
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

XEROX CORPORATION

(Exact name of Registrant as specified in its charter)

New York
(State or other jurisdiction of
incorporation or organization)

16-0468020
(I.R.S. Employer
Identification No.)

800 Long Ridge Road
P.O. Box 1600
Stamford, Connecticut 06904-1600
(203) 968-3000

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

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Copy to:
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(212) 474-1000

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

(Continued on next page)

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Unit(2)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee
Debt Securities (3)				
Convertible Debt Securities (3)				
Preferred Stock, par value \$1.00 per share (3)				
Convertible Preferred Stock, par value \$1.00 per share (3)				
Common Stock, par value \$1.00 per share, (including the associated Rights to purchase Series A Cumulative Preferred Stock, par value \$1.00 per share) (3)(4)				
Warrants to purchase Debt Securities				
Warrants to purchase Preferred Stock				
Warrants to purchase Common Stock				
Depository Shares				
Securities Purchase Contracts				
Securities Purchase Units				
Guarantees of the Debt Securities (5)				
Total	\$2,500,000,000	100%	\$2,500,000,000	\$202,250

The Registrants hereby amend this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrants shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

(Continued from previous page)

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

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

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

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

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

(1) An indeterminate principal amount or number of debt securities, preferred stock, common stock, guarantees, warrants to purchase debt securities, preferred stock and common stock, stock purchase contracts, stock

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purchase units and depositary shares as may be issued in the event Xerox Corporation elects to offer fractional interests in preferred stock as may from time to time be issued at indeterminate prices are being registered hereby. Subject to Rule 462(b) under the Securities Act, in no event will the aggregate initial offering price of the securities issued under this Registration Statement exceed \$2,500,000,000, or if any securities are issued in any foreign currency units, the U.S. dollar equivalent of \$2,500,000,000. For debt securities issued with an original issue discount, the amount to be registered is calculated as the initial accreted value of such debt securities. Pursuant to Rule 457(p), we are offsetting the filing fee with \$32,982 of filing fees which are associated with \$358,500,000 of securities which remain unsold and were registered on Registration Statement No. 333-101164. The last amendment (No. 3) to Registration Statement No. 333-101164 was filed by Xerox Corporation on June 6, 2003.

- (2) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(o).
- (3) Also includes such indeterminate principal amounts or number of debt securities, preferred stock or common stock as may be issued upon conversion of, or in exchange for, or upon exercise of, or pursuant to, warrants, or convertible or exchangeable debt securities, stock purchase contracts or stock purchase units or preferred stock that provides for exercise or conversion into or purchase of such securities of Xerox Corporation. No separate consideration will be received for any debt securities or any shares of preferred stock or common stock so issued upon conversion, exchange or redemption.
- (4) The Rights to purchase shares of our Series A Cumulative Preferred Stock initially are attached to and trade with the shares of our common stock being registered hereby. Value attributed to such Rights, if any, is reflected in the market price of our common stock.
- (5) Guarantees of the debt securities may be issued by subsidiaries of Xerox Corporation that are listed on the following page under the caption "Table of Additional Registrants." No additional registration fee is payable in respect of the registration of the guarantees. Pursuant to Rule 457(o), no separate fee is payable for the guarantees.

TABLE OF ADDITIONAL REGISTRANTS

<u>Name of Subsidiary</u>	<u>Principle Executive Office</u>	<u>Jurisdiction of Incorporation/ Organization</u>	<u>I.R.S. Employer Identification Number</u>
Xerox International Joint Marketing, Inc.	Same as Xerox Corporation	Delaware	06-1328881
Intelligent Electronics, Inc.	411 Eagleview Blvd., Exton, PA 19341	Pennsylvania	23-2208404

XEROX CORPORATION

\$2,500,000,000

Debt Securities
Convertible Debt Securities
Preferred Stock
Convertible Preferred Stock
Common Stock
Warrants to Purchase Debt Securities, Preferred Stock, Common Stock
Depository Shares
Securities Purchase Contracts
Securities Purchase Units
Guarantees of Debt Securities

WE WILL PROVIDE SPECIFIC TERMS OF THESE SECURITIES IN
SUPPLEMENTS TO THIS PROSPECTUS.

YOU SHOULD READ THIS PROSPECTUS, INCLUDING THE RISK FACTORS
BEGINNING ON PAGE 2, AND ANY SUPPLEMENT
CAREFULLY BEFORE YOU INVEST.

Our common stock is listed on the New York Stock Exchange and the Chicago Stock Exchange under the trading symbol "XRX."

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is , 200 .

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XEROX CORPORATION

Xerox Corporation is a leader in the global document market, developing, manufacturing, marketing, servicing and financing a complete range of document equipment, software, solutions and services. We operate in over 130 countries worldwide, and distribute our products in the Western Hemisphere through divisions, wholly-owned subsidiaries and third-party distributors. In Europe, Africa, the Middle East, India and parts of Asia, we distribute our products through Xerox Limited and related companies. We had approximately 62,800 employees at September 30, 2003.

The document industry is undergoing a fundamental transformation, including the continued transition from older light-lens devices to digital technology, the transition from black and white to color, the management of publishing and printing jobs over the internet, the use of variable data to create customized documents, increased reliance on outsourcing and the increase in mobile workers utilizing hand-held devices. Documents are increasingly created and stored in digital electronic form and the internet is increasing the amount of information that can be accessed in the form of electronic documents. We believe these trends play to the strengths of our product and service offerings and represent opportunities for future growth. Two important areas for growth include color and services and solutions that tailor our product and service offerings to solve industry specific customer problems.

We develop document technologies, systems, solutions and services intended to improve our customers' work processes and business results. Our success rests on our ability to understand our customers' needs and provide innovative document management solutions and services that deliver value to them. We deliver value to customers by leveraging our core competencies in technology, document knowledge, global sales and service, brand reputation and value added solutions across our three core markets—high-end production environments, small to large networked offices and services.

We compete in both monochrome (i.e. black and white) and color markets by providing the industry's broadest range of document products, solutions and services. Our products include printing and publishing systems, digital multi-function devices (which can print, copy, scan and fax) and digital copiers, laser and solid ink printers, fax machines, document-management software, and supplies such as toner, paper and ink. We also provide software and solutions that can improve document access for mobile workers and help businesses easily print books or create personalized documents for their customers. In addition, we provide a range of comprehensive document management services, such as operating in-house production centers, developing online document repositories and analyzing how customers can most efficiently create and share documents in the office.

Xerox is a New York corporation and our principal executive offices are located at 800 Long Ridge Road, P.O. Box 1600, Stamford, Connecticut 06904-1600. Our telephone number is (203) 968-3000.

RISK FACTORS

You should carefully consider the risks described below and other information contained in this prospectus and any prospectus supplement before making an investment decision. Additional risks and uncertainties not presently known to us, or that we currently deem immaterial, may also impair our business operations. We cannot assure you that any of the events discussed in the risk factors below will not occur. If they do, our business, results of operations or financial condition could be materially adversely affected. In such an instance, the trading price of our securities could decline, and you might lose all or part of your investment.

This prospectus contains forward-looking statements made as of the date of this prospectus regarding our expected performance that involve certain risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors, including the risks faced by us described below and elsewhere in this prospectus

We face significant competition and our failure to compete successfully could adversely affect our results of operations and financial condition.

We operate in an environment of significant competition, driven by rapid technological advances and the demands of customers to become more efficient. Our competitors range from large international companies to relatively small firms. Some of the large international companies have significant financial resources and compete with us globally to provide document processing products and services in each of the markets we serve. We compete primarily on the basis of technology, performance, price, quality, reliability, brand, distribution and customer service and support. Our success in future performance is largely dependent upon our ability to compete successfully in the markets we currently serve and to expand into additional market segments. To remain competitive, we must develop new products and services and periodically enhance our existing offerings. If we are unable to compete successfully, we could lose market share and important customers to our competitors and that could materially adversely affect our results of operations and financial condition.

We need to successfully develop and market new product lines in order to maintain our market share.

Color printing and copying represents an important and growing segment of the market. A significant part of our strategy and ultimate success in this changing market is our ability to develop and market technology that produces color prints and copies quickly, easily and at reduced cost. Our continuing success in this strategy depends on our ability to make the investments and commit the necessary resources in this highly competitive market, as well as the pace of color adoption by our existing and prospective customers. If we are unable to develop and market advanced color technologies, we may be unable to capture these opportunities and it could materially adversely affect our results of operations and financial condition.

Our profitability is dependent upon our ability to obtain adequate pricing for our products.

Our success depends on our ability to obtain adequate pricing for our products and services which provides a reasonable return to our shareholders. Depending on competitive market factors, future prices we obtain for our products and services may decline from previous levels. In addition, pricing actions to offset the effect of currency devaluations may not prove sufficient to offset further devaluations or may not hold in the face of customer resistance and/or competition.

The level of our customer financing activities is dependent on our credit ratings and maintaining our third party financing arrangements.

The long-term viability and profitability of our customer financing activities is dependent, in part, on our ability to borrow and the cost of borrowing in the credit markets. This ability and cost, in turn, is dependent on our credit ratings. We are currently funding much of our customer financing activity through third-party

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financing arrangements, including several with General Electric Capital Corporation (GECC) in various geographies, cash generated from operations, cash on hand, capital markets offerings and securitizations. There is no assurance that we will be able to continue to fund our customer financing activity at present levels. We continue to negotiate and implement third-party vendor financing programs and actively pursue alternative forms of financing including securitizations and secured borrowings. Our ability to continue to offer customer financing and be successful in the placement of equipment with customers is largely dependent upon maintaining our third party financing arrangements.

Our profitability is dependent upon our ability to maintain an efficient operation.

Our ability to sustain and improve profit margins is largely dependent on our ability to continue to improve the cost efficiency of our operations through such programs as Lean Six Sigma and, to a lesser extent, our ability to successfully complete information technology initiatives. If we are unable to achieve productivity improvements through design efficiency and supplier and manufacturing cost improvements and information technology initiatives, our ability to offset labor cost inflation, potential materials cost increases and competitive price pressures would be impaired, all of which could materially adversely affect our results of operations and financial condition.

Our business, results of operations and financial condition may be negatively impacted by economic conditions abroad, including fluctuating foreign currencies and shifting regulatory schemes.

We derive approximately 40 percent of our revenue from operations outside of the United States. In addition, we manufacture or acquire many of our products and/or their components from outside the United States. Our future revenues, costs and results from operations could be affected by a number of factors, including changes in foreign currency exchange rates, changes in economic conditions from country to country, changes in a country's political conditions, trade protection measures, licensing requirements and local tax issues. We generally hedge foreign currency denominated assets and liabilities, primarily through the use of currency derivative contracts. The use of these derivative contracts mitigates volatility in our results of operations.

If we fail to successfully develop new technologies, we may be unable to retain and gain customers and our results of operations and financial condition could be adversely affected.

The process of developing new high technology products and solutions is inherently complex and uncertain. It requires accurate anticipation of customers' changing needs and emerging technological trends. We must make long-term investments and commit significant resources before knowing whether these investments will eventually result in products that achieve customer acceptance and generate the revenues required to provide desired returns from these investments. If we fail to accurately anticipate and meet our customers' needs through the development of new products or if our new products are not widely accepted, we could lose our customers and that could materially adversely affect our results of operations and financial condition.

Our results of operations and financial condition may be negatively impacted by revenue trends.

Our ability to return to and maintain a consistent trend of revenue growth over the intermediate to longer term is largely dependent upon expansion of our worldwide equipment placements, as well as sales of services and supplies occurring after the initial equipment placement (post sale revenue) in the key growth markets of color and multifunction devices. We expect that revenue growth can be further enhanced through our consulting services in the areas of document, content and knowledge management. The ability to achieve growth in our equipment placements is subject to the successful implementation of our initiatives to provide advanced systems, industry-oriented global solutions and services for major customers, improved direct sales productivity and expansion of our indirect distribution channels in the face of global competition and pricing pressures. Our ability to increase post sale revenue is largely dependent on our ability to increase equipment placements, equipment utilization and color adoption. Equipment placements typically occur through leases with original

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terms of three to five years. There will be a lag between the increase in equipment placement and an increase in post sale revenues. The ability to grow our customers' usage of our products may continue to be adversely impacted by the movement towards distributed printing and electronic substitutes and the impact of lower equipment placements in prior periods. If we are unable to return to and maintain a consistent trend of revenue growth, it could materially adversely affect our results of operations and financial condition.

If we are unable to continue to sustain our cost base at or below the current level and maintain process and systems changes, it could adversely affect our results of operations and financial condition.

Since early 2000, we have engaged in a series of restructuring programs related to downsizing our employee base, exiting certain businesses, outsourcing some internal functions and engaging in other actions designed to reduce our cost structure. These initiatives have resulted in more than \$1 billion in annualized cost savings. If we are unable to continue to sustain our cost base at or below the current level and maintain process and systems changes resulting from the restructuring actions, it could materially adversely affect our results of operations and financial condition.

Our substantial debt could adversely affect our financial health and pose challenges for conducting our business.

We have and will continue to have a substantial amount of debt and other obligations. As of September 30, 2003, we had \$11.814 billion of total debt (\$4.082 billion of which is secured by finance receivables) and \$1.720 billion of mandatory redeemable preferred securities. Cash and cash equivalents were \$2.270 billion at September 30, 2003.

Our substantial debt and other obligations could have important consequences. For example, it could:

- increase our vulnerability to general adverse economic and industry conditions;
- limit our ability to obtain additional financing for future working capital, capital expenditures, acquisitions and other general corporate requirements;
- increase our vulnerability to interest rate fluctuations because a portion of our debt has variable interest rates;
- require us to dedicate a substantial portion of our cash flows from operations to service debt and other obligations thereby reducing the availability of our cash flows from operations for other purposes;
- limit our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate;
- place us at a competitive disadvantage compared to our competitors that have less debt; and
- become due and payable upon a change in control.

If new debt is added to our current debt levels, these related risks could increase.

Any failure to be in compliance with any material provision or covenant of the existing credit facility, the indentures governing our outstanding Senior Notes or the GECC loan agreement could have a material adverse effect on our liquidity, results of operations and financial condition.

The adequacy of our liquidity depends on our ability to successfully generate positive cash flow from an appropriate combination of efficient operations and improvements therein, financing from third parties, access to capital markets and additional asset sales, including sales or securitizations of our receivables portfolios. On June 25, 2003, we completed a \$3.6 billion recapitalization (the "Recapitalization") that included the offering and sale of 9.2 million shares of 6.25 percent Series C Mandatory Convertible Preferred Stock, 46 million shares of Common Stock, \$700 million of 7-1/8 percent Senior Notes due 2010 and \$550 million 7-5/8 percent Senior

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Notes due 2013 and the closing of our new \$1.0 billion credit agreement which matures on September 30, 2008 (the “2003 Credit Facility”). The 2003 Credit Facility consists of a fully drawn \$300 million term loan and a \$700 million revolving credit facility (which includes a \$200 million sub-facility for letters of credit). With \$2.3 billion of cash and cash equivalents on hand at September 30, 2003 and borrowing capacity under our 2003 Credit Facility of \$700 million less \$78 million utilized for letters of credit, we believe our liquidity (including operating and other cash flows that we expect to generate) will be sufficient to meet operating cash flow requirements as they occur and to satisfy all scheduled debt maturities for at least the next twelve months; however, our ability to maintain positive liquidity going forward depends on our ability to generate cash from operations and access to the financial markets, both of which are subject to general economic, financial, competitive, legislative, regulatory and other market factors that are beyond our control.

The 2003 Credit Facility contains affirmative and negative covenants including limitations on: issuance of debt and preferred stock; investments and acquisitions; mergers; certain transactions with affiliates; creation of liens; asset transfers; hedging transactions; payment of dividends and certain other payments and intercompany loans. The 2003 Credit Facility contains financial maintenance covenants, including minimum EBITDA, as defined, maximum leverage (total adjusted debt divided by EBITDA), annual maximum capital expenditures limits and minimum consolidated net worth, as defined. The indentures governing our outstanding senior notes contain several affirmative and negative covenants. The senior notes do not, however, contain any financial maintenance covenants. Our U.S. loan agreement with GECC (effective through 2010) relating to our vendor financing program (the “Loan Agreement”) provides for a series of monthly secured loans up to \$5 billion outstanding at any one time. As of September 30, 2003, \$2.4 billion was outstanding under this Loan Agreement. The Loan Agreement, as well as similar loan agreements with GE in the U.K. and Canada, incorporates the financial maintenance covenants contained in the 2003 Credit Facility and contains other affirmative and negative covenants.

At September 30, 2003, we were in full compliance with the covenants and other provisions of the 2003 Credit Facility, the senior notes and the Loan Agreement and expect to remain in full compliance for at least the next twelve months. Any failure to be in compliance with any material provision or covenant of the 2003 Credit Facility or the senior notes could have a material adverse effect on our liquidity, results of operations and financial condition. Failure to be in compliance with the covenants in the Loan Agreement, including the financial maintenance covenants incorporated from the 2003 Credit Facility, would result in an event of termination under the Loan Agreement and in such case GECC would not be required to make further loans to us. If GECC were to make no further loans to us, it would materially adversely affect our liquidity and our ability to fund our customers’ purchases of our equipment and this could materially adversely affect our results of operations.

Our business, results of operations and financial condition may be negatively impacted by legal and regulatory matters.

We have various contingent liabilities that are not reflected on our balance sheet, including those arising as a result of being a defendant in numerous litigation and regulatory matters involving securities law, patent law, environmental law, employment law and the Employee Retirement Income Security Act (ERISA), as discussed in Note 10 to our Consolidated Financial Statements included in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2003, which is incorporated by reference herein. As required by Statement of Financial Accounting Standards No. 5 “Accounting for Contingencies,” we determine whether an estimated loss from a contingency should be accrued by assessing whether a loss is deemed probable and can be reasonably estimated. We assess potential liability by analyzing our litigation and regulatory matters using available information. We develop our views on estimated losses in consultation with outside counsel handling our defense in these matters, which involves an analysis of potential results, assuming a combination of litigation and settlement strategies. Should developments in any of our legal matters cause a change in our determination as to an unfavorable outcome and result in the need to recognize a material accrual, or should any of these matters result in a final adverse judgment or be settled for significant amounts, they could have a material adverse effect on our results of operations, cash flows and financial position in the period or periods in which such change in determination, judgment or settlement occurs.

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An active trading market may not develop for any securities that we may issue hereunder.

Any securities, other than our common stock, issued hereunder may be new issues of securities with no established trading market. Any underwriters or agents to or through whom such securities are sold for public offering and sale may make a market in such securities, but such underwriters or agents will not be obligated to do so and may discontinue any market making at any time without notice. No assurance can be given as to the liquidity of the trading market for any such securities. If there is no active market, you may not be able to sell your securities.

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

The following table shows the ratios of earnings to fixed charges and earnings to combined fixed charges and preferred stock dividends of Xerox for the periods indicated.

	Nine months ended September 30,		Year ended December 31,				
	2003	2002	2002	2001	2000	1999	1998
Ratio of earnings to fixed charges (1)	1.16	1.26	1.14	1.33	*	2.22	*
Ratio of earnings to combined fixed charges and preferred stock dividends (1)	1.08	1.16	1.06	1.32	**	2.11	**

(1) Refer to Exhibit 12 to each of our Annual Report on Form 10-K for the year ended December 31, 2002 and our Quarterly Report on Form 10-Q for the quarter ended September 30, 2003 for the computation of this ratio.

* Earnings for the years ended December 31, 2000 and 1998 were inadequate to cover fixed charges. The coverage deficiency was \$385 million and \$22 million, respectively.

** Earnings for the years ended December 31, 2000 and 1998 were inadequate to cover combined fixed charges and preferred stock dividend requirements. The coverage deficiency was \$438 million and \$78 million, respectively.

THE SECURITIES WE MAY OFFER

This prospectus is part of a shelf registration statement. Under the shelf registration statement, we may offer from time to time up to \$2,500,000,000 of any of the following securities, either separately or in units:

- debt securities;
- convertible debt securities;
- preferred stock;
- convertible preferred stock;
- common stock;
- warrants to purchase debt securities, preferred stock or common stock;
- depositary shares;
- securities purchase contracts;
- securities purchase units; and
- guarantees of our debt securities.

USE OF PROCEEDS

Unless we state differently in a prospectus supplement, we expect to use the net proceeds we receive from the sale of the securities offered by this prospectus and the accompanying prospectus supplement(s) for general corporate purposes.

