall be made to the Board.

Section 3.5. Other Committees. The Board may appoint from time to time other committees composed of one or more persons each, for such purposes and with such powers as the Board may determine. The Chairman of the Board shall have the power to designate another person to serve on any committee during the absence or inability of any member thereof so to serve.

Section 3.6. Directors' Emeritus. The Board may designate one or more persons to serve as Director Emeritus. Such Director Emeritus shall have the right to attend any and all meetings of the Board, but shall have no vote at such meetings. A person designated as Director Emeritus may serve in that capacity for a period of three years.

Section 3.7. Alternate Committee Members. The Board may, from time to time, appoint one or more, but no more than three persons to serve as alternate members of a committee, each of whom shall be empowered to serve on that committee in place of a regular committee member in the event of the absence or disability of that committee member. An alternate committee member shall, when serving on a committee, have all of the powers of a regular committee member. Alternate committee members shall be notified of, and requested to serve at, a particular meeting or meetings, or for particular periods of time, by or at the direction of the chairman of the committee or the Chairman of the Board.

#### ARTICLE IV

##### Officers

Section 4.1. Officers. The officers of the Association may be a Chairman of the Board, a Vice Chairman of the Board, one or more Chairmen or Vice Chairmen (who shall not be required to be directors of the Association), a President, one or more Vice Presidents, a Secretary, a Cashier or Treasurer, and such other officers, including officers holding similar or equivalent titles to the above in regions, divisions or functional units of the Association, as may be appointed by the Board of Directors. The Chairman of the Board and the President shall be members of the Board of Directors. Any two or more offices may be held by one person, but no officer shall sign or execute any

document in more than one capacity.

4.2. Term of Office. The officers who are required by the articles of association or the bylaws to be members of the Board shall hold their respective offices until the Organization meeting of the Board following the annual meeting of shareholders or until their respective successors shall have been elected, unless they shall resign, become disqualified or be removed from office. Each other officer shall hold office at the pleasure of the Board. Any officer may be removed at any time by the Board.

Section 4.3. Chairman of the Board. The chairman of the board shall be designated as Chairman of the Board. He shall preside at all meetings of the stockholders and directors and he shall be a member of all committees of the Board except the Audit Committee. He shall have such other powers and perform such other duties as may be prescribed from time to time by the Board. He shall be subject only to the direction and control of the Board.

Section 4.4. President. The president shall be the chief executive officer of the Association and he shall be designated as President and Chief Executive Officer. In the absence of the Chairman the President shall preside at all meetings of the Board. The President shall be a member of each committee of the Board except the Audit Committee. He shall have the powers and perform the duties conferred or imposed upon the President by the national banking laws, and he shall have such other powers and perform such other duties as may from time to time be imposed upon or assigned to him by the Board.

Section 4.5. Chief Financial Officer. The Chief Financial officer shall have such title as may be designated by the Board and he shall be responsible for all monies, funds and valuables of this Association, provide for the keeping of proper records of all transactions of the Association, report

to the Board at each regular meeting the condition of the Association, submit to the Board, when requested, a detailed statement of the income and expenses, be responsible for the conduct and efficiency of all persons employed under him, and perform such other duties as may be from time to time assigned to him by the Board.

Section 4.6. Other Officers. All other officers shall respectively exercise such powers and perform such duties as generally pertain to their several offices, or as may be conferred upon or assigned to them by the Board, the Chairman of the Board or the President.

Section 4.7. Bond. Each officer and employee, if so required by the Board, shall give bond with surety to be approved by the Board, conditioning for the honest discharge of his duties as such officer or employee. In the discretion of the Board, such bonds may be individual, schedule or blanket form, and the premiums may be paid by the Association.

Section 4.8. Officers Acting as Assistant Secretary. Notwithstanding Section 4.1a of this Article IV, any Senior Vice President, Vice President or Assistant Vice President shall have, by virtue of his office, and by authority of the Bylaws, the authority from time to time to act as an Assistant Secretary of the Association, and to such extent, said officers are appointed to the office of Assistant Secretary.