**DESCRIPTION OF THE DEBT SECURITIES,
CONVERTIBLE DEBT SECURITIES AND GUARANTEES**

We may offer unsecured general obligations, which may be senior (the “senior debt securities”) or subordinated (the “subordinated debt securities”). The senior debt securities and the subordinated debt securities are together referred to in this prospectus as the “debt securities.” We also may offer convertible debt securities. The senior debt securities will have the same rank as all our other unsecured, unsubordinated debt. The subordinated debt securities may be senior or junior to, or rank pari passu with, our other subordinated obligations and will be entitled to payment only after payment on our Senior Indebtedness (as described below). The subordinated debt securities will be effectively subordinated to creditors (including trade creditors) and our preferred stockholders and those of our subsidiaries.

The senior debt securities and any related guarantees may be issued under the indenture dated June 25, 2003 between us and Wells Fargo Bank Minnesota, National Association or may be issued under a senior indenture to be entered into between us and the trustee named in the prospectus supplement. The subordinated debt securities and any related guarantees will be issued under a subordinated indenture to be entered into between us and the trustee named in the prospectus supplement. We have summarized certain general features of the debt securities from the indenture. A form of each of a senior indenture and a subordinated indenture is attached as an exhibit to the registration statement of which this prospectus forms a part. The following summary is of certain provisions of the form of senior indenture and this summary does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all the provisions of the senior indenture and the provisions of the Trust Indenture Act of 1939 (the “TIA”), as amended. If we issue any subordinated debt securities, the description of those securities and the subordinated indenture will be set forth in the related prospectus supplement.

The following description of the terms of the debt securities and the guarantees sets forth certain general terms and provisions. The particular terms of the debt securities and guarantees offered by any prospectus supplement and the extent, if any, to which such general provisions may apply to the debt securities and guarantees will be described in the related prospectus supplement. Accordingly, for a description of the terms of a particular issue of debt securities, reference must be made to both the related prospectus supplement and to the following description.

General

The aggregate principal amount of debt securities that may be issued under the indenture is unlimited. The debt securities may be issued in one or more series as may be authorized from time to time.

Reference is made to the applicable prospectus supplement for the following terms of the debt securities (if applicable):

- title and aggregate principal amount;
- indenture under which the debt securities are issued;
- applicable subordination provisions, if any;
- percentage or percentages of principal amount at which such securities will be issued;
- maturity date(s);
- interest rate(s) or the method for determining the interest rate(s);
- dates on which interest will accrue or the method for determining dates on which interest will accrue and dates on which interest will be payable;
- redemption or early repayment provisions;

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- authorized denominations;
- form;
- amount of discount or premium with which such securities will be issued;
- whether such securities will be issued in whole or in part in the form of one or more global securities;
- identity of the depositary for global securities;
- whether a temporary security is to be issued with respect to such series and whether any interest payable prior to the issuance of definitive securities of the series will be credited to the account of the persons entitled thereto;
- the terms upon which beneficial interests in a temporary global security may be exchanged in whole or in part for beneficial interests in a definitive global security or for individual definitive securities;
- conversion or exchange features;
- any covenants applicable to the particular debt securities being issued;
- currency, currencies or currency units in which the purchase price for, the principal of and any premium and any interest on, such securities will be payable;
- time period within which, the manner in which and the terms and conditions upon which the purchaser of the securities can select the payment currency;
- securities exchange(s) on which the securities will be listed, if any;
- whether any underwriter(s) will act as market maker(s) for the securities;
- extent to which a secondary market for the securities is expected to develop;
- additions to or changes in the events of default with respect to the securities and any change in the right of the trustee or the holders to declare the principal, premium and interest with respect to such securities to be due and payable;
- whether securities issued by Xerox will be entitled to the benefits of the guarantees or any other form of guarantee; and
- additional terms not inconsistent with the provisions of the indenture.

One or more series of debt securities may be sold at a substantial discount below their stated principal amount, bearing no interest or interest at a rate which at the time of issuance is below market rates. One or more series of debt securities may be variable rate debt securities that may be exchanged for fixed rate debt securities.

United States federal income tax consequences and special considerations applicable to any such series will be described in the applicable prospectus supplement.

Debt securities may be issued where the amount of principal and/or interest payable is determined by reference to one or more currency exchange rates, commodity prices, equity indices or other factors. Holders of such securities may receive a principal amount or a payment of interest that is greater than or less than the amount of principal or interest otherwise payable on such dates, depending upon the value of the applicable currencies, commodities, equity indices or other factors. Information as to the methods for determining the amount of principal or interest, if any, payable on any date, the currencies, commodities, equity indices or other factors to which the amount payable on such date is linked and certain additional United States federal income tax considerations will be set forth in the applicable prospectus supplement.

The term "debt securities" includes debt securities denominated in U.S. dollars or, if specified in the applicable prospectus supplement, in any other freely transferable currency or units based on or relating to foreign currencies.

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We expect most debt securities to be issued in fully registered form without coupons and in denominations of \$1,000 and any integral multiple thereof. Subject to the limitations provided in the indenture and in the prospectus supplement, debt securities which are issued in registered form may be transferred or exchanged at the office of the trustee maintained in the Borough of Manhattan, The City of New York or the principal corporate trust office of the trustee, without the payment of any service charge, other than any tax or other governmental charge payable in connection therewith.

Guarantees

Any senior or subordinated debt securities may be guaranteed by one or more of our direct or indirect subsidiaries. Each prospectus supplement will describe any guarantees for the benefit of the series of debt securities to which it relates, including required financial information of the subsidiary guarantors, as applicable.

Global Securities

We expect the following provisions to apply to all debt securities.

The debt securities of a series may be issued in whole or in part in the form of one or more global securities that will be deposited with, or on behalf of, a depositary (the "depositary") identified in the prospectus supplement. Global securities will be issued in registered form and in either temporary or definitive form. Unless and until it is exchanged in whole or in part for the individual debt securities, a global security may not be transferred except as a whole by the depositary for such global security to a nominee of such depositary or by a nominee of such depositary to such depositary or another nominee of such depositary or by such depositary or any such nominee to a successor of such depositary or a nominee of such successor.

The specific terms of the depositary arrangement with respect to any debt securities of a series and the rights of and limitations upon owners of beneficial interests in a global security will be described in the prospectus supplement. We expect that the following provisions will generally apply to depositary arrangements.

Upon the issuance of a global security, the depositary for such global security or its nominee will credit, on its book-entry registration and transfer system, the respective principal amounts of the individual debt securities represented by such global security to the accounts of persons that have accounts with such depositary. Such accounts shall be designated by the dealers, underwriters or agents with respect to the debt securities or by us if such debt securities are offered and sold directly by us. Ownership of beneficial interests in a global security will be limited to persons that have accounts with the applicable depositary ("participants") or persons that may hold interests through participants. Ownership of beneficial interests in such global security will be shown on, and the transfer of that ownership will be effected only through, records maintained by the applicable depositary or its nominee with respect to interests of participants and the records of participants with respect to interests of persons other than participants. The laws of some states require that certain purchasers of securities take physical delivery of such securities in definitive form. Such limits and such laws may impair the ability to transfer beneficial interests in a global security.

So long as the depositary for a global security, or its nominee, is the registered owner of a global security, such depositary or such nominee, as the case may be, will be considered the sole owner or holder of the debt securities represented by that global security for all purposes under the indenture governing those debt securities. Except as provided below, owners of beneficial interests in a global security will not be entitled to have any of the individual debt securities of the series represented by that global security registered in their names, will not receive or be entitled to receive physical delivery of any debt securities of such series in definitive form and will not be considered the owners or holders thereof under the indenture governing such debt securities.

Payments of principal, premium, if any, and interest, if any, on individual debt securities represented by a global security registered in the name of a depositary or its nominee will be made to the depositary or its

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nominee, as the case may be, as the registered owner of the global security representing the debt securities. None of Xerox, the trustee for the debt securities, any paying agent, or the registrar for the debt securities will have any responsibility or liability for any aspect of the records relating to or payments made by the depositary or any participants on account of beneficial ownership interests of the global security for the debt securities or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

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

If the depositary for a series of debt securities is at any time unwilling, unable or ineligible to continue as depositary and a successor depositary is not appointed by us within 90 days, we will issue definitive debt securities of that series in exchange for the global security or securities representing that series of debt securities. In addition, we may at any time and in our sole discretion, subject to any limitations described in the prospectus supplement relating to the debt securities, determine not to have any debt securities of a series represented by one or more global securities, and, in such event, will issue definitive debt securities of that series in exchange for the global security or securities representing that series of debt securities. If definitive debt securities are issued, an owner of a beneficial interest in a global security will be entitled to physical delivery of definitive debt securities of the series represented by that global security equal in principal amount to that beneficial interest and to have the debt securities registered in its name. Definitive debt securities of any series so issued will be issued in denominations, unless otherwise specified by us, of \$1,000 and integral multiples thereof.

Events of Default, Notice and Waiver

The following events are defined in the indenture as "Events of Default" with respect to a series of debt securities:

- (1) the failure to pay interest on debt securities of such series when the same becomes due and payable and the default continues for a continuous period of 30 days;
- (2) the failure to pay the principal on debt securities of such series, when such principal becomes due and payable, at maturity, upon redemption or otherwise (including the failure to make a payment to purchase debt securities of such series tendered pursuant to a Change of Control Offer or a Net Proceeds Offer);
- (3) a default in the observance or performance of any other covenant or agreement contained in the indenture which default continues for a period of 90 days after we receive written notice specifying the default (and demanding that such default be remedied) from the trustee or the holders of at least 25% of the outstanding principal amount of the debt securities of such series (except in the case of a default with respect to the "Merger, Consolidation and Sale of Assets" covenant, which will constitute an Event of Default with such notice requirement but without such passage of time requirement);
- (4) the failure to pay at final maturity (giving effect to any applicable grace periods and any extensions thereof) the principal amount of any Indebtedness of Xerox or any Restricted Subsidiary of Xerox, or the acceleration of the final stated maturity of any such Indebtedness, if the aggregate principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness in default for failure to pay principal at final maturity or which has been accelerated, aggregates \$50.0 million or more at any time;
- (5) one or more judgments for the payment of money in an aggregate amount in excess of the lesser of (i) \$75.0 million or (ii) the highest amount of one or more judgments that would result in a Default or an Event of Default under any other indenture pursuant to which Xerox or any of its Restricted Subsidiaries has

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issued Capital Markets Debt (in each case excluding any amounts adequately covered by insurance from a solvent and unaffiliated insurance company), shall have been rendered against Xerox or any of its Restricted Subsidiaries and such judgments remain undischarged, unpaid or unstayed for a period of 90 days after such judgment or judgments become final and non-appealable;

(6) any Guarantee of any Guarantor relating to such debt securities ceases to be in full force and effect (other than in accordance with the terms of such Guarantee and indenture) or is declared null and void and unenforceable or found to be invalid or any Guarantor denies its liability under its Guarantee (other than by reason of release of a Guarantor from its Guarantee in accordance with the terms of the indenture and such Guarantee); or

(7) certain events of bankruptcy affecting Xerox or any of its Significant Subsidiaries.

If an Event of Default (other than an Event of Default specified in clause (7) above with respect to Xerox) shall occur and be continuing, the trustee or the holders of at least 25% in principal amount of outstanding debt securities of the affected series under the indenture may declare the principal of and accrued interest on all the debt securities of such series under the indenture to be due and payable by notice in writing to Xerox and the trustee specifying the respective Event of Default and that it is a "notice of acceleration," and the same shall become immediately due and payable. If an Event of Default specified in clause (7) above with respect to Xerox occurs and is continuing, then all unpaid principal of, and premium, if any, and accrued and unpaid interest on all of the outstanding debt securities shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the trustee or any holder.

The indenture will provide that, at any time after a declaration of acceleration with respect to a series of debt securities as described in the preceding paragraph, the holders of a majority in principal amount of debt securities of such series under the indenture may rescind and cancel such declaration and its consequences:

(1) if the rescission would not conflict with any judgment or decree;

(2) 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;

(3) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid; and

(4) if Xerox has paid the trustee its reasonable compensation and reimbursed the trustee for its expenses, disbursements and advances.

No such rescission shall affect any subsequent Default or impair any right consequent thereto.

The holders of a majority in principal amount of the debt securities of the affected series under the indenture may waive any existing Default or Event of Default under such series, and its consequences, except a default in the payment of the principal of or interest on any debt securities of such series.

Holders of the debt securities may not enforce the indenture or the debt securities except as provided in the indenture and under the TIA. Subject to the provisions of the indenture relating to the duties of the trustee, the trustee is under no obligation to exercise any of its rights or powers under the indenture at the request, order or direction of any of the holders, unless such holders have offered to the trustee reasonable indemnity. Subject to all provisions of the indenture and applicable law, the holders of a majority in aggregate principal amount of the then outstanding debt securities of any affected series have the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee or exercising any trust or power conferred on the trustee.

Under the indenture, Xerox is required to provide an officers' certificate to the trustee promptly upon any such officer obtaining knowledge of any Default or Event of Default (provided that such officers shall provide such certification at least annually whether or not they know of any Default or Event of Default) that has occurred and, if applicable, describe such Default or Event of Default and the status thereof.

Legal Defeasance and Covenant Defeasance

Xerox may, at its option and at any time, elect to have its and the Guarantors' obligations discharged with respect to any series of the outstanding debt securities ("Legal Defeasance"). Such Legal Defeasance means that Xerox shall be deemed to have paid and discharged the entire indebtedness represented by such series of outstanding debt securities, except for:

- (1) the rights of holders of such series to receive payments in respect of the principal of, premium, if any, and interest on such series of debt securities when such payments are due from the trust fund referred to below;
- (2) Xerox's obligations with respect to such series of debt securities concerning issuing temporary debt securities, issuing debt securities to replace mutilated, destroyed, lost or stolen debt securities and the maintenance of an office or agency for payments;
- (3) the rights, powers, trust, duties and immunities of the trustee and Xerox's obligations in connection therewith; and
- (4) the Legal Defeasance provisions of the indenture.

In addition, Xerox may, at its option and at any time, elect to have its obligations released with respect to certain covenants (other than, among others, the covenant to make payments in respect of the principal, premium, if any, and interest on the debt securities) that are described in the indenture ("Covenant Defeasance") and thereafter any omission to comply with such obligations shall not constitute a Default or Event of Default with respect to the applicable series of the debt securities. In the event Covenant Defeasance occurs, certain events (not including nonpayment, bankruptcy, receivership, reorganization and insolvency events) described under "Events of Default" will no longer constitute Events of Default with respect to the debt securities. We may exercise our Legal Defeasance option notwithstanding its prior exercise of its Covenant Defeasance option.

In order to exercise either Legal Defeasance or Covenant Defeasance:

(1) We must irrevocably deposit with the trustee, in trust for the benefit of the holders of the applicable series of debt securities, cash in U.S. dollars, non-callable U.S. government obligations, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium, if any, and interest on the applicable debt securities on the stated date for payment thereof or on the applicable redemption date, as the case may be;

(2) in the case of Legal Defeasance, we shall have delivered to the trustee an opinion of counsel in the United States reasonably acceptable to the trustee confirming that:

(a) Xerox has received from, or there has been published by, the Internal Revenue Service a ruling; or

(b) since the date of the indenture, there has been a change in the applicable federal income tax law, in either case to the effect that, and based thereon such opinion of counsel shall confirm that, the applicable holders will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(3) in the case of Covenant Defeasance, Xerox shall have delivered to the trustee an opinion of counsel in the United States reasonably acceptable to the trustee confirming that the applicable holders will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(4) no Default or Event of Default shall have occurred and be continuing on the date of such deposit or insofar as Events of Default from bankruptcy or insolvency events are concerned, at any time in the period ending on the 91st day after the date of deposit;

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(5) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under the indenture or any other material agreement or instrument to which Xerox or any of its Subsidiaries is a party or by which Xerox or any of its Subsidiaries is bound;

(6) Xerox shall have delivered to the trustee an officers' certificate stating that the deposit was not made by Xerox with the intent of preferring the holders over any other creditors of Xerox or with the intent of defeating, hindering, delaying or defrauding any other creditors of Xerox or others;

(7) Xerox shall have delivered to the trustee an officers' certificate and an opinion of counsel, each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance have been complied with; and

(8) certain other customary conditions precedent are satisfied.

Notwithstanding the foregoing, the opinion of counsel required by clause (2) above with respect to a Legal Defeasance need not be delivered if all debt securities not theretofore delivered to the trustee for cancellation (1) have become due and payable or (2) will become due and payable on the maturity date 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 Xerox.

Satisfaction and Discharge

The indenture will be discharged and will cease to be of further effect (except as to surviving rights of transfer or exchange of the applicable debt securities, as expressly provided for in the indenture) as to all outstanding debt securities of any series under the indenture when:

(1) either:

(a) all the debt securities of such series theretofore authenticated and delivered (except lost, stolen or destroyed debt securities which have been replaced or paid and debt securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by Xerox and thereafter repaid to Xerox or discharged from such trust) have been delivered to the trustee for cancellation; or

(b) all debt securities of such series not theretofore delivered to the trustee for cancellation have become due and payable within one year or as a result of a mailing of a notice of redemption and Xerox has irrevocably deposited or caused to be deposited with the trustee cash or non-callable U.S. government obligations or a combination thereof in an amount sufficient to pay and discharge the entire Indebtedness on such debt securities not theretofore delivered to the trustee for cancellation, for principal of, premium, if any, and interest on such debt securities to the date of deposit together with irrevocable instructions from Xerox directing the trustee to apply such funds to the payment thereof at maturity or redemption, as the case may be;

(2) Xerox has paid all other sums payable under the indenture in respect of such debt securities by Xerox; and

(3) Xerox has delivered to the trustee an officers' certificate and an opinion of counsel stating that all conditions precedent under the indenture relating to the satisfaction and discharge of the indenture in respect of such debt securities have been complied with.

Modification of the Indenture

From time to time, Xerox, the Guarantors and the trustee, without the consent of the holders of debt securities of any series, may amend the indenture for certain specified purposes, including curing ambiguities, defects or inconsistencies, complying with the covenant described under "—Certain Covenants Applicable at All Times—Merger, Consolidation and Sale of Assets," complying with any requirement of the SEC in connection with qualifying, or maintaining the qualification of, the indenture under the TIA and making any change that

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does not adversely affect the rights of any holder of such debt securities in any material respect. Other modifications and amendments of the indenture as it applies to a series of debt securities may be made with the consent of the holders of a majority in principal amount of the then outstanding debt securities of such series, except that, without the consent of each holder affected thereby, no amendment may:

- (1) reduce the amount of debt securities whose holders must consent to an amendment;
- (2) reduce the rate of or change or have the effect of changing the time for payment of interest, including defaulted interest, on any debt securities;
- (3) reduce the principal of or change or have the effect of changing the fixed maturity of any debt securities, or change the date on which any debt securities may be subject to redemption or reduce the redemption price therefor;
- (4) make any debt securities payable in money other than that stated in the debt securities;
- (5) make any change in provisions of the indenture protecting the right of each holder to receive payment of principal of and interest on such debt securities on or after the due date thereof or to bring suit to enforce such payment, or permitting holders of a majority in principal amount of debt securities to waive Defaults or Events of Default;
- (6) after our obligation to purchase debt securities arises thereunder, amend, change or modify in any material respect the obligation of Xerox to make and consummate a Change of Control Offer in the event of a Change of Control or, after such Change of Control has occurred, modify any of the provisions or definitions with respect thereto; provided, that for purposes of this provision, a Change of Control shall not be deemed to have occurred upon the entering into or execution of any agreement or instrument notwithstanding that the consummation of the transactions contemplated by such agreement or instrument would result in a Change of Control as defined in the indenture if such agreement or instrument expressly provides that it shall be a condition to closing thereunder that the holders of the debt securities shall have waived the Change of Control on or prior to such closing unless and until such condition is waived by the parties to such agreement or instrument or the Change of Control has actually occurred;
- (7) release any Guarantor from its Guarantee except as provided in the indenture; or
- (8) modify or change any provision of the indenture or the related definitions affecting the ranking of the debt securities in a manner which adversely affects the holders.

Governing Law

The indenture, the debt securities and the guarantees shall be construed in accordance with and governed by the laws of the State of New York, without giving effect to the principles thereof relating to conflicts of law (other than Section 5-1401 of the General Obligations Law of the State of New York, and any successor statute or statutes).

Convertibility

Debt securities may be convertible into or exchangeable for our common stock or preferred stock. The prospectus supplement will describe the terms of any conversion rights.

Provisions Applicable Only To Senior Debt Securities

Ranking

The senior debt securities and the subsidiary guarantees will be unsecured obligations, and will rank *pari passu* with all other unsecured and unsubordinated debt of the issuer.

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Change of Control

Upon the occurrence of a Change of Control, each holder will have the right to require that Xerox purchase all or a portion (equal to \$1,000 and integral multiples thereof) of such holder's debt securities pursuant to the offer described below (the "Change of Control Offer"), at a purchase price equal to 101% of the principal amount of the debt securities repurchased plus accrued and unpaid interest to the date of purchase.

Within 30 days following the date upon which the Change of Control occurred, Xerox must send, or cause the trustee to send, by first class mail, a notice to each holder, with a copy to the trustee, which notice shall govern the terms of the Change of Control Offer. Such notice shall state, among other things, the purchase date, which must be no earlier than 30 days nor later than 45 days from the date such notice is mailed, other than as may be required by law (the "Change of Control Payment Date"). Holders electing to have debt securities purchased pursuant to a Change of Control Offer will be required to surrender the debt securities, with the form entitled "Option of Holder to Elect Purchase" on the reverse of the debt securities completed, to the Paying Agent at the address specified in the notice prior to the close of business on the third business day prior to the Change of Control Payment Date.

Xerox will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in the indenture applicable to a Change of Control Offer made by Xerox and purchases all debt securities validly tendered and not withdrawn under such Change of Control Offer.

If a Change of Control Offer is made, there can be no assurance that we will have available funds sufficient to pay the Change of Control purchase price for all the debt securities that might be delivered by holders seeking to accept the Change of Control Offer. In the event Xerox is required to purchase outstanding debt securities pursuant to a Change of Control Offer, Xerox expects that it would seek third-party financing to the extent it does not have available funds to meet its purchase obligations. However, there can be no assurance that Xerox would be able to obtain such financing. In addition, there can be no assurance that Xerox will be able to obtain the consents necessary to consummate a Change of Control Offer from the lenders under agreements governing outstanding Indebtedness which may in the future prohibit the offer.

Neither our Board of Directors nor the trustee may waive the covenant relating to a holder's right to redemption upon a Change of Control. Restrictions in the indenture described herein on the ability of Xerox and its Restricted Subsidiaries to incur additional Indebtedness, to grant Liens on its property, to make Restricted Payments and to make Asset Sales may also make more difficult or discourage a takeover of Xerox, whether favored or opposed by the management of Xerox. There can be no assurance that Xerox or the acquiring party will have sufficient financial resources to effect a Change of Control Offer. Such restrictions and the restrictions on transactions with Affiliates may, in certain circumstances, make more difficult or discourage any leveraged buyout of Xerox or any of its Subsidiaries by the management of Xerox. While such restrictions cover a wide variety of arrangements which have traditionally been used to effect highly leveraged transactions, the indenture may not afford the holders protection in all circumstances from the adverse aspects of a highly leveraged transaction, reorganization, restructuring, merger or similar transaction.

We will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the repurchase of debt securities pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the "Change of Control" provisions of the indenture, we shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under the "Change of Control" provisions of the indenture by virtue thereof.

The "Change of Control" provisions described above will apply during any Suspension Period.

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Suspension Period

During each Suspension Period, the provisions of the indenture described under “Certain Covenants That Will Cease To Apply During Suspension Period” will not apply. The provisions of the indenture described under “Certain Covenants Applicable at All Times” will apply at all times during any Suspension Period so long as any debt securities remain outstanding thereunder.

“Suspension Period” means any period (a) beginning on the date that;

(1) the applicable series of debt securities has Investment Grade Status; provided that prior to the assignment of the ratings contemplated by the definition of “Investment Grade Status,” Xerox has advised Moody’s and S&P that the covenants under “Certain Covenants That Will Cease To Apply During Suspension Period” will not apply during such Suspension Period;

(2) no Default or Event of Default has occurred and is continuing; and

(3) Xerox has delivered an officers’ certificate to the trustee certifying that the conditions set forth in clauses (1) and (2) above are satisfied;

and (b) ending on the date (the “Reversion Date”) that the applicable series of debt securities ceases to have the applicable ratings from both Moody’s and S&P specified in the definition of “Investment Grade Status.”

On each Reversion Date, all Indebtedness incurred during the Suspension Period prior to such Reversion Date will be deemed to have been outstanding on Issue Date and classified as permitted under clause (4) of the definition of “Permitted Indebtedness.”

For purposes of calculating the amount available to be made as Restricted Payments under clause (iii) of the first paragraph of the “Limitation on Restricted Payments” covenant, calculations under that clause will be made with reference to December 31, 2001 as set forth in that clause. Accordingly, (x) Restricted Payments made during the Suspension Period not otherwise permitted pursuant to any of clauses (1) through (15) under the second paragraph under the “Limitation on Restricted Payments” covenant will reduce the amount available to be made as Restricted Payments under clause (iii) of such covenant; provided that such reduction by itself shall not cause the amount available to be made as Restricted Payments under clause (iii) of such covenant on the Reversion Date to be reduced to below an amount equal to \$75.0 million per calendar year, provided further that such amount shall be pro rated only for the number of calendar days between the Reversion Date and the earlier of (A) the end of the calendar year in which the Reversion Date occurs and (B) June 15, 2013 and (y) the items specified in subclauses (v) through (z) of clause (iii) of such covenant that occur during the Suspension Period will increase the amount available to be made as Restricted Payments under clause (iii) of such covenant. Any Restricted Payments made during the Suspension Period that (i) are of the type described in clauses (4), (8), (13) or (14) under the second paragraph of the “Limitations on Restricted Payments” covenant or (ii) that would have been made pursuant to clause (15) of the second paragraph under such covenant if such covenant were then applicable shall reduce the amounts permitted to be incurred under such clause (4), (8), (13), (14) or (15), as the case may be, on the Reversion Date.

For purposes of the “Limitation on Asset Sales” covenant, on the Reversion Date, the unutilized Net Proceeds Offer Amount will be reset to zero.

Certain Covenants That Will Cease To Apply During Suspension Period

Set forth below are summaries of certain covenants contained in the indenture that will apply at all times except during any Suspension Period.

Limitation on Incurrence of Additional Indebtedness. (a) Xerox will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume, guarantee, acquire, become liable, contingently or otherwise, with respect to, or otherwise become responsible for payment of (collectively, “incur”)

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any Indebtedness (other than Permitted Indebtedness); provided, however, that Xerox or any Finance SPE may incur Indebtedness (including, without limitation, Acquired Indebtedness), if on the date of the incurrence of such Indebtedness, after giving effect to the incurrence thereof, the Consolidated Fixed Charge Coverage Ratio of Xerox is greater than 2.25 to 1.0.

(b) Xerox will not, directly or indirectly, incur any Indebtedness which by its terms (or by the terms of any agreement governing such Indebtedness) is subordinated in right of payment to any other Indebtedness of Xerox, unless such Indebtedness is also by its terms (or by the terms of any agreement governing such Indebtedness) made expressly subordinate to the debt securities to the same extent and in the same manner as such Indebtedness is subordinated to other Indebtedness of Xerox.

Limitation on Restricted Payments. Xerox will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly:

(1) declare or pay any dividend or make any distribution (other than dividends or distributions payable in Qualified Capital Stock of Xerox) on or in respect of shares of Xerox's or any Restricted Subsidiary's Capital Stock to holders of such Capital Stock in their capacity as such, other than dividends, payments or distributions payable to Xerox or any Restricted Subsidiary of Xerox (and, if such Restricted Subsidiary is not a Wholly Owned Restricted Subsidiary, dividends or distributions payable to the other equity holders of such Restricted Subsidiary on a pro rata basis);

(2) purchase, redeem or otherwise acquire or retire for value any Capital Stock of Xerox or any Restricted Subsidiary (other than (x) in exchange for Qualified Capital Stock of Xerox, or (y) Capital Stock of a Restricted Subsidiary held by Xerox or another Restricted Subsidiary) or any warrants, rights or options to purchase or acquire shares of any class of such Capital Stock or make any payments with respect to Synthetic Purchase Agreements;

(3) make any principal payment on, purchase, defease, redeem, prepay, decrease or otherwise acquire or retire for value, prior to any scheduled final maturity, scheduled repayment or scheduled sinking fund payment, any Subordinated Indebtedness (other than the purchase, repurchase or other acquisition of Subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such purchase, repurchase or other acquisition); or

(4) make any Investment (other than Permitted Investments) (each of the foregoing actions set forth in clauses (1), (2), (3) and (4) being referred to as a "Restricted Payment") (and for the avoidance of doubt, Permitted Investments shall not be Restricted Payments), if at the time of such Restricted Payment or immediately after giving effect thereto,

(i) a Default or an Event of Default shall have occurred and be continuing; or

(ii) Xerox is not able to incur at least \$1.00 of additional Indebtedness (other than Permitted Indebtedness) in compliance with the "Limitation on Incurrence of Additional Indebtedness" covenant; or

(iii) the aggregate amount of Restricted Payments (including such proposed Restricted Payment) made subsequent to December 31, 2001 (the amount expended for such purposes, if other than in cash, being the fair market value of such property as determined in good faith by Xerox) shall exceed the sum, without duplication (the "Restricted Payments Basket"), of:

(u) 50% of the cumulative Consolidated Net Income (or if cumulative Consolidated Net Income shall be a loss, minus 100% of such loss) of Xerox earned subsequent to December 31, 2001 and on or prior to the date the Restricted Payment occurs (the "Reference Date") (treating such period as a single accounting period); plus

(v) 100% of the aggregate net cash proceeds received by Xerox from any Person (other than a Subsidiary of Xerox) from the issuance and sale subsequent to December 31, 2001 and on or

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prior to the Reference Date of Qualified Capital Stock of Xerox or warrants, options or other rights to acquire Qualified Capital Stock of Xerox (but excluding any debt security that is convertible into, or exchangeable for, Qualified Capital Stock); plus

(w) 100% of the aggregate net cash proceeds of any equity contribution received by Xerox from a holder of Xerox's Capital Stock; plus

(x) 100% of the aggregate settlement value of Qualified Capital Stock issued by Xerox in respect of the settlement of pending or threatened litigation; plus

(y) the amount by which Indebtedness of Xerox (other than the Convertible Subordinated Debentures) is reduced on Xerox's balance sheet upon the conversion or exchange (other than by a Subsidiary of Xerox) subsequent to December 31, 2001 of such Indebtedness for Qualified Capital Stock of Xerox (less the amount of any cash, or the fair value of any other property, distributed by Xerox upon such conversion or exchange); plus

(z) without duplication, the sum of:

(1) the aggregate amount returned in cash on or with respect to Investments (other than Permitted Investments) made subsequent to December 31, 2001 whether through interest payments, principal payments, dividends or other distributions or payments;

(2) the net cash proceeds received by Xerox or any of its Restricted Subsidiaries from the disposition of all or any portion of such Investments (other than to a Subsidiary of Xerox); and

(3) upon redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary, the fair market value of such Subsidiary;

provided, however, that the sum of clauses (1), (2) and (3) above shall not exceed the aggregate amount of all such Investments made subsequent to December 31, 2001.

Notwithstanding the foregoing, the provisions set forth in the preceding paragraphs do not prohibit:

(1) the payment of any dividend within 60 days after the date of declaration of such dividend if the dividend would have been permitted on the date of declaration;

(2) the acquisition of any shares of Capital Stock of Xerox or any warrants, rights or options to purchase or acquire shares of any class of such Capital Stock, either (i) solely in exchange for shares of Qualified Capital Stock of Xerox or any warrants, rights or options to purchase or acquire shares of any class of Qualified Capital Stock of Xerox or (ii) through the application of net proceeds of a substantially concurrent sale for cash (other than to a Subsidiary of Xerox) of shares of Qualified Capital Stock of Xerox;

(3) the repurchase, redemption or other repayment of any Subordinated Indebtedness or Preferred Stock permitted to be issued pursuant to clause (2) of the definition of "Permitted Indebtedness" either (i) solely in exchange for shares of Qualified Capital Stock of Xerox or any warrants, rights or options to purchase or acquire shares of any class of Qualified Capital Stock of Xerox or other Subordinated Indebtedness of Xerox that is Refinancing Indebtedness, or (ii) through the application of net proceeds of a substantially concurrent sale for cash (other than to a Subsidiary of Xerox) of (a) shares of Qualified Capital Stock of Xerox or (b) other Subordinated Indebtedness of Xerox that is Refinancing Indebtedness;

(4) (x) the repurchase or other acquisition of shares of Qualified Capital Stock of Xerox or any warrants, rights or options to purchase or acquire shares of any such Qualified Capital Stock, from employees, former employees, directors or former directors of Xerox or any of its Subsidiaries (or permitted transferees of such employees, former employees, directors or former directors), pursuant to the terms of the agreements (including employment agreements) or plans (or amendments thereto) approved by the Board of Directors under which such individuals purchase or sell, or are granted the option to purchase or sell, shares of such Qualified Capital Stock or (y) the redemption or repayment of any outstanding de minimis

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Subordinated Indebtedness; provided that the aggregate amount paid under clauses (x) and (y) combined does not exceed \$25.0 million since January 17, 2002;

(5) the declaration and payment of dividends or distributions by Xerox or any of its Restricted Subsidiaries on Preferred Stock so long as (a) no Event of Default has occurred and is continuing, (b) such Preferred Stock is otherwise permitted to be issued under the indenture and (c) such dividends or distributions are included in Consolidated Fixed Charges;

(6) the redemption of Preferred Stock of Xerox or any Restricted Subsidiary (other than the Convertible Trust Preferred Securities) outstanding as of the Issue Date at any final scheduled or other mandatory redemption date thereof as in effect on the Issue Date;

(7) any repurchase of the Convertible Trust Preferred Securities upon the exercise by the holders thereof of any right to require such Restricted Subsidiary to purchase such securities through the application of the net proceeds of a substantially concurrent sale for cash (other than to a Subsidiary of Xerox) of an issuance of, or solely in exchange for, either (x) junior subordinated debentures of Xerox that are subordinated to the debt securities pursuant to a written agreement that is, taken as a whole, no less restrictive to the holders of such junior subordinated debentures than the subordination terms of the junior subordinated debentures into which such Convertible Trust Preferred Securities are exchangeable and have a maturity (including pursuant to any sinking fund obligation, mandatory redemption or right of repurchase at the option of the holder or otherwise) no earlier than the final maturity of the debt securities and that have the benefit of covenants that are, taken as a whole, no more restrictive than the covenants in the indenture or (y) Qualified Capital Stock of Xerox or any warrants, rights or options to purchase or acquire shares of any class of Qualified Capital Stock of Xerox;

(8) the redemption of Xerox's Series B Convertible Preferred Stock as and when required by the terms of the Xerox Corporation Employee Stock Ownership Plan, 2000 Restatement dated March 17, 2000, as amended, provided that the aggregate amount paid pursuant to this clause (8) since the Issue Date does not exceed \$50.0 million;

(9) upon the occurrence of a Change of Control and after the completion of the offer to repurchase of debt securities as described under "Change of Control" above (including the purchase of all debt securities tendered), any purchase, defeasance, retirement, redemption or other acquisition of Subordinated Indebtedness required under the terms of such Subordinated Indebtedness as a result of such Change of Control;

(10) payments to holders of Capital Stock (or to the holders of Indebtedness or Disqualified Capital Stock that is convertible into or exchangeable for Capital Stock upon such conversion or exchange) in lieu of the issuance of fractional shares;

(11) the payment of consideration by a Person other than Xerox or a Subsidiary to equity holders of Xerox;

(12) the transactions with any Person (including any Affiliate of Xerox) described in clause (1) of the third paragraph of the "Transaction with Affiliates" covenant and the funding of any obligations in connection therewith;

(13) (a) the repurchase or redemption by any Restricted Subsidiary of its own Capital Stock or the purchase by Xerox of the Capital Stock of any Restricted Subsidiary in order to acquire all or a portion of the minority interest in such Restricted Subsidiary and (b) Investments in a Restricted Subsidiary that is not a Wholly Owned Restricted Subsidiary, in order to (i) maintain Xerox's present direct or indirect ownership percentage in such Restricted Subsidiary in the event of a mandatory capital call or (ii) acquire all or a portion of the minority interest in such Restricted Subsidiary; provided that the amount of all Restricted Payments made pursuant to this clause (13) in Restricted Subsidiaries that have not at any time become 100% directly or indirectly owned by Xerox, does not exceed \$75.0 million in the aggregate since the Issue Date;

(14) mandatory prepayments of Subordinated Indebtedness;

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(15) payments in respect of Subordinated Indebtedness, the payment of which has been accelerated, in an amount taken together with all other payments made pursuant to this clause (15) since the Issue Date not to exceed \$75.0 million; and

(16) other Restricted Payments in an aggregate amount which, when taken together with all other Restricted Payments pursuant to this clause (16), does not exceed \$35.0 million.

In determining the aggregate amount of Restricted Payments made subsequent to January 1, 2002 in accordance with clause (iii) of the second preceding paragraph, amounts expended pursuant to clauses (1), (4), (13), (14) and (15) of the immediately preceding paragraph shall be included in such calculation. No issuance and sale of Qualified Capital Stock pursuant to clause (2) or (3) of the immediately preceding paragraph shall increase the Restricted Payments Basket, except to the extent the proceeds thereof exceed the amounts used to effect the transactions described therein.

Limitation on Asset Sales. Xerox will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

(1) Xerox or the applicable Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the fair market value of the assets sold or otherwise disposed of (as determined in good faith by Xerox or such Restricted Subsidiary);

(2) at least 75% of the consideration received by Xerox or the Restricted Subsidiary, as the case may be, from such Asset Sale shall be in the form of cash or Cash Equivalents (provided that the amount of any Pari Passu Indebtedness or other unsubordinated liability of Xerox or any Indebtedness or other liability of a Restricted Subsidiary that is assumed by the transferee of any such assets shall be deemed to be cash for the purposes of this provision; and

(3) upon the consummation of an Asset Sale, Xerox shall apply, or cause such Restricted Subsidiary to apply, the Net Cash Proceeds relating to such Asset Sale within 365 days of receipt thereof:

(a) (i) to repurchase or otherwise acquire any Pari Passu Indebtedness pursuant to any exercise by the holders thereof of the right to require the issuer thereof to repurchase or acquire such Pari Passu Indebtedness prior to its scheduled maturity or scheduled repayment, (ii) to prepay, repay, repurchase, redeem, defease or otherwise acquire or retire for value, on or prior to any scheduled maturity, repayment or amortization that portion of Pari Passu Indebtedness of Xerox to the extent that such Pari Passu Indebtedness has a stated maturity, scheduled repayment or amortization that has or will become due prior to the final stated maturity of the applicable debt securities, (iii) any Pari Passu Indebtedness under the Credit Agreement (other than Capital Markets Debt), or (iv) any Indebtedness of a Restricted Subsidiary; provided that, in each case under this clause (a), if such Pari Passu Indebtedness was borrowed under the revolving portion of any credit facility, then a permanent reduction in the availability under the revolving portion of such credit facility will be effected;

(b) to make an investment in or expenditures for properties and assets that replace the properties and assets that were the subject of such Asset Sale or in properties and assets (including Capital Stock of any entity) that will be used in the business of Xerox and its Subsidiaries or in businesses reasonably related thereto ("Replacement Assets") or to fund the cash portion of the Business Effectiveness Actions; and/or

(c) a combination of prepayment and investment permitted by the foregoing subclauses (3)(a) and (3)(b);

provided that, notwithstanding the preceding provisions of this clause (3), if Xerox or any Restricted Subsidiary:

(i) enters into any letter of intent, memorandum of understanding, agreement or other instrument (each, an "Asset Sales Agreement") after the Issue Date that contemplates one or more Asset Sales by Xerox or such Restricted Subsidiary, and

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(ii) after the date of such Asset Sale Agreement and within 365 days immediately prior to the consummation of the Asset Sale(s) pursuant thereto, has applied any cash or Cash Equivalents (other than Net Cash Proceeds from any other Asset Sale) (“Applied Cash”) in any manner permitted by subclause 3(a), 3(b) or 3(c) above,

then the amount of Net Cash Proceeds relating to such Asset Sale(s) up to the amount of Applied Cash shall be deemed to have been applied by Xerox or such Restricted Subsidiary in accordance with the provisions of this clause (3).

Pending the application of any Net Cash Proceeds required by this covenant, Xerox or such Restricted Subsidiary may temporarily reduce any short-term loans or any Indebtedness under the revolving portion of any credit facility, including without limitation, under the Credit Agreement, and such temporary reductions shall not result in any permanent reduction in the availability under the revolving portion of such credit facility.