#### ARTICLE V

##### Trust Department

Section 5.1. Trust Department. There shall be a department of the Association known as the Trust Department which shall perform the fiduciary responsibilities of the Association. Opinions of counsel shall be retained on file in the Trust Department in connection with all important matters

pertaining to fiduciary activities.

Section 5.2. Trust Investment. Funds held in a fiduciary capacity shall be invested in accordance with the instrument establishing the fiduciary relationship and local law. Where such instrument does not specify the character and class of the investments to be made and does not vest in the Association a discretion in the matter, funds held pursuant to such instrument shall be invested in investments in which corporate fiduciaries may invest under local law.

## ARTICLE VI

### Stock Certificates and Transfers

Section 6.1. Stock Certificates. Ownership of capital stock of the Association shall be evidenced by certificates of stock signed by the Chairman or President, and the Secretary, or an Assistant Secretary. Each certificate shall state upon its face that the stock is transferable only upon the books of the Association by the holder thereof, or by duly authorized attorney, upon the surrender of such certificate, and shall meet the requirements of Section 5139, United States Revised Statutes, as amended.

Section 6.2. Transfers. The stock of this Association shall be assignable and transferable only on the books of this Association, subject to the restrictions and provisions of the national banking laws; and a transfer book shall be provided in which all assignments and transfers of stock shall be made. When stock is transferred, the certificates thereof shall be returned to the Association, canceled, preserved and new certificates issued.

Section 6.3. Dividends. Dividends shall be paid to the shareholders in whose names the stock shall stand at the close of business on the day next preceding the date when the dividends are payable,

provided, however, that the directors may fix another date as a record date for the determination of the shareholders entitled to receive payment thereof.

ARTICLE VII

Increase of Stock

7.1. Capital Stock. Shares of the capital stock of the Association, which have been authorized but not issued, may be issued from time to time for such consideration, not less than the par value thereof, as may be determined by the Board.

ARTICLE VIII

Corporate Seal

Section 8.1. Seal. The seal, an impression of which appears below, is the seal of the Association adopted by the Board of Directors:

[Seal]

The Chairman of the Board, the Vice Chairman, the President, Senior Executive Vice President, Executive Vice President, Senior Vice President, Vice President, each Assistant Vice President, the Chief Financial Officer, the Secretary, each Assistant Secretary, each Trust Officer, each Assistant Trust Officer or each Assistant Cashier, shall have the authority to affix the corporate seal of this Association and to attest to the same.



## ARTICLE IX

## Miscellaneous Provisions

Section 9.1. Fiscal Year. The fiscal year of the Association shall be the calendar year.

Section 9.2. Execution of Instruments. All agreements, indentures, mortgages, deeds, conveyances, transfers, certificates, declarations, receipts, discharges, releases, satisfactions, settlements, petitions, schedules, accounts, affidavits, bonds, undertakings, proxies, and other instruments or documents may be signed, executed, acknowledged, verified, delivered or accepted in behalf of the Association by the Chairman of the Board, the Vice Chairman of the Board, any Chairman or Vice Chairman, the President, any Vice President or Assistant Vice President, the Secretary or any Assistant Secretary, the Cashier or Treasurer or any Assistant Cashier or Assistant Treasurer, or any officer holding similar or equivalent titles to the above in any regions, divisions or functional units of the Association, or, if in connection with the exercise of fiduciary powers of the Association, by any of said officers or by any Trust Officer or Assistant Trust Officer (or equivalent titles); provided, however, that where required, any such instrument shall be attested by one of said officers other than the officer executing such instrument. Any such instruments may also be executed, acknowledged, verified, delivered, or accepted in behalf of the Association in such other manner and by such other officers as the Board of Directors may from time to time direct. The provisions of this Section 9.2 are supplementary to any other provision of these Bylaws.