On the 366th day after an Asset Sale or such earlier date, if any, as the Board of Directors of Xerox or of such Restricted Subsidiary determines not to apply the Net Cash Proceeds relating to such Asset Sale as set forth in subclauses (3)(a), (3)(b) and (3)(c) of the preceding paragraph (each, a “Net Proceeds Offer Trigger Date”), such aggregate amount of Net Cash Proceeds which have not been applied on or before such Net Proceeds Offer Trigger Date as permitted in subclauses (3)(a), (3)(b) and (3)(c) of the preceding paragraph or deemed to have been applied pursuant to the proviso to clause (3) of the preceding paragraph (each a “Net Proceeds Offer Amount”) shall be applied by Xerox or such Restricted Subsidiary to make an offer to purchase (the “Net Proceeds Offer”) to all holders of applicable debt securities (and holders of other Pari Passu Indebtedness of Xerox to the extent required by the terms thereof) on a date (the “Net Proceeds Offer Payment Date”) not less than 30 nor more than 60 days following the applicable Net Proceeds Offer Trigger Date, from all such holders (and holders of other Pari Passu Indebtedness of Xerox to the extent required by the terms thereof) on a pro rata basis, that amount of applicable debt securities (and other Pari Passu Indebtedness) equal to the Net Proceeds Offer Amount at a price equal to 100% of the principal amount thereof, plus accrued and unpaid interest thereon, if any, to the date of purchase; provided, however, that if at any time any non-cash consideration received by Xerox or any Restricted Subsidiary of Xerox, as the case may be, in connection with any Asset Sale is converted into or sold or otherwise disposed of for cash (other than interest received with respect to any such non-cash consideration), then such conversion or disposition shall be deemed to constitute an Asset Sale hereunder and the Net Cash Proceeds thereof shall be applied in accordance with this covenant.

We may defer the Net Proceeds Offer until there is an aggregate unutilized Net Proceeds Offer Amount equal to or in excess of \$75.0 million resulting from one or more Asset Sales (at which time, the entire unutilized Net Proceeds Offer Amount, and not just the amount in excess of \$75.0 million, shall be applied as required pursuant to this paragraph).

Notwithstanding the first two paragraphs of this covenant, Xerox and its Restricted Subsidiaries will be permitted to consummate an Asset Sale without complying with such paragraphs to the extent that:

- (1) at least 75% of the consideration for such Asset Sale constitutes Replacement Assets; and
- (2) such Asset Sale is for fair market value; provided that any cash or Cash Equivalents received by Xerox or any of its Restricted Subsidiaries in connection with any Asset Sale permitted to be consummated under this paragraph shall constitute Net Cash Proceeds subject to the provisions of the first two paragraphs of this covenant.

Each Net Proceeds Offer will be mailed to the holders of record of applicable debt securities as shown on the register of holders within 45 days following the Net Proceeds Offer Trigger Date, with a copy to the trustee, and shall comply with the procedures set forth in the indenture. Upon receiving notice of the Net Proceeds Offer, holders may elect to tender their debt securities in whole or in part in integral multiples of \$1,000 in exchange for cash. To the extent the aggregate principal amount of debt securities and other Pari Passu Indebtedness properly

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tendered exceeds the Net Proceeds Offer Amount, the tendered debt securities and other Pari Passu Indebtedness will be purchased on a pro rata basis based on the amount of debt securities and other Pari Passu Indebtedness tendered. A Net Proceeds Offer shall remain open for a period of 20 business days or such longer period as may be required by law.

Xerox will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the repurchase of debt securities pursuant to a Net Proceeds Offer. To the extent that the provisions of any securities laws or regulations conflict with the “Asset Sale” provisions of the indenture, Xerox shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under the “Asset Sale” provisions of the indenture by virtue thereof.

After consummation of any Net Proceeds Offer, any Net Proceeds Offer Amount not applied to any such purchase may be used by Xerox for any purpose permitted by the other provisions of the indenture.

Limitation on Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries. Xerox will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or permit to exist or become effective any consensual, encumbrance or restriction on the ability of any Restricted Subsidiary of Xerox to:

- (1) pay dividends or make any other distributions on or in respect of its Capital Stock to Xerox or any Restricted Subsidiary;
- (2) make loans or advances or to pay any Indebtedness or other obligation owed to Xerox or any other Restricted Subsidiary of Xerox; or
- (3) transfer any of its property or assets to Xerox or any other Restricted Subsidiary of Xerox,

except for such encumbrances or restrictions existing under or by reason of:

- (a) applicable law, rules, regulations and/or orders;
- (b) the indenture (including, without limitation, any Liens permitted by the indenture);
- (c) customary non-assignment provisions of any contract, or any lease or license governing a leasehold interest, of any Restricted Subsidiary of Xerox;
- (d) any agreement or instrument governing Acquired Indebtedness, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person or the properties or assets of the Person so acquired or any Subsidiary of such Person;
- (e) agreements or instruments existing on the Issue Date to the extent and in the manner such agreements are in effect on the Issue Date and any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings thereof; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are no more restrictive (as determined in the good faith judgment of Xerox) in any material respect, taken as a whole, with respect to such dividend and other payment restrictions than those contained in such agreements or instruments as in effect on the Issue Date;
- (f) the Credit Agreement;
- (g) Purchase Money Indebtedness incurred in compliance with the “Limitation on Incurrence of Additional Indebtedness” covenant that impose restrictions of the nature described in clause (3) above on the property acquired;
- (h) any agreement relating to Indebtedness of a Restricted Subsidiary permitted to be incurred under the “Limitation on Incurrence of Additional Indebtedness” covenant;
- (i) restrictions on cash or other deposits or net worth imposed under contracts entered into in the ordinary course of business;

(j) any encumbrance or restriction existing under or by reason of contractual requirements in connection with the Third-Party Vendor Financing Program or any Qualified Receivables Transaction;

(k) pursuant to any merger agreements, stock purchase agreements, asset sale agreements and similar agreements limiting the transfer of properties and assets or distributions pending consummation of the subject transaction;

(l) in the case of clause (3) of the first paragraph of this covenant, any encumbrance or restriction (a) that restricts in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease, license, or similar contract, (b) by virtue of any transfer of, agreement to transfer, option or right with respect to, or Lien on, any property or assets of Xerox or any Restricted Subsidiary not otherwise prohibited by the indenture, or (c) contained in security agreements securing Indebtedness of any Restricted Subsidiary to the extent permitted by the indenture and such encumbrance or restrictions restrict the transfer of the property subject to such security agreements;

(m) an agreement governing Indebtedness incurred to Refinance the Indebtedness issued, assumed or incurred pursuant to an agreement referred to in clause (b), (d), (e), (g), (h) or (j) above; provided, however, that the provisions relating to such encumbrance or restriction contained in any such Indebtedness are no more restrictive in any material respect than the provisions relating to such encumbrance or restriction contained in agreements referred to in such clause (b), (d), (e), (g), (h) or (j) as determined by Xerox; and

(n) agreements or instruments, including, without limitation, joint venture agreements entered into to facilitate the Business Effectiveness Actions or in connection with Permitted Joint Venture Investments.

Limitations on Transactions with Affiliates. Xerox will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction or series of related transactions (including, without limitation, the purchase, sale, lease or exchange of any property or the rendering of any service) with any of its Affiliates (each, an "Affiliate Transaction"), other than (x) Affiliate Transactions permitted under the third paragraph of this covenant and (y) Affiliate Transactions on terms that are no less favorable in any material respect than those that might reasonably have been obtained, in the good faith judgment of the Board of Directors of Xerox or the Restricted Subsidiary, as the case may be, in a comparable transaction at such time on an arm's length basis from a Person that is not an Affiliate of Xerox or such Restricted Subsidiary.

Each Affiliate Transaction (and each series of related Affiliate Transactions which are similar or part of a common plan) involving aggregate payments or other property with a fair market value in excess of \$20.0 million shall be approved by the Board of Directors of Xerox or such Restricted Subsidiary, as the case may be, such approval to be evidenced by a Board Resolution stating that such Board of Directors has determined that such transaction complies with the foregoing provisions.

The foregoing paragraphs shall not apply to:

(1) any employment agreement, collective bargaining agreement, employee benefit plan, related trust agreement or any similar arrangement, payment of compensation and fees to, and indemnity provided on behalf of, any present or former employees, officers, directors or consultants, maintenance of benefit programs or arrangements for any present or former employees, officers or directors, including vacation plans, health and life insurance plans, deferred compensation plans, and retirement or savings plan and similar plans, and loans and advances to any present or former employees, officers, directors, consultants and shareholders, in each case entered into by Xerox or any of its Restricted Subsidiaries in the ordinary course of business or approved by the Board of Directors of Xerox or such Restricted Subsidiary, as the case may be;

(2) transactions exclusively between or among Xerox and any of its Restricted Subsidiaries or any joint venture in which Xerox has a Permitted Joint Venture Investment or exclusively between or among such Restricted Subsidiaries; provided such transactions are not otherwise prohibited by the indenture;

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- (3) any agreement, instrument or arrangement as in effect as of the Issue Date or any amendment thereto or any transaction contemplated thereby (including pursuant to any amendment thereto) in any replacement agreement thereto so long as any such amendment or replacement agreement is not more disadvantageous to the holders in any material respect than the original agreement as in effect on the Issue Date as determined by Xerox;
- (4) Permitted Investments and Restricted Payments permitted by the indenture;
- (5) the issuance or sale of any Capital Stock (other than Disqualified Capital Stock) of Xerox; and
- (6) Permitted Joint Venture Investments and any other transactions contemplated by or to facilitate the Business Effectiveness Actions.

Certain Covenants Applicable at All Times

Set forth below are summaries of certain covenants contained in the indenture that, except as expressly indicated, will apply at all times so long as any debt securities remain outstanding.

Limitation on Liens. Xerox will not create or suffer to exist, or permit any of its Specified Subsidiaries to create or suffer to exist, any Lien, or any other type of preferential arrangement, upon or with respect to any of its properties (other than “margin stock” as that term is defined in Regulation U issued by the Board of Governors of the Federal Reserve System), whether now owned or hereafter acquired, or assign, or permit any of its Specified Subsidiaries to assign, any right to receive income, in each case to secure any Indebtedness (other than Indebtedness described in clauses (5) and (8) of the definition of “Indebtedness” herein) without making effective provision whereby all of the debt securities (together with, Xerox shall so determine, any other Indebtedness of Xerox or such Specified Subsidiary then existing or thereafter created which is not subordinate to the debt securities) shall be equally and ratably secured with the Indebtedness secured by such security (provided that any Lien created for the benefit of the holders of the debt securities pursuant to this sentence shall provide by its terms that such Lien shall be automatically and unconditionally released and discharged upon the release and discharge of the Lien that resulted in such provision becoming applicable, unless a Default or Event of Default shall then be continuing); provided, however, that Xerox or its Specified Subsidiaries may create or suffer to exist any Lien or preferential arrangement of any kind in, or upon any of the properties or assets of Xerox or its Specified Subsidiaries to secure Indebtedness if upon creation of such Lien or arrangement and after giving effect thereto, the aggregate principal amount of Indebtedness secured by Liens would not exceed the greater of (i) \$2.0 billion and (ii) 20% of the Consolidated Net Worth of Xerox; and provided, further, that the foregoing restrictions or limitations shall not apply to any of the following:

(1) deposits, liens or pledges arising in the ordinary course of business to enable Xerox or any of its Specified Subsidiaries to exercise any privilege or license or to secure payments of workers’ compensation or unemployment insurance, or to secure the performance of bids, tenders, leases, contracts (other than for the payment of borrowed money) or statutory landlords’ liens or to secure public or statutory obligations or surety, stay or appeal bonds, or other similar deposits or pledges made in the ordinary course of business;

(2) Liens imposed by law or other similar Liens, if arising in the ordinary course of business, such as mechanic’s, materialman’s, workman’s, repairman’s or carrier’s liens, or deposits or pledges in the ordinary course of business to obtain the release of such Liens;

(3) Liens arising out of judgments or awards against Xerox or any of its Specified Subsidiaries in an aggregate amount not to exceed at any time outstanding under this clause (3) the greater of (a) 15% of the Consolidated Net Worth of Xerox or (b) the minimum amount which, if subtracted from such Consolidated Net Worth, would reduce such Consolidated Net Worth below \$3.2 billion and, in each case, with respect to which Xerox or such Specified Subsidiary shall in good faith be prosecuting an appeal or proceedings for review, or Liens for the purpose of obtaining a stay or discharge in the course of any legal proceedings;

(4) Liens for taxes if such taxes are not delinquent or thereafter can be paid without penalty, or are being contested in good faith by appropriate proceedings, or minor survey exceptions or minor

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encumbrances, easements or restrictions which do not in the aggregate materially detract from the value of the property so encumbered or restricted or materially impair their use in the operation of the business of Xerox or any Specified Subsidiary owning such property;

(5) Liens in favor of any government or department or agency thereof or in favor of a prime contractor under a government contract and resulting from the acceptance of progress or partial payments under government contracts or subcontracts thereunder;

(6) Liens existing on December 1, 1991;

(7) purchase money liens or security interests in property acquired or held by Xerox or any Specified Subsidiary in the ordinary course of business to secure the purchase price thereof or Indebtedness incurred to finance the acquisition thereof;

(8) Liens existing on property at the time of its acquisition;

(9) the rights of Xerox Credit Corporation relating to a certain reserve account established pursuant to an operating agreement dated as of November 1, 1980, between Xerox and Xerox Credit Corporation;

(10) the replacement, extension or renewal of any of the foregoing; and

(11) Liens on any assets of any Specified Subsidiary of up to \$500.0 million incurred since December 1, 1991 in connection with the sale or assignment of assets of such Specified Subsidiary for cash where the proceeds are applied to repayment of Indebtedness of such Specified Subsidiary and/or invested by such Specified Subsidiary in assets which would be reflected as receivables on the balance sheet of such Specified Subsidiary.

In addition, if after January 17, 2002 any Capital Markets Debt of Xerox or any Restricted Subsidiary becomes secured by a Lien pursuant to any provision similar to the covenant in the immediately preceding paragraph, then, for so long as such Capital Markets Debt of Xerox is secured by such Lien (and provided that any Lien created for the benefit of the holders of the debt securities pursuant to this sentence shall be automatically and unconditionally released and discharged upon the release and discharge of the Lien that resulted in the imposition of the Lien hereunder):

(1) in the case of a Lien securing Subordinated Indebtedness, the debt securities shall be secured by a Lien on the same property as such Lien that is senior in priority to such Lien; and

(2) in all other cases, the debt securities shall be equally and ratably secured by a Lien on the same property as such Lien.

Merger, Consolidation and Sale of Assets. Xerox will not, in a single transaction or series of related transactions, consolidate or merge with or into any Person, or sell, assign, transfer, lease, convey or otherwise dispose of (or cause or permit any Restricted Subsidiary of Xerox to sell, assign, transfer, lease, convey or otherwise dispose of) all or substantially all Xerox's assets (determined on a consolidated basis for Xerox and Xerox's Restricted Subsidiaries) whether as an entirety or substantially as an entirety to any Person unless:

(1) either:

(a) Xerox shall be the surviving or continuing corporation; or

(b) the Person (if other than Xerox) formed by such consolidation or into which Xerox is merged or the Person which acquires by sale, assignment, transfer, lease, conveyance or other disposition the properties and assets of Xerox and of Xerox's Restricted Subsidiaries substantially as an entirety (the "Surviving Entity"):

(x) shall be a corporation organized and validly existing under the laws of the United States or any State thereof or the District of Columbia; and

(y) shall expressly assume, by supplemental indenture (in form and substance satisfactory to the trustee), executed and delivered to the trustee, the due and punctual payment of the principal

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of, and premium, if any, and interest on all of the debt securities and the performance of every covenant of the debt securities and the indenture on the part of Xerox to be performed or observed;

(2) if such transaction or series of related transactions occurs other than during a Suspension Period, immediately after giving effect to such transaction and the assumption contemplated by clause (1)(b)(y) above (including giving effect to any Indebtedness (including Acquired Indebtedness) incurred or anticipated to be incurred in connection with or in respect of such transaction), Xerox or such Surviving Entity, as the case may be, shall either (x) be able to incur at least \$1.00 of additional Indebtedness (other than Permitted Indebtedness) pursuant to the first paragraph under the "Limitation on Incurrence of Additional Indebtedness" covenant or (y) shall have a Consolidated Fixed Charge Coverage Ratio immediately after such transaction or series of related transactions equal to or greater than Xerox's Consolidated Fixed Charge Coverage Ratio immediately prior to such transaction or series of related transactions;

(3) immediately after giving effect to such transaction and the assumption contemplated by clause (1)(b)(y) above (including, without limitation, giving effect to any Indebtedness (including Acquired Indebtedness) incurred or anticipated to be incurred and any Lien granted in connection with or in respect of the transaction), no Default or Event of Default shall have occurred or be continuing; and

(4) Xerox or the Surviving Entity shall have delivered to the trustee an officers' certificate and an opinion of counsel, each stating that such consolidation, merger, sale, assignment, transfer, lease, conveyance or other disposition and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, comply with the applicable provisions of the indenture and that all conditions precedent in the indenture relating to such transaction have been satisfied.

For purposes of the foregoing, the transfer (by lease, assignment, sale or otherwise, in a single transaction or series of transactions) of all or substantially all the properties or assets of one or more Restricted Subsidiaries of Xerox, the Capital Stock of which constitutes all or substantially all the properties and assets of Xerox, shall be deemed to be the transfer of all or substantially all the properties and assets of Xerox.

The indenture will provide that upon any consolidation, combination or merger or any transfer of all or substantially all the assets of Xerox in accordance with the foregoing, in which Xerox is not the continuing corporation, the successor Person formed by such consolidation or into which Xerox is merged or to which such conveyance, lease or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, Xerox under the indenture and the debt securities with the same effect as if such surviving entity had been named as such.

Notwithstanding the foregoing, Xerox need not comply with clause (2) of the first paragraph of this covenant in connection with (x) a sale assignment, transfer, conveyance or other disposition of assets between or among Xerox and any of its Wholly Owned Restricted Subsidiaries or (y) any merger of Xerox with or into any Wholly Owned Restricted Subsidiary or (z) a merger by Xerox with an Affiliate incorporated or organized solely for the purpose of reincorporating or reorganizing Xerox in another jurisdiction.

Subsidiary Guarantees. If on or after January 17, 2002:

(a) any other Capital Market Debt of Xerox is or becomes guaranteed by any Restricted Subsidiary of Xerox, or

(b) any one or more Wholly Owned Domestic Restricted Subsidiaries (singly or in the aggregate) would at the end of any fiscal quarter constitute a Significant Subsidiary (which term for the purposes of this covenant entitled "Subsidiary Guarantees" shall be limited to any Person that satisfies only the asset criteria set forth in clauses (1) and (2) of paragraph (w) of Rule 1.02 of Regulation S-X under the Exchange Act) (other than (i) Xerox Financial Services, Inc. and each of its Subsidiaries (other than Xerox Credit Corporation) for so long as its respective business is conducted in a manner similar to that on January 17,

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2002, (ii) Xerox Credit Corporation or any other Restricted Subsidiary of Xerox, in each case so long as it is primarily a special purpose financing vehicle of Xerox or its Restricted Subsidiaries (a "Financing Subsidiary") or any holding company whose principal asset is Capital Stock of a Financing Subsidiary or (iii) any Domestic Restricted Subsidiary so long as its primary asset is Capital Stock of one or more Foreign Subsidiaries and/or its primary asset is Indebtedness of one or more Foreign Subsidiaries or any combination of the foregoing),

then, if such Restricted Subsidiary is not already a Guarantor, Xerox shall cause, in the case of (a), such Restricted Subsidiary that is guaranteeing Company Capital Markets Debt, and, in the case of (b), such Domestic Restricted Subsidiar(ies), to execute and deliver to the trustee a supplemental indenture in form reasonably satisfactory to the trustee pursuant to which such Person shall fully and unconditionally guarantee all Xerox's obligations under the debt securities and the indenture on the terms set forth in the indenture.

Any Guarantee executed pursuant to clause (a) of the immediately preceding paragraph (including, without limitation, any guarantee of the debt securities issued as of the Issue Date) shall provide by its terms that such Guarantee shall be automatically and unconditionally released upon the release of the guarantee that resulted in such clause (a) becoming applicable (other than by reason of payment under such guarantee) so long as such Restricted Subsidiary is not at such time guaranteeing any other Capital Markets Debt of Xerox and no Default or Event of Default is then continuing. In addition, any Guarantee executed pursuant either to clause (a) or clause (b) of the immediately preceding paragraph shall provide by its terms that such Guarantee shall be automatically and unconditionally released upon: (i) the designation of the Restricted Subsidiary that gave such Guarantee as an Unrestricted Subsidiary in compliance with the provisions of the debt securities or (ii) any transaction, including without limitation, any sale, exchange or transfer, to any Person not an Affiliate of Xerox, of our Capital Stock in, or all or substantially all the property of, such Restricted Subsidiary, which transaction is in compliance with the terms of the indenture, and which results in the Restricted Subsidiary that gave such Guarantee ceasing to be a Subsidiary of Xerox and, in the case of either clause (i) or clause (ii), such Restricted Subsidiary is released from all guarantees, if any, by it of other Capital Markets Debt of Xerox.

Notwithstanding the foregoing, Xerox shall have the right to cause any Restricted Subsidiary to execute a Guarantee in respect of Xerox's obligations under the debt securities; provided that such Restricted Subsidiary shall execute and deliver to the trustee a supplemental indenture in a form reasonably satisfactory to the trustee in respect of such Guarantee.

Reports to Holders. The indenture provides that, whether or not required by the rules and regulations of the SEC, so long as any debt securities are outstanding, Xerox will file a copy of the following information and reports with the SEC for public availability within the time periods specified in the SEC's rules and regulations (unless the SEC will not accept such a filing, in which case Xerox shall furnish such information and reports to holders):

(1) all quarterly and annual financial information that would be required to be contained in a filing with the SEC on Forms 10-Q and 10-K if Xerox were required to file such Forms, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" that describes the financial condition and results of operations of Xerox and its consolidated Subsidiaries and, with respect to the annual information only, a report thereon by Xerox's certified independent accounts; and

(2) all current reports that would be required to be filed with the SEC on Form 8-K if Xerox were required to file such reports, in each case within the time periods specified in the SEC's rules and regulations.

Certain Definitions

Set forth below is a summary of certain of the defined terms used in the indenture. Reference is made to the indenture for the full definition of all such terms, as well as any other terms used herein for which no definition is provided.

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“Acquired Indebtedness” means Indebtedness of a Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary of Xerox or at the time it merges or consolidates with or into Xerox or any of its Subsidiaries or assumed in connection with the acquisition of property or assets from such Person and in each case not incurred by such Person in connection with, or in anticipation or contemplation of, such Person becoming a Restricted Subsidiary of Xerox or such acquisition, merger or consolidation.

“Affiliate” means, with respect to any specified Person, any other Person who directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative of the foregoing.

“Asset Acquisition” means (1) an Investment by Xerox or any Restricted Subsidiary of Xerox in any other Person pursuant to which such Person shall become a Restricted Subsidiary of Xerox or any Restricted Subsidiary of Xerox, or shall be merged with or into Xerox or any Restricted Subsidiary of Xerox, or (2) the acquisition by Xerox or any Restricted Subsidiary of Xerox of the assets of any Person (other than a Restricted Subsidiary of Xerox) which constitute all or substantially all of the assets of such Person or comprise any division or line of business of such Person or any other properties or assets of such Person other than (i) in the ordinary course of business or (ii) any transaction or series of related transactions involving aggregate consideration (other than Qualified Capital Stock) of \$100.0 million or less.

“Asset Sale” means any direct or indirect sale, issuance, conveyance, transfer, lease (other than operating leases entered into in the ordinary course of business), assignment or other transfer for value by Xerox or any of its Restricted Subsidiaries (including any Sale and Leaseback Transaction) to any Person other than Xerox or a Restricted Subsidiary of Xerox of: (1) any Capital Stock of any Restricted Subsidiary of Xerox (other than directors’ qualifying shares or shares required by applicable law to be held by a Person other than Xerox or a Restricted Subsidiary); or (2) any other property or assets of Xerox or any Restricted Subsidiary of Xerox other than in the ordinary course of business; provided, however, that asset sales or other dispositions shall not include: (a) a transaction or series of related transactions for which Xerox or its Restricted Subsidiaries receive aggregate consideration of up to \$25.0 million; (b) the sale, lease, conveyance, disposition or other transfer of all or substantially all of the assets of Xerox in accordance with and as permitted by the “Merger, Consolidation and Sale of Assets” covenant; (c) any Restricted Payment permitted by the “Limitation on Restricted Payments” covenant or that constitutes a Permitted Investment; (d) the sale, lease, conveyance, disposition or other transfer of any Capital Stock or other ownership interest in or assets or property of an Unrestricted Subsidiary or a Person which is not a Subsidiary pursuant to any foreclosure of assets or other remedy provided by applicable law to a creditor of Xerox or any Subsidiary of Xerox with a Lien on such assets, which Lien is permitted under the indenture; provided that such foreclosure or other remedy is conducted in a commercially reasonable manner or in accordance with any bankruptcy law; (e) a disposition of obsolete or worn out property or property that is no longer useful in the conduct of the business of Xerox and its Restricted Subsidiaries; (f) the discounting or compromising by Xerox or any Restricted Subsidiary for less than the face value thereof of notes or accounts receivable in order to resolve disputes that occur in the ordinary course of business and not in connection with a factoring or financing transaction; and (g) for purposes of clauses (1) and (2) of the first paragraph of the “Limitation on Asset Sales” covenant only, any disposition, sale or transfer of property or assets that are part of the Business Effectiveness Actions.

“Board of Directors” means, as to any Person, the board of directors or similar governing body of such Person or any duly authorized committee thereof.

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

“Business Effectiveness Actions” means (a) the Third-Party Vendor Financing Program, including the creation and maintenance of joint ventures in furtherance thereof (including Xerox Capital Services, LLC), (b)

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the outsourcing of manufacturing activities, including transfers and closings of any related manufacturing sites, offices or other real property or assets and the creation and maintenance of joint ventures in furtherance thereof, (c) transfers of assets related to the SOHO business, (d) deployment of, and transition to, a “distributor” model in the “Developing Markets Operations” or other markets outside North America pursuant to which Xerox or any of its Subsidiaries’ products or services, or any receivables relating to any thereof, would be sold or disposed of to third-party vendors or any other Person, including transfers of offices, equipment and real estate relating to such markets and the creation and maintenance of joint ventures in furtherance thereof; (e) the following types of transactions in respect of research and development and intellectual property of Xerox and its Subsidiaries: (i) the creation of IP Companies, whether alone or with third parties, (ii) the transfer of assets of, or Capital Stock in, any IP Company, (iii) the transfer to any IP Company of any offices, real property, equipment or other tangible assets relating to the business of the applicable IP Company and (iv) the transfer to any IP Company of intellectual property; provided that the terms of any such transfer pursuant to this clause (e)(iv) do not restrict in any material manner the ability of Xerox and its Subsidiaries to utilize any such intellectual property that is material to the production or office businesses of Xerox and its Subsidiaries and, where ownership of such intellectual property is transferred to any IP Company by Xerox or any of its Subsidiaries, all rights (if any) of Xerox or any of its Subsidiaries to use such intellectual property are evidenced by a license or other agreement that in no event shall include any transfer of ownership of the “Xerox” name, and (f) to the extent not covered in clause (a), (b), (c), (d) or (e) above, charges relating to cost reduction initiatives or measures relating to workforce reductions.

“Capital Markets Debt” means any Indebtedness that is a security (other than syndicated commercial loans) that is eligible for resale in the United States pursuant to Rule 144A under the Securities Act or outside the United States pursuant to Regulation S of the Securities Act or a security (other than syndicated commercial loans) that is sold or subject to resale pursuant to a registration statement under the Securities Act.

“Capital Stock” means:

- (1) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock, including each class of Common Stock and Preferred Stock of such Person; and
- (2) with respect to any Person that is not a corporation, any and all partnership, membership or other equity interests of such Person.

“Capitalized Lease Obligation” means, as to any Person, the obligations of such Person under a lease that are required to be classified and accounted for as capital lease obligations under GAAP and, for purposes of this definition, the amount of such obligations at any date shall be the capitalized amount of such obligations at such date, determined in accordance with GAAP.

“Cash Equivalents” means:

- (1) marketable direct obligations issued by, or unconditionally guaranteed by, the United States Government or the government of any Eligible Jurisdiction or issued by any agency thereof and backed by the full faith and credit of such government, in each case maturing within one year from the date of acquisition thereof;
- (2) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either S&P or Moody’s;
- (3) commercial paper and other securities maturing no more than one year from the date of acquisition thereof and, at the time of acquisition, having a rating of at least A-2 from S&P or at least P-2 from Moody’s;
- (4) certificates of deposit or bankers’ acceptances maturing within one year from the date of acquisition thereof issued by any bank organized under the laws of the United States of America or any state thereof or

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the District of Columbia or any Eligible Jurisdiction or any U.S. branch of a foreign bank having at the date of acquisition thereof combined capital and surplus of not less than \$100.0 million;

(5) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (1) above entered into with any bank meeting the qualifications specified in clause (4) above; and

(6) investments in money market funds which invest substantially all their assets in securities of the types described in clauses (1) through (5) above.

“Change of Control” means the occurrence of one or more of the following events:

(1) any “person,” including its affiliates and associates, other than Xerox, its Subsidiaries or Xerox’s or such Subsidiaries’ employee benefit plans, or any “group” files a Schedule 13D or Schedule TO (or any successor schedule, form or report under the Exchange Act) disclosing that such person or group has become the “beneficial owner” of 50% or more of the combined voting power of Xerox’s Capital Stock or other Capital Stock into which Xerox’s Common Stock is reclassified or changed, with certain exceptions having ordinary power to elect directors, or has the power to, directly or indirectly, elect managers, trustees or a majority of the members of Xerox’s Board of Directors;

(2) there shall be consummated any share exchange, consolidation or merger of Xerox pursuant to which Xerox’s Common Stock would be converted into cash, securities or other property, or Xerox sells, assigns, conveys, transfers, leases or otherwise disposes of all or substantially all of its assets, in each case other than pursuant to a share exchange, consolidation or merger of Xerox in which the holders of Xerox’s Common Stock immediately prior to the share exchange, consolidation or merger have, directly or indirectly, at least a majority of the total voting power in the aggregate of all classes of Capital Stock of the continuing or surviving corporation immediately after the share exchange, consolidation or merger; or

(3) Xerox is dissolved or liquidated.

For purposes of this Change of Control definition:

- “person” or “group” has the meaning given to it for purposes of Sections 13(d) and 14(d) of the Exchange Act or any successor provisions, and the term “group” includes any group acting for the purpose of acquiring, holding or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act or any successor provision;
- a “beneficial owner” will be determined in accordance with Rule 13d-3 under the Exchange Act, as in effect on the date of the indenture; and
- the number of shares of Xerox’s voting stock outstanding will be deemed to include, in addition to all outstanding shares of Xerox’s voting stock and unissued shares deemed to be held by the “person” or “group” or other person with respect to which the Change of Control determination is being made, all unissued shares deemed to be held by all other persons.

“Common Stock” of any Person means any and all shares, interests or other participations in, and other equivalents (however designated and whether voting or non-voting) of such Person’s common stock, whether outstanding on January 17, 2002 or issued thereafter, and includes, without limitation, all series and classes of such common stock.

“Consolidated EBITDA” means, with respect to any Person, for any period, the sum, all as determined on a consolidated basis for such Person and its Restricted Subsidiaries in accordance with GAAP (without duplication), of:

(1) Consolidated Net Income; and

(2) to the extent Consolidated Net Income has been reduced thereby:

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(a) all income taxes of such Person and its Restricted Subsidiaries paid or accrued in accordance with GAAP for such period (other than income taxes attributable to extraordinary, or nonrecurring gains or losses, taxes attributable to Asset Sales and taxes attributable to discontinued operations);

(b) Consolidated Fixed Charges; and

(c) Consolidated Non-cash Charges.

“Consolidated Fixed Charge Coverage Ratio” means, with respect to any Person, the ratio of Consolidated EBITDA of such Person during the four full fiscal quarters (the “Four Quarter Period”) ending prior to the date of the transaction giving rise to the need to calculate the Consolidated Fixed Charge Coverage Ratio for which financial statements are available (the “Transaction Date”) to Consolidated Fixed Charges of such Person for the Four Quarter Period. In addition to and without limitation of the foregoing, for purposes of this definition, “Consolidated EBITDA” and “Consolidated Fixed Charges” shall be calculated after giving effect on a pro forma basis for the period of such calculation to:

(1) the incurrence or repayment of any Indebtedness of such Person or any of its Restricted Subsidiaries (and the application of the proceeds thereof) giving rise to the need to make such calculation and any incurrence or repayment of other Indebtedness (and the application of the proceeds thereof), other than the incurrence or repayment of Indebtedness in the ordinary course of business for working capital purposes pursuant to working capital facilities, occurring during the Four Quarter Period or at any time subsequent to the last day of the Four Quarter Period and on or prior to the Transaction Date, as if such incurrence or repayment, as the case may be (and the application of the proceeds thereof), occurred on the first day of the Four Quarter Period; and

(2) any asset sales or other dispositions or Asset Acquisitions (including, without limitation, any Asset Acquisition giving rise to the need to make such calculation as a result of such Person or one of its Restricted Subsidiaries (including any Person who becomes a Restricted Subsidiary as a result of the Asset Acquisition) incurring, assuming or otherwise being liable for Acquired Indebtedness and also including any Consolidated EBITDA (including any pro forma expense and cost reductions calculated on a basis consistent with Regulation S-X under the Exchange Act) attributable to the assets which are the subject of the Asset Acquisition or asset sale or other disposition during the Four Quarter Period) occurring during the Four Quarter Period or at any time subsequent to the last day of the Four Quarter Period and on or prior to the Transaction Date, as if such asset sale or other disposition or Asset Acquisition (including the incurrence, assumption or liability for any such Acquired Indebtedness) occurred on the first day of the Four Quarter Period.

If such Person or any of its Restricted Subsidiaries directly or indirectly guarantees Indebtedness of a third Person, the preceding sentence shall give effect to the incurrence of such guaranteed Indebtedness, without duplication, as if such Person or any Restricted Subsidiary of such Person had directly incurred or otherwise assumed such guaranteed Indebtedness.

Furthermore, in calculating “Consolidated Fixed Charges”:

(1) for purposes of determining the numerator (but not the denominator) of this “Consolidated Fixed Charge Coverage Ratio,” interest income determined on a fluctuating basis as of the Transaction Date and which will continue to be so determined thereafter, shall be deemed to have accrued at a fixed rate per annum equal to the applicable rate of interest in effect on the Transaction Date;

(2) for purposes of determining the denominator (but not the numerator) of this “Consolidated Fixed Charge Coverage Ratio”, interest on outstanding Indebtedness, determined on a fluctuating basis as of the Transaction Date and which will continue to be so determined thereafter, shall be deemed to have accrued at a fixed rate per annum equal to the applicable rate of interest in effect on the Transaction Date; and

(3) notwithstanding clause (2) above, interest on Indebtedness determined on a fluctuating basis, to the extent such interest is covered by agreements relating to Interest Swap Obligations, shall be deemed to

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accrue at the rate per annum resulting after giving effect to the operation of such agreements.

“Consolidated Fixed Charges” means, with respect to any Person for any period, the sum, without duplication, of:

(1) Consolidated Interest Expense; plus

(2) the amount of all dividends on any series of Preferred Stock of such Person and its Restricted Subsidiaries paid, declared or accrued during such period multiplied, to the extent such dividend payments are not otherwise a deduction to such Person’s federal income tax liabilities by a fraction, the numerator of which is one and the denominator of which is one minus the then current effective consolidated federal, state and local tax rate of such Person, expressed as a decimal.

“Consolidated Interest Expense” means, with respect to any Person for any period, total interest expense (including that portion attributable to Capital Lease Obligations in accordance with GAAP) of Xerox and its Restricted Subsidiaries for such period, on a consolidated basis, determined in conformity with GAAP.

“Consolidated Net Income” means, with respect to any Person, for any period, the aggregate net income (or loss) of such Person and its Restricted Subsidiaries for such period on a consolidated basis, determined in accordance with GAAP; provided that there shall be excluded therefrom:

(1) after-tax gains or losses from Asset Sales or abandonments or reserves relating thereto;

(2) after-tax items classified as extraordinary or nonrecurring gains or losses;

(3) the net income (but not loss) of any Restricted Subsidiary of the referent Person to the extent that the declaration of dividends or similar distributions by that Restricted Subsidiary of that income is restricted by a contract, operation of law or otherwise;

(4) the net income of any other Person, other than a Restricted Subsidiary of the referent Person, joint ventures described in the definition of “Permitted Joint Venture Investments” and any joint ventures in which Xerox or any Restricted Subsidiary is a party that exists as of January 17, 2002, except to the extent of cash dividends or distributions paid to the referent Person or to a Restricted Subsidiary of the referent Person by such Person;

(5) after-tax income or loss attributable to discontinued operations; and

(6) in the case of a successor to the referent Person by consolidation or merger or as a transferee of the referent Person’s assets, any earnings of the successor corporation prior to such consolidation, merger or transfer of assets.

For purposes of determining the Consolidated Fixed Charge Coverage Ratio only, any loss, charge or cost attributable to the Business Effectiveness Actions shall be excluded, provided that any loss, charge or cost described in clause (f) of the definition of Business Effectiveness Actions shall be so excluded only to the extent it is non-cash.

“Consolidated Net Worth” means, at any time, as to a given entity (a) the sum of the amounts appearing on the latest consolidated balance sheet of such entity and its Subsidiaries, prepared in accordance with generally accepted accounting principles consistently applied, as (i) the par or stated value of all outstanding Capital Stock (including preferred stock), (ii) capital paid-in and earned surplus or earnings retained in the business plus or minus cumulative transaction adjustments, (iii) any unappropriated surplus reserves, (iv) any net unrealized appreciation of equity investment, and (v) minorities’ interests in equity of subsidiaries, less (b) treasury stock, plus (c) in the case of Xerox, \$600.0 million.

“Consolidated Non-cash Charges” means, with respect to any Person, for any period, the aggregate depreciation and amortization of such Person and its Restricted Subsidiaries reducing Consolidated Net Income of such Person and its Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

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“Convertible Subordinated Debentures” means the 3.625% Convertible Subordinated Debentures due 2018 of Xerox.

“Convertible Trust Preferred Securities” means the \$650.0 million aggregate liquidation amount of 8% Convertible Trust Preferred Securities of Xerox Capital Trust I and the \$1.035 billion aggregate liquidation amount of 7 1/2% Convertible Trust Preferred Securities of Xerox Capital Trust II, in each case, as in effect on January 17, 2002.

“Credit Agreement” means the Credit Agreement, dated as of June 19, 2003, among Xerox, the lenders party thereto in their capacities as lenders thereunder and the agents named therein, together with the related documents thereto (including, without limitation, any guarantee agreements and security documents), in each case as such agreement may be amended (including any amendment and restatement thereof), supplemented or otherwise modified from time to time, including any agreements extending the maturity of, refinancing, replacing (whether or not contemporaneously) or otherwise restructuring (including increasing the amount of available borrowings thereunder (provided that such increase in borrowings is permitted by the “Limitation on Incurrence of Additional Indebtedness” covenant above) or adding Restricted Subsidiaries of Xerox as additional borrowers or collateral guarantors thereunder) all or any portion of the Indebtedness under such agreement or any successor or replacement agreements and whether by the same or any other agent, lender or group of lenders or investors and whether such refinancing or replacement is under one or more debt facilities or commercial paper facilities, indentures or other agreements, in each case with banks or other institutional lenders or trustees or investors providing for revolving credit loans, term loans, notes or letters of credit, together with related documents thereto (including, without limitation, any guaranty agreements and security documents).

“Currency Agreement” means any foreign exchange contract, currency swap agreement or other similar agreement or arrangement designed to protect Xerox or any Restricted Subsidiary of Xerox against fluctuations in currency values.

“Default” means an event or condition the occurrence of which is, or with the lapse of time or the giving of notice or both would be, an Event of Default.

“Disqualified Capital Stock” means that portion of any Capital Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder thereof), or upon the happening of any event (other than an event which would constitute an Asset Sale or Change of Control), matures or is mandatory redeemable (other than such Capital Stock that will be redeemed with Qualified Capital Stock), pursuant to a sinking fund obligation or otherwise, or is redeemable at the sole option of the holder thereof (except, in each case, upon the occurrence of an Asset Sale or Change of Control) on or prior to the final maturity date of the applicable debt securities.

“Domestic Restricted Subsidiary” means a Restricted Subsidiary incorporated or otherwise organized or existing under the laws of the United States, any state thereof or any territory or possession of the United States.

“Domestic Wholly Owned Restricted Subsidiary” means a Domestic Restricted Subsidiary that is also a Wholly Owned Restricted Subsidiary.