Section 9.3. Records. The organization papers of this Association, the articles of association, the bylaws and any amendments thereto, the proceedings of all regular and special meetings of the shareholders and of the directors, the returns of the judges of elections, and the reports of the committees of directors shall be recorded in an appropriate minute book, and the minutes of each

meeting shall be signed by the Secretary or any other officer appointed to act as secretary of the meeting.

Section 9.4. Banking Hours. This Association and its branch offices shall be open on such days and during such hours as shall be fixed from time to time by the Board.

Section 9. 5. Voting Shares of Other Corporations. The Chairman, any Vice Chairman, the President, or any Vice President is authorized to vote, represent and exercise on behalf of this Association all rights incident to any and all shares of stock of any other corporation standing in the name of the Association. The authority granted herein may be exercised by such officers in person or by proxy or by power of attorney duly executed by said officer.

ARTICLE X

Bylaws

Section 10.1. Inspection. A copy of the Bylaws, with all amendments thereto, shall at all times be kept in a convenient place at the Head Office of the Association, and shall be open for inspection to all shareholders, during banking hours.

Section 10-2. Amendments. These Bylaws may be changed or amended at any regular or special meeting of the Board by the vote of a majority of the Directors.

## FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION

## ARTICLES OF ASSOCIATION

For the purpose of organizing an association to carry on the business of banking under the laws of the United States, the undersigned do enter into the following Articles of Association:

FIRST. The title of this association shall be FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION

SECOND. The main office of this association shall be in Wilmington, Delaware. The business of this association will be limited to that of a national trust bank. This association must obtain the prior written approval of the Office of the Comptroller of the Currency ("OCC") before amending its Articles of Association to expand the scope of its activities and services. Transfers of this association's stock are subject to prior approval of a federal depository institution regulatory agency. If no other agency approval is required, the OCC's approval must be obtained before the transfers. In such cases where OCC approval is required, the OCC will apply the definitions and standards of the Change in Bank Control Act and the OCC's implementing regulation to ownership changes in this association.

THIRD. The Board of Directors of this association shall consist of not less than five nor more than twenty-five shareholders, the exact number to be fixed and determined from time to time by resolution of a majority of the full Board of Directors or by resolution of the shareholders at any annual or special meeting thereof. Each director, during the full term of his directorship, shall own a minimum of \$1,000 aggregate par value of stock of this association or a minimum par market value or equity interest of \$1,000 of stock in the bank holding company controlling this association. Any vacancy in the Board of Directors may be filled by action of the Board of Directors.

FOURTH. There shall be an annual meeting of the shareholders to elect directors and transact whatever other business may be brought before the meeting. It shall be held at the main office or any other convenient place the Board of Directors may designate, on the day of each year specified thereby in the bylaws, but if no election is held on that day, it may be held on any subsequent day according to such lawful rules as may be prescribed by the Board of Directors.

Nominations for election to the Board of Directors may be made by the Board of Directors or by any shareholder of any outstanding class of capital stock of this association entitled to vote for election of directors. Nominations other than those made by or on behalf of

the existing bank management shall be made in writing and be delivered or mailed to the president of this association and to the OCC, Washington, D.C., not less than 14 days nor more than 50 days prior to any meeting of shareholders called for the election of directors, provided, however, that if less than 21 days notice of the meeting is given to shareholders, such nomination shall be mailed or delivered to the president of this association and to the Comptroller of the Currency not later than the close of business on the seventh day following the day on which the notice of meeting was mailed.

Such notification shall contain the following information to the extent known to the notifying shareholder:

- The name and address of each proposed nominee.
- The principal occupation of each proposed nominee.
- The total number of shares of capital stock of this association that will be voted for each proposed nominee.
- The name and residence address of the notifying shareholder.
- The number of shares of capital stock of this association owned by the notifying shareholder. Nominations not made in accordance herewith may, in his discretion, be disregarded by the chairperson of the meeting, and upon his instructions, the vote tellers may disregard all votes cast for each such nominee.

FIFTH. The authorized amount of capital stock of this association shall be 2,000 shares of common stock of the par value of one hundred dollars (\$100.00) each; but said capital stock may be increased or decreased from time to time, according to the provisions of the laws of the United States.