“Eligible Jurisdiction” means any country in the European Union (as it exists on the Issue Date) or Switzerland.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto.

“fair market value” means, with respect to any asset or property, the price which could be negotiated in an arm’s-length, free market transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction.

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“Finance SPE” means (a) any Receivables SPE and (b) any Restricted Subsidiary that (i) is a special purpose financing vehicle, (ii) was created solely for the purpose of facilitating the incurrence of Capital Markets Debt by Xerox or any Restricted Subsidiary or any equity issuance by Xerox or any Restricted Subsidiary (including the issuance of any Preferred Stock), (iii) has no business other than the facilitation of such incurrence or issuance and activities incidental thereto and (iv) is capitalized with no more than an amount equal to the cash proceeds received by such Finance SPE from such transaction; provided that such transaction does not constitute or create Indebtedness secured by a Lien that is not permitted by the “Limitation on Liens” covenant.

“Foreign Subsidiary” means a Restricted Subsidiary that is incorporated or formed in a jurisdiction other than the United States or a State thereof or the District of Columbia.

“GAAP” means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States, which are in effect from time to time.

“Guarantee” means any guarantee of the debt securities by a Guarantor.

“Guarantor” means each of Xerox’s Restricted Subsidiaries that has agreed or in the future agrees to be bound by the terms of the indenture as a Guarantor; provided that any Person constituting a Guarantor as described above shall cease to constitute a Guarantor when its respective Guarantee is released in accordance with the terms of the indenture.

“Indebtedness” means with respect to any Person, without duplication:

- (1) all indebtedness of such Person for borrowed money;
- (2) all indebtedness of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (3) all Capitalized Lease Obligations of such Person;
- (4) all indebtedness of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations and all indebtedness under any title retention agreement (but excluding trade accounts payable incurred in the ordinary course with a maturity of not greater than 90 days);
- (5) all indebtedness for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction (other than obligations with respect to letters of credit supporting obligations not for money borrowed entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the fifth business day following payment on the letter of credit);
- (6) guarantees and other contingent obligations in respect of Indebtedness referred to in clauses (1) through (5) above and clause (8) below;
- (7) all indebtedness of any other Person of the type referred to in clauses (1) through (6) which are secured by any Lien on any property or asset of such Person, the amount of such indebtedness being deemed to be the lesser of the fair market value of such property or asset or the amount of the indebtedness so secured;
- (8) all indebtedness under currency agreements and interest swap agreements of such Person; and
- (9) all Disqualified Capital Stock issued by such Person or any Preferred Stock of such Person or any Restricted Subsidiary of such Person with the amount of Indebtedness represented by such Disqualified Capital Stock or Preferred Stock being equal to the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price, but excluding accrued dividends, if any.

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For purposes hereof, the “maximum fixed repurchase price” of any Disqualified Capital Stock or Preferred Stock which does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Capital Stock or Preferred Stock as if such Disqualified Capital Stock or Preferred Stock were purchased on any date on which Indebtedness shall be required to be determined pursuant to the indenture, and if such price is based upon, or measured by, the fair market value of such Disqualified Capital Stock or Preferred Stock, such fair market value shall be determined reasonably and in good faith by the Board of Directors of the issuer of such Disqualified Capital Stock or Preferred Stock.

Accrual of interest, accrual of dividends, the accretion of accreted value, the payment of interest in the form of additional Indebtedness and the payment of dividends in the form of additional shares of Preferred Stock will not be deemed to be an incurrence of Indebtedness. The amount of any Indebtedness outstanding as of any date shall be (i) the accreted value of the Indebtedness in the case of any Indebtedness issued with original issue discount and (ii) the principal amount or liquidation preference thereof.

For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term Indebtedness, or first committed, in the case of revolving credit Indebtedness. Notwithstanding any other provision of the “Limitation on Incurrence of Additional Indebtedness” covenant, the maximum amount of Indebtedness that Xerox or any Restricted Subsidiary may incur pursuant to the “Limitation on Incurrence of Additional Indebtedness” covenant shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

“Interest Swap Obligations” means the obligations of any Person pursuant to any arrangement with any other Person, whereby, directly or indirectly, such Person is entitled to receive from time to time periodic payments calculated by applying either a floating or a fixed rate of interest on a stated notional amount in exchange for periodic payments made by such other Person calculated by applying a fixed or a floating rate of interest on the same notional amount and shall include, without limitation, interest rate swaps, caps, floors, collars and similar agreements.

“Investment” means, with respect to any Person, any direct or indirect loan or other extension of credit (including, without limitation, a guarantee of Indebtedness) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or any purchase or acquisition by such Person of any Capital Stock, bonds, notes, debentures or other securities or evidences of Indebtedness issued by, any Person, or any keep-well agreement of any Person. “Investment” shall exclude extensions of trade credit by Xerox and its Restricted Subsidiaries in the ordinary course of business. If Xerox or any Restricted Subsidiary of Xerox sells or otherwise disposes of any Capital Stock of any direct or indirect Restricted Subsidiary of Xerox such that, after giving effect to any such sale or disposition, such Restricted Subsidiary is no longer a Restricted Subsidiary of Xerox, Xerox shall be deemed to have made an Investment on the date of any such sale or disposition equal to the fair market value of the Common Stock of such Restricted Subsidiary not sold or disposed of. If Xerox designates any of its Subsidiaries to be an Unrestricted Subsidiary, Xerox shall be deemed to have made an Investment on the date of such designation equal to the Designation Amount determined in accordance with the definition of “Unrestricted Subsidiary.”

“Investment Grade Status,” with respect to Xerox, shall occur when the applicable debt securities have both (i) a rating of “BBB-” or higher from S&P and (ii) a rating of “Baa3” or higher from Moody’s, and each such rating shall have been published by the applicable agency.

“IP Company” means any Person, whether now existing or hereafter formed, in which Xerox or any of its Restricted Subsidiaries owns or acquires any Capital Stock, which Person (a) has as its primary business one or

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more of the following: (i) research and development, (ii) the generation or management of intellectual property or (iii) the commercialization or maximization of the value of intellectual property developed by or transferred to such Person by one or more of Xerox or any of its Restricted Subsidiaries, and activities incidental thereto, and (b) has no other significant business; provided that each of the following Persons and its Subsidiaries shall be deemed to be an IP Company: (i) Palo Alto Research Center Incorporated, (ii) Integic Corporation, (iii) ScanSoft, Inc., (iv) Telesensory Corporation, (v) dpiX, LLC, (vi) ContentGuard Holdings, Inc., (vii) InXight Software, Inc. and (viii) Gyricon, LLC.

“Issue Date” means the date of original issuance of debt securities.

“Lien” means any lien, mortgage, deed of trust, pledge, security interest, charge or encumbrance of any kind (including any conditional sale or other title retention agreement, any lease in the nature thereof and any agreement to give any security interest).

“Moody’s” means Moody’s Investors Service, Inc. and its successors.

“Net Cash Proceeds” means, with respect to any Asset Sale, the proceeds in the form of cash or Cash Equivalents including payments in respect of deferred payment obligations when received in the form of cash or Cash Equivalents (other than the portion of any such deferred payment constituting interest) received by Xerox or any of its Restricted Subsidiaries from such Asset Sale net of:

(1) out-of-pocket expenses and fees relating to such Asset Sale (including, without limitation, legal, accounting and investment banking fees and sales commissions);

(2) all legal, title and recording tax expenses, commissions and other fees and expenses incurred, and all federal, state, foreign and local taxes required to be accrued as a liability under GAAP, as a consequence of such Asset Sale;

(3) repayment of Indebtedness and any accrued interest and premium that is secured by the property or assets that are the subject of such Asset Sale;

(4) appropriate amounts to be provided by Xerox or any Restricted Subsidiary, as the case may be, as a reserve, in accordance with GAAP, against any liabilities associated with such Asset Sale and retained by Xerox or any Restricted Subsidiary, as the case may be, after such Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale; and

(5) all distributions and other payments required to be made to minority interest holders in Restricted Subsidiaries as a result of such Asset Sale.

“Non-Guarantor Subsidiary” means any Subsidiary of Xerox that is not a Guarantor.

“Pari Passu Indebtedness” means any Indebtedness of Xerox that is not subordinated to the debt securities.

“Permitted Indebtedness” means, without duplication, each of the following:

(1) Indebtedness under the debt securities being issued;

(2) Indebtedness of Xerox or any Restricted Subsidiary incurred in the ordinary course of business (including, without limitation, in connection with the Business Effectiveness Actions) so long as the proceeds thereof are not used, directly or indirectly, to finance an Asset Acquisition or to make a Restricted Payment (other than a Permitted Investment) or to effect a refinancing of Indebtedness or Capital Stock (other than Refinancing Indebtedness incurred to refinance any Indebtedness originally permitted to be incurred under this clause (2));

(3) Indebtedness incurred pursuant to the Credit Agreement in an aggregate principal amount at any time outstanding not to exceed \$4.75 billion;

(4) other Indebtedness of Xerox and its Restricted Subsidiaries outstanding on the Issue Date;

(5) Interest Swap Obligations of Xerox or any Restricted Subsidiary of Xerox covering Indebtedness of Xerox or any of its Restricted Subsidiaries; provided, however, that such Interest Swap Obligations are entered into to protect Xerox or its Restricted Subsidiaries from fluctuations in interest rates on outstanding Indebtedness to the extent the notional principal amount of such Interest Swap Obligation does not, at the time of the incurrence thereof, exceed the principal amount of the Indebtedness to which such Interest Swap Obligation relates;

(6) Indebtedness under Currency Agreements; provided that in the case of Currency Agreements which relate to Indebtedness, such Currency Agreements do not increase the Indebtedness of Xerox and its Restricted Subsidiaries outstanding other than as a result of fluctuations in foreign currency exchange rates or by reason of fees, indemnities and compensation payable thereunder;

(7) Indebtedness of a Restricted Subsidiary of Xerox to Xerox or to a Restricted Subsidiary of Xerox for so long as such Indebtedness is held by Xerox or a Restricted Subsidiary of Xerox, in each case subject to no Lien held by a Person other than Xerox or a Restricted Subsidiary of Xerox (other than in favor of a senior secured credit agreement that is permitted to be incurred under clause (3) above); provided that if as of any date any Person other than Xerox or a Restricted Subsidiary of Xerox owns or holds any such Indebtedness or holds a Lien (other than in favor of a senior secured credit agreement that is permitted to be incurred under clause (3) above) in respect of such Indebtedness, such date shall be deemed the incurrence of Indebtedness not constituting Permitted Indebtedness by the issuer of such Indebtedness;

(8) Indebtedness of Xerox to a Restricted Subsidiary of Xerox for so long as such Indebtedness is held by a Restricted Subsidiary of Xerox and subject to no Lien (other than in favor of a senior secured credit agreement that is permitted to be incurred under clause (3) above); provided that if as of any date any Person other than a Restricted Subsidiary of Xerox owns or holds any such Indebtedness or any Person holds a Lien (other than in favor of a senior secured credit agreement that is permitted to be incurred under clause (3) above) in respect of such Indebtedness, such date shall be deemed the incurrence of Indebtedness not constituting Permitted Indebtedness by Xerox;

(9) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; provided, however, that such Indebtedness is extinguished within five business days of incurrence;

(10) Indebtedness of Xerox or any Restricted Subsidiary in respect of performance bonds, bankers' acceptances, workers' compensation claims, surety or appeal bonds, payment obligations in connection with self-insurance or similar obligations, and operating leases, trade contracts and bank overdrafts (and letters of credit in respect thereof) in the ordinary course of business;

(11) Indebtedness incurred in connection with the Third-Party Vendor Financing Program or any Qualified Receivables Transaction; provided that any Liens on such Indebtedness are permitted by the "Limitation on Liens" covenant;

(12) any guarantee by Xerox or a Restricted Subsidiary of Indebtedness of Xerox or any Restricted Subsidiary so long as the incurrence of such Indebtedness would otherwise be permitted to be incurred under the indenture and such guarantee is otherwise not prohibited by the indenture and clause (a) of the "Subsidiary Guarantees" covenant, to the extent applicable, is complied with;

(13) Indebtedness arising from guarantees of Indebtedness of Xerox or any Restricted Subsidiary or the agreements of Xerox or a Restricted Subsidiary providing for indemnification, adjustment of purchase price or similar obligations, in each case, incurred or assumed in connection with the disposition of any business, assets or Capital Stock of a Subsidiary, or other guarantees of Indebtedness incurred by any person acquiring all or any portion of such business, assets, Subsidiary or Capital Stock of a Subsidiary for the purpose of financing such acquisition; provided that the maximum aggregate liability in respect of all such

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Indebtedness shall at no time exceed the gross proceeds (including non-cash proceeds) actually received by Xerox and/or such Restricted Subsidiary in connection with such disposition;

(14) the issuance of shares of Disqualified Stock by Xerox to a Restricted Subsidiary of Xerox; provided, however, that (a) any subsequent issuance or transfer that results in any such Disqualified Stock being held by a Person other than a Restricted Subsidiary thereof and (b) any sale or other transfer of any such Disqualified Stock to a Person that is not a Restricted Subsidiary thereof shall be deemed, in each case, to constitute an issuance of such Disqualified Stock by Xerox that was not permitted by this clause (14);

(15) obligations incurred in the ordinary course of business and not for money borrowed (for example, repurchase agreements) to purchase securities or other property, if such obligations arise out of or in connection with the sale of the same or similar securities or properties;

(16) obligations to deliver goods or services in consideration of advance payments therefor;

(17) Indebtedness consisting of take-or-pay obligations contained in supply contracts entered into in the ordinary course of business;

(18) Refinancing Indebtedness; and

(19) additional Indebtedness of Xerox and its Restricted Subsidiaries in an aggregate principal amount not to exceed \$75.0 million at any one time outstanding (which amount may, but need not, be incurred in whole or in part under the Credit Agreement).

For purposes of determining compliance with the “Limitation on Incurrence of Additional Indebtedness” covenant, in the event that an item of Indebtedness meets the criteria of more than one of the categories of Permitted Indebtedness described in clauses (1) through (19) above or is entitled to be incurred pursuant to the Consolidated Fixed Charge Coverage Ratio provisions of such covenant, Xerox shall, in its sole discretion, classify such item of Indebtedness in any manner that complies with such covenant. In addition, Xerox may, at any time, change the classification of an item of Indebtedness (or any portion thereof) to any other clause, and in part under any one or more of the clauses listed above, or to the first paragraph of the “Limitation on Incurrence of Additional Indebtedness” covenant provided that Xerox would be permitted to incur such item of Indebtedness (or portion thereof) pursuant to such other clause or clauses, as the case may be, or of the first paragraph of the “Limitation on Incurrence of Additional Indebtedness” covenant, as the case may be, at such time of reclassification. Accrual of interest, accretion or amortization of original issue discount or other discounts or premiums, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, and the payment of dividends on Disqualified Capital Stock or Preferred Stock in the form of additional shares of the same class of Disqualified Capital Stock or Preferred Stock and any other changes in reported Indebtedness required by GAAP and other non-cash changes in Indebtedness due to fluctuations in interest rates, will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Capital Stock or Preferred Stock for purposes of the “Limitation on Incurrence of Additional Indebtedness” covenant.

“Permitted Investment Intermediate Ratings Condition” means the condition that Xerox’s senior unsecured debt is rated at least “BB” by S&P and “Ba2” by Moody’s.

“Permitted Investments” means:

(1) Investments by Xerox or any Restricted Subsidiary of Xerox in any Person that is or will become immediately after such Investment a Restricted Subsidiary of Xerox or that will merge or consolidate into Xerox or a Restricted Subsidiary of Xerox;

(2) Investments in Xerox by any Restricted Subsidiary of Xerox;

(3) Investments in cash in (a) euros or dollars and Cash Equivalents or, to the extent determined by Xerox or a Foreign Subsidiary in good faith to be necessary for local working capital requirements and operational requirements of the Foreign Subsidiaries, other cash and cash equivalents denominated in the currency of any jurisdiction which are, as determined in good faith by Xerox or such Foreign Subsidiary,

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necessary or desirable for reasonable business purposes and, in the case of cash equivalents, are otherwise substantially similar to the items specified in the definition of “Cash Equivalents,” and (b) cash and Cash Equivalents denominated in the currency of the jurisdiction of organization or place of business of a Foreign Subsidiary that are otherwise substantially similar to items specified in the definition of “Cash Equivalents,” except that if such jurisdiction prohibits the repatriation of working capital to the United States, any specific rating required in the definition of “Cash Equivalents” shall be deemed to be satisfied if such Investments have, at the time of the acquisition, the highest rating from any rating agency of any Investments available to be issued in such currency; provided that the aggregate amount of Investments made pursuant to this clause (3)(b) shall not exceed the equivalent of \$50.0 million at any time outstanding;

(4) loans and advances to employees and officers of Xerox and its Subsidiaries to purchase Capital Stock of Xerox for bona fide business purposes;

(5) Currency Agreements and Interest Swap Obligations entered into in the ordinary course of Xerox’s or its Restricted Subsidiaries’ businesses and not for speculative purposes and otherwise in compliance with the indenture;

(6) additional Investments having an aggregate fair market value, taken together with all other Investments made or deemed to be made pursuant to this clause (6) that are at that time outstanding, not to exceed \$750.0 million at the time of such Investment (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(7) Investments in securities of trade creditors or customers received pursuant to any plan of reorganization or similar arrangement upon the bankruptcy, work-out or insolvency of such trade creditors or customers or as a result of a foreclosure by Xerox or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(8) Investments made by Xerox or its Restricted Subsidiaries as a result of consideration received in connection with any sale or other transfer of assets, to the extent applicable, in compliance with the “Limitation on Asset Sales” covenant;

(9) Permitted Joint Venture Investments;

(10) receivables owing to Xerox or any Restricted Subsidiary or other trade credit provided by Xerox or any Restricted Subsidiary if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; provided, however, that such trade terms may include such concessionary trade terms as Xerox or any such Restricted Subsidiary deems reasonable under the circumstances;

(11) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;

(12) stock, obligations or securities received as security for, or in settlement of, debts created in the ordinary course of business and owing to Xerox or any of its Restricted Subsidiaries or in satisfaction of judgments or claims;

(13) Investments relating to purchase or acquisition of products from vendors, manufacturers or suppliers in the ordinary course of business;

(14) Investments owned by Xerox and any Restricted Subsidiary existing on the Issue Date, any extension or renewal thereof that does not increase the principal amount thereof (other than to reflect any accrued interest, dividends or other amounts with respect thereto and any expenses incurred in connection with such extension or renewal) and conversions of any such debt Investments into equity Investments and contributions or other transfers of such Investments to Xerox or any of its Restricted Subsidiaries (other than for cash);

(15) Investments in connection with pledges, deposits, payments or performance bonds made or given in the ordinary course of business in connection with or to secure statutory, regulatory or similar obligations, including obligations under health, safety or environmental obligations;

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(16) any Investment by Ridge Reinsurance Limited of cash that may legally be made by a Bermuda insurance company; and

(17) Investments made by Xerox or any Subsidiary at any time the Permitted Investment Covenant Intermediate Ratings Condition is satisfied; provided that on any Reinstatement Date, Investments made at any time that the Permitted Investment Covenant Intermediate Ratings Condition is satisfied that are not of the type described in any of clauses (1) through (5) and (7) through (16) of this definition (such Investments, “Excess Investments”) shall be deemed to have been made and shall be applied to reduce (A) the amount of Investments available to be made after the Reinstatement Date pursuant to clause (6) of this definition and/or (B) the amount of Restricted Payments available to be made after the Reinstatement Date under clause (iii) of the “Limitation on Restricted Payments” covenant; provided further that Xerox shall have the exclusive right to allocate and choose the order in which Excess Investments are applied under clauses (A) and/or (B) above; provided that such reductions by themselves shall not cause the amount available at any time to be made either as Investments pursuant to clause (6) of this definition or Restricted Payments pursuant to clause (iii) of the “Limitation on Restricted Payments” covenant to be reduced to below an amount equal to \$75.0 million per calendar year in each case; provided further that such amount shall be pro rated only for the number of calendar days between the Reinstatement Date and the earlier of (A) the end of the calendar year in which the Reinstatement Date occurs and (B) the maturity of the debt securities of the applicable series issued under the indenture.

“Permitted Joint Venture Investments” means any Investment (A) in a joint venture, partnership or other arrangement with a Person or Persons to the extent necessary or desirable as determined by Xerox to (x) facilitate, or as contemplated by, the Business Effectiveness Actions or (y) facilitate Qualified Receivables Transactions and (B) in Fuji Xerox Co., Limited.

“Person” means an individual, partnership, corporation, limited liability company, unincorporated organization, trust or joint venture, or a governmental agency or political subdivision thereof.

“Preferred Stock” of any Person means any Capital Stock of such Person that has preferential rights to any other Capital Stock of such Person with respect to dividends or redemptions or upon liquidation.

“Purchase Money Indebtedness” means Indebtedness of Xerox and its Restricted Subsidiaries incurred for the purpose of financing all or any part of the purchase price, or the cost of installation, construction or improvement, of property or equipment; provided, however, that (1) the amount of such Indebtedness shall not exceed such purchase price or cost, (2) such Indebtedness shall not be secured by any asset other than the specified asset being financed or, in the case of real property or fixtures, including additions and improvements, the real property to which such asset is attached and (3) such Indebtedness shall be incurred within 180 days after such acquisition of such asset by Xerox or such Restricted Subsidiary or such installation, construction or improvement.

“Qualified Capital Stock” means any Capital Stock that is not Disqualified Capital Stock.

“Qualified Receivables Transaction” means any transaction or arrangement or series of transactions or arrangements entered into by Xerox or any of its Subsidiaries in order to monetize or otherwise finance, or as a result of which it may receive earlier than otherwise due amounts that will become receivable or be earned in the future in respect of, a discrete pool (which may be fixed or revolving) of receivables, leases or other financial assets including financing contracts and any transaction or arrangement that is not a sale or transfer but pursuant to and by virtue of which a Person succeeds to, and becomes entitled to, the rights under or in respect of such receivables, leases or other financial assets (in each case whether now existing or arising in the future), and which may include a Lien on (a) receivables, (b) deposit or other accounts (and the funds or investments from time to time credited thereto) established in connection with a Qualified Receivables Transaction to secure obligations of Xerox or any of its Subsidiaries arising in connection with or otherwise related to such transaction, (c) any promissory note issued by Xerox or any of its Subsidiaries evidencing the repayment of amounts directly

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or indirectly distributed to Xerox or any of its Subsidiaries from any such accounts and (d) any assets of or Capital Stock any warrants, options or other rights to acquire Capital Stock in each and any Receivables SPE used to facilitate such transaction, provided that such transaction or arrangement does not constitute or create indebtedness secured by a Lien that is not permitted by the "Limitation on Liens" covenant.

"Receivables SPE" means a Restricted Subsidiary that is a special purpose entity that (a) borrows against receivables or purchases, leases or otherwise acquires receivables or transfers receivables to one or more third-party purchasers or another Receivables SPE in connection with a Qualified Receivables Transaction, (b) engages in other activities that are necessary or desirable to effectuate the activities described in the definitions of "Qualified Receivables Transaction" or "Third-Party Vendor Financing Program," or (c) is established or then used solely for the purpose of, and has no business other than, owning a Receivables SPE, servicing receivables owned by a Receivables SPE, owning or holding title to the property or assets giving rise to such receivables or any activities incidental thereto (including those described in the definitions of "Qualified Receivables Transaction" or "Third-Party Vendor Financing Program").

"Refinance" means, in respect of any security or Indebtedness, to refinance, extend, renew, refund, repay, prepay, redeem, defease or retire, or to issue a security or Indebtedness in exchange or replacement for, such security or Indebtedness in whole or in part. "Refinanced" and "Refinancing" shall have correlative meanings.

"Refinancing Indebtedness" means any Refinancing by Xerox or any Restricted Subsidiary of Xerox of Indebtedness permitted by the "Limitation on Incurrence of Additional Indebtedness" covenant (other than pursuant to clauses (3), (5), (6), (7), (8), (9), (10), (11), (13), (14), (15), (16), (17) or (19) of the definition of "Permitted Indebtedness"), in each case that does not:

(1) result in an increase in the aggregate principal amount of Indebtedness of such Person as of the date of such proposed Refinancing (plus the amount of (i) any premium required to be paid under the terms of the instrument governing such Indebtedness, (ii) accrued interest on the Indebtedness being refinanced and (iii) reasonable expenses incurred by Xerox in connection with such Refinancing); or

(2) create Indebtedness with: (a) a Weighted Average Life to Maturity that is less than the Weighted Average Life to Maturity of the Indebtedness being Refinanced; or (b) a final maturity earlier than the final maturity of the Indebtedness being Refinanced; provided that (x) if such Indebtedness being Refinanced is Indebtedness of Xerox, then such Refinancing Indebtedness shall be Indebtedness solely of Xerox and (y) if such Indebtedness being Refinanced is subordinate or junior to the applicable debt securities, then such Refinancing Indebtedness shall be subordinate to the applicable debt securities at least to the same extent and in the same manner as the Indebtedness being Refinanced.

"Reinstatement Date" means, after the satisfaction of the Investment Covenant Intermediate Ratings Condition the first date on which the Investment Covenant Intermediate Ratings Condition is no longer satisfied.

"Restricted Subsidiary" of any Person means any Subsidiary of such Person which at the time of determination is not an Unrestricted Subsidiary.

"S&P" means Standard & Poor's Rating Service, a division of The McGraw-Hill Companies, Inc., and its successors.

"Sale and Leaseback Transaction" means any direct or indirect arrangement with any Person or to which any such Person is a party, providing for the leasing to Xerox or a Restricted Subsidiary of any property, whether owned by Xerox or any Restricted Subsidiary at the Issue Date or later acquired, which has been or is to be sold or transferred by Xerox or such Restricted Subsidiary to such Person or to any other Person from whom funds have been or are to be advanced by such Person on the security of such Property.

"Securities Act" means the Securities Act of 1933, as amended, or any successor statute or statutes thereto.

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“Series B Convertible Preferred Stock” means the 10.0 million shares of Series B Convertible Preferred Stock of Xerox issued to Xerox’s Employee Stock Ownership Plan Trust, as in effect on January 17, 2002.

“Significant Subsidiary,” with respect to any Person, means any Restricted Subsidiary of such Person that satisfies the criteria for a “significant subsidiary” set forth in Rule 1.02 of Regulation S-X under the Exchange Act as such Regulation is in effect on January 17, 2002.

“Specified Subsidiary” means any Subsidiary of Xerox from time to time having a Consolidated Net Worth Amount of at least \$100.0 million; provided, however, that each of Xerox Financial Services, Inc., Xerox Credit Corporation and any other Subsidiary principally engaged in any business or businesses other than development, manufacture and/or marketing of (x) business equipment (including, without limitation, reprographic, computer (including software) and facsimile equipment), (y) merchandise or (z) services (other than financial services) shall be excluded as a “Specified Subsidiary” of Xerox.

“Subordinated Indebtedness” means Indebtedness of Xerox that is subordinated or junior in right of payment to the debt securities.

“Subsidiary,” with respect to any Person, means:

(1) any corporation of which the outstanding Capital Stock having at least a majority of the votes entitled to be cast in the election of directors under ordinary circumstances shall at the time be owned, directly or indirectly, by such Person; or

(2) any other Person of which at least a majority of the voting interest under ordinary circumstances is at the time, directly or indirectly, owned by such Person.

“Suspension Period” has the meaning set forth under “—Suspension Period.”

“Synthetic Purchase Agreement” shall mean any agreement pursuant to which Xerox or any of its Subsidiaries is or may become obligated to make any payment the amount of which is determined by reference to a derivative agreement that relates to the price or value at any time of any Capital Stock of Xerox; provided, that no phantom stock or similar plan providing for payments only to current or former directors, officers or employees of Xerox or any Subsidiary (or to their heirs or estates or successors or assigns) shall be deemed to be a Synthetic Purchase Agreement.

“Third-Party Vendor Financing Program” means any arrangement by Xerox or any Restricted Subsidiary of third-party vendor financing directly or indirectly for customers of Xerox or any Restricted Subsidiary, including (a) the sale of a financing business, (b) transfers of all or any portion of the business of, and assets relating to the business of, providing billing, collection and other services in respect of finance, lease and other receivables, (c) Qualified Receivables Transactions and (d) other arrangements for the indirect financing of receivables wherein a third-party financier makes loans to Restricted Subsidiaries that are Finance SPEs in respect of receivables generated by Xerox or any Restricted Subsidiary, whether generated prior to or during such arrangements and whether the relevant transaction is consolidated balance sheet (including the Program Agreement dated as of October 21, 2002 between General Electric Capital Corporation, Xerox, Xerox Lease Funding, LLC and Xerox Lease Equipment LLC as thereafter amended, modified or supplemented from time to time and any Qualified Receivables Transactions and similar arrangements for indirect financings of receivables between Xerox or any Restricted Subsidiary and General Electric Capital Corporation or any of its affiliates).

“Unrestricted Subsidiary” of any Person means:

(1) the Subsidiary to be so designated has total assets of \$1,000 or less or any Subsidiary of such Person that at the time of determination shall be or continue to be designated an Unrestricted Subsidiary by the Board of Directors of such Person in the manner provided below; and

(2) any Subsidiary of an Unrestricted Subsidiary.

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The Board of Directors may designate any Subsidiary (including any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary owns any Capital Stock of, or owns or holds any Lien on any property of, Xerox or any other Subsidiary of Xerox that is not a Subsidiary of the Subsidiary to be so designated; provided that:

(1) Xerox certifies to the trustee that such designation complies with the “Limitation on Restricted Payments” covenant, including that Xerox would be permitted to make, at the time of such designation, (a) a Permitted Investment or (b) an Investment pursuant to the first paragraph of the “Limitation on Restricted Payments” covenant, in either case, in an amount (the “Designation Amount”) equal to the fair market value of Xerox’s proportionate interest in such Subsidiary on such date; and

(2) each Subsidiary to be so designated and each of its Subsidiaries has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of Xerox or any of its Restricted Subsidiaries.

The Board of Directors may designate any Unrestricted Subsidiary to be a Restricted Subsidiary only if it contemporaneously becomes a Guarantor or:

(1) immediately after giving effect to such designation, Xerox is able to incur at least \$1.00 of additional Indebtedness (other than Permitted Indebtedness) in compliance with the “Limitation on Incurrence of Additional Indebtedness” covenant; and

(2) immediately before and immediately after giving effect to such designation, no Default or Event of Default shall have occurred and be continuing.

Any such designation by the Board of Directors shall be evidenced to the trustee by promptly filing with the trustee a copy of the Board Resolution giving effect to such designation and an officers’ certificate certifying that such designation complied with the foregoing provisions.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing (a) the then outstanding aggregate principal amount of such Indebtedness into (b) the sum of the total of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payment of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) which will elapse between such date and the making of such payment.

“Wholly Owned Restricted Subsidiary” of any Person means any Wholly Owned Subsidiary of such Person which at the time of determination is a Restricted Subsidiary of such Person.

“Wholly Owned Subsidiary” of any Person means any Subsidiary of such Person of which all the outstanding voting securities (other than in the case of a foreign Subsidiary, directors’ qualifying shares or an immaterial amount of shares required to be owned by other Persons pursuant to applicable law) are owned by such Person or any Wholly Owned Subsidiary of such Person.

Provisions Applicable Only To Subordinated Debt Securities

The subordinated debt securities may be senior or junior to, or rank pari passu with, our other subordinated obligations and will be subordinated to all of our existing and future “Senior Indebtedness.” Senior Indebtedness means, without duplication, the principal, premium (if any) and unpaid interest on all present and future:

- indebtedness of Xerox for borrowed money,
- obligations of Xerox evidenced by bonds, debentures, notes or similar instruments,
- all obligations of Xerox under

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- (x) interest rate swaps, caps, collars, options and similar arrangements,
- (y) any foreign exchange contract, currency swap contract, futures contract, currency option contract or other foreign currency hedge, and
- (z) credit swaps, caps, floors, collars and similar arrangements,
- indebtedness incurred, assumed or guaranteed by Xerox in connection with the acquisition by it or a subsidiary of any business, properties or assets (except purchase-money indebtedness classified as accounts payable under generally accepted accounting principles),
- obligations of Xerox as lessee under leases required to be capitalized on the balance sheet of the lessee under generally accepted accounting principles,
- reimbursement obligations of Xerox in respect of letters of credit relating to indebtedness or other obligations of Xerox that qualify as indebtedness or obligations of the kind referred to in the first five bullet points above, and
- obligations of Xerox under direct or indirect guarantees in respect of, and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in the first six bullet points above.

Subordinated debt securities will not be subordinated to any indebtedness or obligation if the instrument creating or evidencing the indebtedness or obligation or pursuant to which it is outstanding provides that such indebtedness or obligation is not superior in right of payment to the subordinated debt securities.

Other provisions applicable to subordinated debt securities will be described in a prospectus supplement.

DESCRIPTION OF THE PREFERRED STOCK AND CONVERTIBLE PREFERRED STOCK

Xerox Preferred Stock

The following is a description of certain general terms and provisions of our preferred stock. The particular terms of any series of preferred stock will be described in a prospectus supplement. The following summary of terms of our preferred stock is not complete. You should refer to the provisions of our Restated Certificate of Incorporation and the certificate of amendment relating to each series of the preferred stock (the "Certificate of Amendment"), which will be filed with the SEC at or prior to the time of issuance of such series of the preferred stock. We may also offer convertible preferred stock. As of the date of this prospectus, we are authorized to issue up to 22,043,067 shares of cumulative preferred stock, par value \$1.00 per share. As of September 30, 2003, 9,200,000 shares of Series C Mandatory Convertible Preferred Stock were outstanding, 6,502,552 shares of Series B Convertible Preferred Stock were outstanding and 1,500,000 shares of Series A Cumulative Preferred Stock are reserved for issuance in connection with our Shareholders Rights Plan. The Series C Mandatory Convertible Preferred Stock will convert at or prior to July 1, 2006 into between approximately 75 to 90 million shares of our common stock depending on the market price of our common stock on the conversion date. The Series C Mandatory Convertible Preferred Stock ranks senior in right of payment to our common stock and generally has no voting rights. All of the Series B Convertible Preferred Stock is held by the trustee for the Xerox Employee Stock Ownership Plan, and is convertible, at any time, at the option of the trustee, into Xerox common stock at a predetermined price, which is subject to adjustment. The holders of the Series B Convertible Preferred Stock have dividend and liquidation rights prior to holders of the common stock, but generally have voting rights equal to those of holders of the common stock, each share of Series B Convertible Preferred Stock having the same number of votes per share as the total number of shares of Common Stock into which it is convertible. Currently, each share of Series B Convertible Preferred Stock has six votes per share and is convertible into six shares of Common Stock.

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Subject to limitations prescribed by law, the Board of Directors is authorized at any time to:

- issue one or more series of preferred stock;
- determine the distinctive serial designation for any such series; and
- determine the number of shares in any such series.

The Board of Directors is authorized to determine, for each series of preferred stock, and the prospectus supplement will set forth with respect to such series the following information:

- the dividend rate (or method for determining the rate);
- any liquidation preference per share of that series of preferred stock;
- any conversion or exchange provisions applicable to that series of preferred stock;
- any redemption or sinking fund provisions applicable to that series of preferred stock;
- any voting rights of that series of preferred stock in addition to those specified in our Restated Certificate of Incorporation; and
- the terms of any other preferences or rights applicable to that series of preferred stock.

Dividends

Holders of preferred stock will be entitled to receive, when, as and if declared by the Board of Directors, cash dividends at the rates and on the dates as set forth in the prospectus supplement. Except as set forth below, no dividends will be declared or paid on any series of preferred stock unless full dividends for all series of preferred stock (including cumulative dividends still owing, if any) have been or contemporaneously are declared and a sum sufficient to pay such dividends has been set apart or has been paid. When those dividends are not paid in full, the shares of all series of preferred stock will share ratably in the payment of dividends, in accordance with the sums that would be payable on those shares if all dividends were declared and paid in full. In addition, generally, unless all dividends on the preferred stock have been declared and a sum sufficient to pay such dividends has been set apart or has been paid, no dividends will be declared or paid on the common stock and generally we may not redeem or purchase any common stock.

Both the 2003 Credit Facility and the Indentures, dated as of January 17, 2002 (pursuant to which our 9-³/₄% Senior Notes due 2009 were issued) and June 25, 2003 (pursuant to which our 7-¹/₈% Senior Notes due 2010 and 7-⁵/₈% Senior Notes due 2013 were issued) (the “Senior Note Indentures”), contain covenants that restrict our ability to pay dividends on preferred stock under certain circumstances that include the occurrence and continuation of any default or event of default (as defined therein) under the 2003 Credit Facility and Senior Note Indentures, respectively.

Convertibility

Shares of preferred stock may be convertible or exchangeable into another series of our preferred stock, our common stock, or other securities. The Certificate of Amendment and the prospectus supplement relating to each series of convertible preferred stock, if any, will describe those conversion rights.

Redemption And Sinking Fund

No series of preferred stock will be redeemable or receive the benefit of a sinking fund except as set forth in the applicable prospectus supplement.

Liquidation

In the event we voluntarily or involuntarily liquidate, dissolve or wind up our affairs, the holders of each series of preferred stock will be entitled to receive the liquidation preference per share specified in the prospectus supplement plus an amount equal to accrued and unpaid dividends, if any, before any distribution to the holders of common stock. If the amounts payable with respect to preferred stock are not paid in full, the holders of preferred stock will share ratably in any distribution of assets based upon the aggregate liquidation preference for all outstanding shares for each series. After the holders of shares of preferred stock are paid in full, they will have no right or claim to any of our remaining assets.

Voting

Except as indicated below or in the prospectus supplement, the holders of preferred stock will not be entitled to vote. If the equivalent of six quarterly dividends payable on any series of preferred stock is in default, whether or not consecutive, the number of directors constituting our Board of Directors will be increased by two and the holders of such series of preferred stock, voting together as a class with all other series of preferred stock entitled to vote on such election of directors, will be entitled to elect those additional directors. In the event of such a default, any holder of preferred stock may request that we call a special meeting of the holders of preferred stock for the purpose of electing the additional directors and we must call such meeting within 20 days of request. If we fail to call such a meeting upon request, then any holder of preferred stock can call a meeting. If all accumulated dividends on any series of preferred stock have been paid in full, the holders of shares of such series will no longer have the right to vote on directors and the term of office of each director so elected will terminate and the number of our directors will, without further action, be reduced by two.

The vote of the holders of two-thirds of the outstanding shares of each series of preferred stock voting together as a class, is required to authorize any amendment, alteration or repeal of our Restated Certificate of Incorporation or any Certificate of Amendment or our By-Laws which would adversely affect the rights, preferences, privileges or voting power of the preferred stock or any holder thereof.

Miscellaneous

The holders of preferred stock will have no preemptive rights. All our issued and outstanding preferred stock is fully paid and non-assessable. The shares of preferred stock offered, when issued, will also be fully paid and nonassessable. Shares of preferred stock that we redeem or otherwise reacquire will resume the status of authorized and unissued shares of preferred stock undesignated as to series, and will be available for subsequent issuance. We may not repurchase or redeem less than all the preferred stock, pursuant to a sinking fund or otherwise, while there are any dividends in arrears on the preferred stock. Neither the par value nor the liquidation preference is indicative of the price at which the preferred stock will actually trade on or after the date of issuance. Payment of dividends on any series of preferred stock may be restricted by loan agreements, indenture and other transactions we may enter into.

No Other Rights

The shares of a series of preferred stock will not have any preferences, voting powers or relative, participating, optional or other special rights except as set forth above or in the prospectus supplement, our Restated Certificate of Incorporation or Certificate of Amendment or as otherwise required by law.

Transfer Agent and Registrar

The transfer agent and registrar for each series of preferred stock will be described in the prospectus supplement.

DESCRIPTION OF COMMON STOCK

The following description of our common stock is only a summary. We encourage you to read our Restated Certificate of Incorporation and our Shareholder Rights Plan, referred to below, which have been filed with the SEC and are incorporated by reference into this prospectus.

As of the date of this prospectus, we are authorized to issue up to 1,750,000,000 shares of common stock, \$1.00 par value per share (the "common stock"). As of September 30, 2003, 791,857,130 shares of common stock were outstanding. Also, as of such date, there were 431,264,020 shares of common stock authorized, but reserved for issuance and 526,878,850 shares of common stock authorized and available for issue or reserve.

General

Dividend Rights and Restrictions

Holders of our common stock are entitled to dividends as and when declared by the Board of Directors out of the net assets legally available therefor. All shares of common stock are entitled to participate equally in such dividends. There are no restrictions on the payment of dividends or purchase or redemption of our common stock under our Restated Certificate of Incorporation or By-Laws, provided all dividends for past periods and the dividends for the current quarter on any outstanding preferred stock and retirement, purchase or sinking fund requirements thereon, if any, have been paid or provided for, and subject further to the restrictions referred to below.