If the capital stock is increased by the sale of additional shares thereof, each shareholder shall be entitled to subscribe for such additional shares in proportion to the number of shares of said capital stock owned by him at the time the increase is authorized by the shareholders, unless another time subsequent to the date of the shareholders' meeting is specified in a resolution by the shareholders at the time the increase is authorized. The Board of Directors will have the power to prescribe a reasonable period of time within which the preemptive rights to subscribe to the new shares of capital stock must be exercised.

This association, at any time and from time to time, may authorize and issue debt obligations, whether or not subordinated, without the approval of the shareholders.

SIXTH. The Board of Directors shall appoint one of its members president of this association, who shall be chairperson of the Board of Directors, unless the Board of Directors appoints another director to be the chairperson. The Board of Directors shall have the power to appoint one or more vice presidents and to appoint a cashier and such other officers and employees as may be required to transact the business of this association.

The Board of Directors shall have the power to:

- Define the duties of the officers and employees of this association.
- Fix the salaries to be paid to the officers and employees.
- Dismiss officers and employees.
- Require bonds from officers and employees and to fix the penalty thereof.
- Regulate the manner in which any increase of the capital of this association shall be made.
- Manage and administer the business and affairs of this association.
- Make all bylaws that it may be lawful for the Board of Directors to make.
- Generally to perform all acts that are legal for a Board of Directors to perform.

SEVENTH. The Board of Directors shall have the power to change the location of the main office to any other place within the limits of Wilmington, Delaware, without the approval of the shareholders, and shall have the power to establish or change the location of any branch or branches of the association to any other location, without the approval of the shareholders.

EIGHTH. The corporate existence of this association shall continue until terminated according to the laws of the United States.

NINTH. The Board of Directors of this association, or any three or more shareholders owning, in the aggregate, not less than 10 percent of the stock of this association, may call a special meeting of shareholders at any time. Unless otherwise provided by the laws of the United States, a notice of the time, place and purpose of every annual and special meeting of the shareholders shall be given by first-class mail, postage prepaid, mailed at least 10 days prior to the date of the meeting to each shareholder of record at his address as shown upon the books of this association.

TENTH. Each director and executive officer of this association shall be indemnified by the association against liability in any proceeding (including without limitation a proceeding brought by or on behalf of this association itself) arising out of his status as such or his activities in either of the foregoing capacities, except for any liability incurred on account of activities which were at the time taken known or believed by such person to be clearly in conflict with the best interests of this association. Liabilities incurred by a director or executive officer of this association in defending a proceeding shall be paid by this association in advance of the final disposition of such proceeding upon receipt of an undertaking by the director or executive officer to repay such amount if it shall be determined, as provided in the last paragraph of this Article Tenth, that he is not entitled to be indemnified by this association against such liabilities.

The indemnity against liability in the preceding paragraph of this Article Tenth, including liabilities incurred in defending a proceeding, shall be automatic and self-operative.

Any director, officer or employee of this association who serves at the request of this association as a director, officer, employee or agent of a charitable, not-for-profit, religious, educational or hospital corporation, partnership, joint venture, trust or other enterprise, or a trade association, or as a trustee or administrator under an employee benefit plan, or who serves at the request of this association as a director, officer or employee of a business corporation in connection with the administration of an estate or trust by this association, shall have the right to be indemnified by this association, subject to the provisions set forth in the following paragraph of this Article Tenth, against liabilities in any manner arising out of or attributable to such status or activities in any such capacity, except for any liability incurred on account of activities which were at the time taken known or believed by such person to be clearly in conflict with the best interests of this association, or of the corporation, partnership, joint venture, trust, enterprise, association or plan being served by such person.

In the case of all persons except the directors and executive officers of this association, the determination of whether a person is entitled to indemnification under the preceding paragraph of this Article Tenth shall be made by and in the sole discretion of the Chief Executive Officer of this association. In the case of the directors and executive officers of this association, the indemnity against liability in the preceding paragraph of this Article Tenth shall be automatic and self-operative.

For purposes of this Article Tenth of these Articles of Association only, the following terms shall have the meanings indicated:

- (a) "association" means First Union Trust Company, National Association and its direct and indirect wholly-owned subsidiaries.
- (b) "director" means an individual who is or was a director of this association.

- (c) "executive officer" means an officer of this association who by resolution of the Board of Directors of this association has been determined to be an executive officer of this association for purposes of Regulation O of the Federal Reserve Board.
- (d) "liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses, including counsel fees and expenses, incurred with respect to a proceeding.
- (e) "party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.
- (f) "proceeding" means any threatened, pending, or completed claim, action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

This association shall have no obligation to indemnify any person for an amount paid in settlement of a proceeding unless this association consents in writing to such settlement.

The right to indemnification herein provided for shall apply to persons who are directors, officers, or employees of banks or other entities that are hereafter merged or otherwise combined with this association only after the effective date of such merger or other combination and only as to their status and activities after such date.

The right to indemnification herein provided for shall inure to the benefit of the heirs and legal representatives of any person entitled to such right.

No revocation of, change in, or adoption of any resolution or provision in the Articles of Association or By-laws of this association inconsistent with, this Article Tenth shall adversely affect the rights of any director, officer, or employee of this association with respect to (i) any proceeding commenced or threatened prior to such revocation, change, or adoption, or (ii) any proceeding arising out of any act or omission occurring prior to such revocation, change, or adoption, in either case, without the written consent of such director, officer, or employee.

The rights hereunder shall be in addition to and not exclusive of any other rights to which a director, officer, or employee of this association may be entitled under any statute, agreement, insurance policy, or otherwise.

This association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, or employee of this association, or is or was serving at the request of this association as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, trade association, employee benefit plan, or other enterprise, against any liability asserted against such director, officer, or employee in any such capacity, or arising out of their status as such, whether or not this association would have the power to

indemnify such director, officer, or employee against such liability, excluding insurance coverage for a formal order assessing civil money penalties against a director, officer or employee of this association.

Notwithstanding anything to the contrary provided herein, no person shall have a right to indemnification with respect to any liability (i) incurred in an administrative proceeding or action instituted by an appropriate bank regulatory agency which proceeding or action results in a final order assessing civil money penalties or requiring affirmative action by an individual or individuals in the form of payments to this association, (ii) to the extent such person is entitled to receive payment therefor under any insurance policy or from any corporation, partnership, joint venture, trust, trade association, employee benefit plan, or other enterprise other than this association, or (iii) to the extent that a court of competent jurisdiction determines that such indemnification is void or prohibited under state or federal law.

ELEVENTH. These Articles of Association may be amended at any regular or special meeting of the shareholders by the affirmative vote of the holders of a majority of the stock of this association, unless the vote of the holders of a greater amount of stock is required by law, and in that case by the vote of the holders of such greater amount.

IN WITNESS WHEREOF, we have hereunto set our hands this 25th day of November, 1996.

ORGANIZERS:

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Kent S. Hathaway

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Keith D. Lembo

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Robert L. Andersen

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Stephen J. Antal

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Daniel Glassberg



COMPTROLLER OF THE CURRENCY  
Administrator of National Banks

Multinational Banking Division  
250 E Street, SW  
Washington, D.C. 20219-0001

TRUST CERTIFICATE

Whereas, FIRST UNION TRUST COMPANY, NATIONAL ASSOCIATION, Charter Number 23201, located in WILMINGTON, State of DELAWARE, being a National Banking Association, organized under the statutes of the United States, has made application for authority to act as fiduciary;

And whereas, applicable provisions of the statutes of the United States authorize the granting of such authority;

Now, therefore, I hereby certify that the said association is authorized to act in all fiduciary capacities by such statutes.

In testimony whereof, witness my signature and Seal of office this fifteenth day of January 1997.

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Deputy Comptroller for Multinational Banking