The 2002 Credit Facility prohibits us from paying cash dividends on our common stock, and permits us to declare and pay dividends on our common stock solely in the form of shares of Qualified Capital Stock (as defined therein). The Senior Note Indentures contain covenants that restrict our ability to pay dividends on common stock under certain circumstances that include the occurrence and continuation of any default or event of default (as defined therein).

Voting Rights

Each share of common stock is entitled to one vote per share, subject, to the right of the holders of any outstanding preferred stock, if six quarterly dividends (whether or not consecutive) thereon are in default, to elect, voting as a class, two members of the Board of Directors, which right continues until the default is cured. In addition, the separate vote or consent of the holders of outstanding preferred stock may be required to authorize certain corporate action. The holders of our Series B Convertible Preferred Stock generally have voting rights equal to those of holders of common stock, each share of Series B Convertible Stock having the same number of votes per share as the total number of shares of Common Stock into which it is convertible. Currently, each share of Series B Convertible Preferred Stock has six votes per share and is convertible into six shares of Common Stock. Since the common stock and Series B Convertible Preferred Stock do not have cumulative voting rights, if they choose to do so, the holders of more than 50% of the aggregate amount of shares of those stocks can elect all of the directors. In such event, the holders of less than 50% of those shares cannot elect any directors.

Liquidation Rights

Holders of our common stock are entitled to receive our net assets, on a pro-rata basis, upon the dissolution, liquidation or winding up of the Company, after the payment in full of all preferential amounts to which the holders of any then-outstanding shares of preferred stock shall be entitled.

Preemptive Rights

Holders of our common stock do not possess preemptive rights or subscription rights as to any additional issues of any class of the capital stock or any of our other securities.

Liability To Further Calls Or Assessments

All our issued and outstanding common stock is fully paid and non-assessable. The shares of common stock offered, when issued, will be also fully paid and non-assessable.

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Transfer Agent

Our common stock is listed and traded on the New York Stock Exchange and the Chicago Stock Exchange under the symbol "XRX" and is also traded on the Boston, Cincinnati, Pacific Coast, Philadelphia, London and Switzerland exchanges. The transfer agent for the common stock is Equiserve Trust Company, N.A., P.O. Box 43010, Providence, RI 02940-3010, (800) 828-6396, or reachable, via email at website www.equiserve.com.

Preferred Stock Purchase Rights

The Board of Directors of Xerox has adopted a Shareholder Rights Plan. Each share of common stock has one half of a right (a "Right") attached to it.

Until the earlier of:

- 10 business days following the date of a public announcement that a person or group has acquired beneficial ownership of 20 percent or more of the aggregate amount of the outstanding voting common stock of Xerox (the date of such public announcement, the "Stock Acquisition Date", and, such person or group, an "Acquiring Person"), and
- 10 business days (or such later date as may be determined by our Board of Directors) following the commencement of, or the first public announcement of the intent to commence, a tender or exchange offer by a person or group if, upon consummation of the offer, such person or group would be an Acquiring Person (the earlier of such dates, the "Distribution Date"), or earlier redemption or expiration of the Rights,

the Rights will be evidenced, with respect to the shares of common stock outstanding, by the certificates representing such shares and will be transferred with and only with the common stock. Certificates representing shares of common stock (including the shares of common stock which may be offered hereby) which are issued upon transfer, replacement or new issuance of common stock prior to the Distribution Date or earlier redemption or expiration of the Rights will contain a legend evidencing the Rights and incorporating the Rights Agreement by reference. As soon as practicable following the Distribution Date, separate certificates representing the Rights ("Rights Certificates") will be mailed to holders of record of common stock as of the close of business on the Distribution Date and, thereafter, such separate Rights Certificates will trade separately and will alone evidence the Rights. The Rights are not exercisable until the Distribution Date and will expire on April 16, 2007. Until a Right is exercised, the holder thereof will have no rights as a shareholder of Xerox, including, without limitation, the right to vote or to receive dividends.

When the Rights become exercisable, each Right will entitle the registered holder thereof to purchase from Xerox, at a price of \$250.00, subject to adjustment (the "Purchase Price"), one three-hundredth of a share of Series A Cumulative Preferred Stock. If certain types of mergers, sales of assets or other business combinations involving Xerox occur after the Rights become exercisable, each Right will represent the right to purchase, at the Purchase Price, common stock of the acquiring company having a market value then equal to twice the Purchase Price. If (i) a person or group becomes an Acquiring Person (other than pursuant to a tender or exchange offer for all outstanding shares of common stock at a price and on terms approved by a majority of the members of our Board of Directors who are not officers of Xerox or affiliates of such Acquiring Person), or (ii) an Acquiring Person acquires Xerox in a transaction in which Xerox and the common stock survive, each Right not owned by such Acquiring Person will be converted into the right to purchase, at the Purchase Price, the number of shares of common stock that at that time have a market value then equal to twice the Purchase Price.

Our Board of Directors may, at any time on or before the earlier of (x) the Stock Acquisition Date and (y) the date on which the Rights shall expire, authorize the redemption of all, but not less than all, of the then outstanding Rights at a redemption price of \$.01 per Right, as adjusted under certain specified circumstances. Any of the provisions of the Rights Agreement may be amended by our Board of Directors before the Rights become exercisable. Thereafter, provisions of the Rights Agreement may be amended by our Board of Directors:

- to cure any ambiguity, to lengthen or shorten any time period under the Rights Agreement or

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- in any other manner that will not adversely affect the interest of the holders of the Rights (other than the Acquiring Person).

The Rights have certain “anti-takeover” effects. The Rights may cause substantial dilution to a person or group that attempts to acquire Xerox on terms not approved by our Board of Directors, except pursuant to an offer conditioned on a substantial number of Rights being acquired. Generally, the Rights should not interfere with any merger or other business combination approved by our Board of Directors prior to the time that there is an Acquiring Person (at which time holders of the Rights become entitled to exercise their Rights for shares of common stock at one-half the market price), since until such time the Rights generally may be redeemed by our Board of Directors at \$.01 per Right.

DESCRIPTION OF WARRANTS

This section describes the general terms of the warrants that Xerox may offer and sell by this prospectus. This prospectus and any accompanying prospectus supplement will contain the material terms and conditions for each warrant. The prospectus supplement may add, update or change the terms and conditions of the warrants as described in this prospectus.

General

Xerox may issue warrants to purchase debt securities, preferred stock or common stock. Warrants may be issued independently or together with any securities and may be attached to or separate from those securities. The warrants will be issued under warrant agreements to be entered into between us and a bank or trust company, as warrant agent, all of which will be described in the prospectus supplement relating to the warrants we are offering. The warrant agent will act solely as our agent in connection with the warrants and will not have any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants. A copy of the warrant agreement will be filed with the SEC in connection with the offering of the warrants.

Debt Warrants

We may issue warrants for the purchase of our debt securities. As explained below, each debt warrant will entitle its holder to purchase debt securities at an exercise price set forth in, or to be determinable as set forth in, the related prospectus supplement. Debt warrants may be issued separately or together with debt securities.

The debt warrants are to be issued under debt warrant agreements to be entered into between us, and one or more banks or trust companies, as debt warrant agent, as will be set forth in the prospectus supplement relating to the debt warrants being offered by the prospectus supplement and this prospectus. A copy of the debt warrant agreement, including a form of debt warrant certificate representing the debt warrants, will be filed with the SEC in connection with the offering of the debt warrants.

The particular terms of each issue of debt warrants, the debt warrant agreement relating to the debt warrants and the debt warrant certificates representing debt warrants will be described in the applicable prospectus supplement, including, as applicable:

- (a) the title of the debt warrants;
- (b) the initial offering price;
- (c) the title, aggregate principal amount and terms of the debt securities purchasable upon exercise of the debt warrants;
- (d) the currency or currency units in which the offering price, if any, and the exercise price are payable;
- (e) the title and terms of any related debt securities with which the debt warrants are issued and the number of the debt warrants issued with each debt security;

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- (f) the date, if any, on and after which the debt warrants and the related debt securities will be separately transferable;
- (g) the principal amount of debt securities purchasable upon exercise of each debt warrant and the price at which that principal amount of debt securities may be purchased upon exercise of each debt warrant;
- (h) if applicable, the minimum or maximum number of warrants that may be exercised at any one time;
- (i) the date on which the right to exercise the debt warrants will commence and the date on which the right will expire;
- (j) if applicable, a discussion of United States federal income tax, accounting or other considerations applicable to the debt warrants;
- (k) whether the debt warrants represented by the debt warrant certificates will be issued in registered or bearer form, and, if registered, where they may be transferred and registered;
- (l) anti-dilution provisions of the debt warrants, if any;
- (m) redemption or call provisions, if any, applicable to the debt warrants; and
- (n) any additional terms of the debt warrants, including terms, procedures and limitations relating to the exchange and exercise of the debt warrants.

Debt warrant certificates will be exchangeable for new debt warrant certificates of different denominations and, if in registered form, may be presented for registration of transfer and debt warrants may be exercised at the corporate trust office of the debt warrant agent or any other office indicated in the related prospectus supplement. Before the exercise of debt warrants, holders of debt warrants will not be entitled to payments of principal, premium, if any, or interest, if any on the debt securities purchasable upon exercise of the debt warrants, or to enforce any of the covenants in the applicable indenture.

Equity Warrants

We may issue warrants for the purchase of our equity securities such as our preferred stock or common stock. As explained below, each equity warrant will entitle its holder to purchase equity securities at an exercise price set forth in, or to be determinable as set forth in, the related prospectus supplement. Equity warrants may be issued separately or together with equity securities.

The equity warrants are to be issued under equity warrant agreements to be entered into between us and one or more banks or trust companies, as equity warrant agent, as will be set forth in the prospectus supplement relating to the equity warrants being offered by the prospectus supplement and this prospectus. A copy of the equity warrant agreement, including a form of equity warrant certificate representing the equity warrants, will be filed with the SEC in connection with the offering of the equity warrants.

The particular terms of each issue of equity warrants, the equity warrant agreement relating to the equity warrants and the equity warrant certificates representing equity warrants will be described in the applicable prospectus supplement, including, as applicable:

- (a) the title of the equity warrants;
- (b) the initial offering price;
- (c) the aggregate number of equity warrants and the aggregate number of shares of the equity security purchasable upon exercise of the equity warrants;
- (d) the currency or currency units in which the offering price, if any, and the exercise price are payable;
- (e) the designation and terms of the equity securities with which the equity warrants are issued, and the number of equity warrants issued with each equity security;

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- (f) the date, if any, on and after which the equity warrants and the related equity security will be separately transferable;
- (g) if applicable, the minimum or maximum number of the warrants that may be exercised at any one time;
- (h) the date on which the right to exercise the equity warrants will commence and the date on which the right will expire;
- (i) if applicable, a discussion of United States federal income tax, accounting or other considerations applicable to the equity warrants;
- (j) anti-dilution provisions of the equity warrants, if any;
- (k) redemption or call provisions, if any, applicable to the equity warrants; and
- (l) any additional terms of the equity warrants, including terms, procedures and limitations relating to the exchange and exercise of the equity warrants.

Holders of equity warrants will not be entitled, solely by virtue of being holders, to vote, to consent, to receive dividends, to receive notice as shareholders with respect to any meeting of shareholders for the election of directors or any other matter, or to exercise any rights whatsoever as a holder of the equity securities purchasable upon exercise of the equity warrants.

DESCRIPTION OF SECURITIES PURCHASE CONTRACTS AND SECURITIES PURCHASE UNITS

This section describes the general terms of the securities purchase contracts and securities purchase units that Xerox may offer and sell by this prospectus. This prospectus and any accompanying prospectus supplement will contain the material terms and conditions for each securities purchase contract and securities purchase unit. The accompanying prospectus supplement may add, update or change the terms and conditions of the securities purchase contracts and securities purchase units as described in this prospectus.

Stock Purchase Contract and Stock Purchase Units

We may issue stock purchase contracts, representing contracts obligating holders to purchase from us, and obligating us to sell to the holders, a specified number of shares of common stock or preferred stock at a future date or dates, or a variable number of shares of common stock or preferred stock for a stated amount of consideration. The price per share and the number of shares of common stock or preferred stock may be fixed at the time the stock purchase contracts are issued or may be determined by reference to a specified formula set forth in the stock purchase contracts. Any such formula may include anti-dilution provisions to adjust the number of shares of common stock or preferred stock issuable pursuant to the stock purchase contracts upon certain events.

The stock purchase contracts may be issued separately or as a part of units consisting of a stock purchase contract and, as security for the holder's obligations to purchase the shares under the stock purchase contracts, either (a) our senior debt securities or subordinated debt securities or, (b) our debt obligations of third parties, including U.S. Treasury securities. The stock purchase contracts may require us to make periodic payments to the holders of the stock purchase units or vice versa, and such payments may be unsecured or prefunded on some basis. The stock purchase contracts may require holders to secure their obligations in a specified manner and in certain circumstances we may deliver newly issued prepaid stock purchase contracts upon release to a holder of any collateral securing such holder's obligations under the original stock purchase contract.

Debt Purchase Contracts and Debt Purchase Units

We may issue debt purchase contracts, representing contracts obligating holders to purchase from us, and obligating us to sell to the holders, a specified principal amount of debt securities at a future date or dates. The purchase price and the interest rate may be fixed at the time the debt purchase contracts are issued or may be determined by reference to a specific formula set forth in the debt purchase contracts.

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The debt purchase contracts may be issued separately or as a part of units consisting of a debt purchase contracts and, as security for the holder's obligations to purchase the securities under the debt purchase contracts, either (a) our senior debt securities or subordinated debt securities or (b) our debt obligations of third parties, including U.S. Treasury securities. The debt purchase contracts may require us to make periodic payments to the holders of the debt purchase units or vice versa, and such payments may be unsecured or prefunded on some basis. The debt purchase contracts may require holders to secure their obligations in a specified manner and in certain circumstances we may deliver newly issued prepaid debt purchase contracts upon release to a holder of any collateral securing such holder's obligations under the original debt purchase contract.

The prospectus supplement will describe the general terms of any purchase contracts or purchase units and, if applicable, prepaid purchase contracts. The description in the prospectus supplement will not purport to be complete and will be qualified in its entirety by reference to (a) the purchase contracts, (b) the collateral arrangements and depositary arrangements, if applicable, relating to such purchase contracts or purchase units and (c) if applicable, the prepaid purchase contracts and the document pursuant to which such prepaid purchase contracts will be issued. Material United States federal income tax considerations applicable to the purchase contracts and the purchase units will also be discussed in the prospectus supplement.

DESCRIPTION OF DEPOSITARY SHARES

This section describes the general terms of the depositary shares Xerox may offer and sell by this prospectus. This prospectus and any accompanying prospectus supplement will contain the material terms and conditions for the depositary shares. The accompanying prospectus supplement may add, update, or change the terms and conditions of the depositary shares as described in this prospectus.

General

We may, at our option, elect to offer depositary shares, each representing a fraction (to be set forth in the prospectus supplement relating to a particular series of preferred stock) of a share of a particular class or series of preferred stock as described below. In the event we elect to do so, depositary receipts evidencing depositary shares will be issued to the public.

The shares of any class or series of preferred stock represented by depositary shares will be deposited under a deposit agreement among us, a depositary selected by us and the holders of the depositary receipts. The depositary will be a bank or trust company having its principal office in the United States and having a combined capital and surplus of at least \$50,000,000. Subject to the terms of the deposit agreement, each owner of a depositary share will be entitled, in proportion to the applicable fraction of a share of preferred stock represented by such depositary share, to all the rights and preferences of the shares of preferred stock represented by the depositary share, including dividend, voting, redemption and liquidation rights. The depositary shares will be evidenced by depositary receipts issued pursuant to the deposit agreement. Depositary receipts will be distributed to those persons purchasing the fractional shares of the related class or series of preferred shares in accordance with the terms of the offering described in the applicable prospectus supplement.

Pending the preparation of definitive depositary receipts the depositary may, upon our written order, issue temporary depositary receipts substantially identical to, and entitling the holders thereof to all the rights pertaining to, the definitive depositary receipts but not in definitive form. Definitive depositary receipts will be prepared without unreasonable delay, and temporary depositary receipts will be exchangeable for definitive depositary receipts without charge to the holder.

Dividends and Other Distributions

The depositary will distribute all cash dividends or other cash distributions received for the preferred stock to the entitled record holders of depositary shares in proportion to the number of depositary shares that the holder owns on the relevant record date, provided, however, that if we or the depositary is required by law to withhold

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an amount on account of taxes, then the amount distributed to the holders of depositary shares shall be reduced accordingly. The depositary will distribute only an amount that can be distributed without attributing to any holder of depositary shares a fraction of one cent. The depositary will add the undistributed balance to and treat it as part of the next sum received by the depositary for distribution to holders of the depositary shares.

If there is a non-cash distribution, the depositary will distribute property received by it to the entitled record holders of depositary shares, in proportion, insofar as possible, to the number of depositary shares owned by the holders, unless the depositary determines, after consultation with us, that it is not feasible to make such distribution. If this occurs, the depositary may, with our approval, sell such property and distribute the net proceeds from such sale to the holders. The deposit agreement also will contain provisions relating to how any subscription or similar rights that we may offer to holders of the preferred stock will be available to the holders of the depositary shares.

Both the 2002 Credit Facility and the Senior Note Indentures contain covenants that restrict our ability to pay dividends on preferred stock under certain circumstances that include the occurrence and continuation of any default or event of default (as defined therein) under the 2002 Credit Facility and Senior Note Indentures, respectively.

Withdrawal of Shares

Upon surrender of the depositary receipts at the corporate trust office of the depositary unless the related depositary shares have previously been called for redemption, converted or exchanged into our other securities, the holder of the depositary shares evidenced thereby is entitled to delivery of the number of whole shares of the related class or series of preferred stock and any money or other property represented by such depositary shares. Holders of depositary receipts will be entitled to receive whole shares of the related class or series of preferred stock on the basis set forth in the prospectus supplement for such class or series of preferred stock, but holders of such whole shares of preferred stock will not thereafter be entitled to exchange them for depositary shares. If the depositary receipts delivered by the holder evidence a number of depositary shares in excess of the number of depositary shares representing the number of whole shares of preferred stock to be withdrawn, the depositary will deliver to such holder at the same time a new depositary receipt evidencing such excess number of depositary shares. In no event will fractional shares of preferred stock be delivered upon surrender of depositary receipts to the depositary.

Conversion, Exchange and Redemption

If any class or series of preferred stock underlying the depositary shares may be converted or exchanged, each record holder of depositary receipts representing the shares of preferred stock being converted or exchanged will have the right or obligation to convert or exchange the depositary shares represented by the depositary receipts. Whenever we redeem or convert shares of preferred stock held by the depositary, the depositary will redeem or convert, at the same time, the number of depositary shares representing the preferred stock to be redeemed or converted. The depositary will redeem the depositary shares from the proceeds it receives from the corresponding redemption of the applicable series of preferred stock. The depositary will mail notice of redemption or conversion to the record holders of the depositary shares that are to be redeemed between 30 and 60 days before the date fixed for redemption or conversion. The redemption price per depositary share will be equal to the applicable fraction of the redemption price per share on the applicable class or series of preferred stock. If less than all the depositary shares are to be redeemed, the depositary will select which shares are to be redeemed by lot on a pro rata basis or by any other equitable method as the depositary may decide. After the redemption or conversion date, the depositary shares called for redemption or conversion will no longer be outstanding. When the depositary shares are no longer outstanding, all rights of the holders will end, except the right to receive money, securities or other property payable upon redemption or conversion.

Voting the Preferred Stock

When the depositary receives notice of a meeting at which the holders of the particular class or series of preferred stock are entitled to vote, the depositary will mail the particulars of the meeting to the record holders of

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the depositary shares. Each record holder of depositary shares on the record date may instruct the depositary on how to vote the shares of preferred stock underlying the holder's depositary shares. The depositary will try, if practical, to vote the number of shares of preferred stock underlying the depositary shares according to the instructions. We will agree to take all reasonable action requested by the depositary to enable it to vote as instructed.

Amendment and Termination of the Deposit Agreement

We and the depositary may agree at any time to amend the deposit agreement and the depositary receipt evidencing the depositary shares. Any amendment that (a) imposes or increases certain fees, taxes or other charges payable by the holders of the depositary shares as described in the deposit agreement that (b) otherwise materially adversely affects any substantial existing rights of holders of depositary shares, will not take effect until such amendment is approved by the holders of at least a majority of the depositary shares then outstanding. Any holder of depositary shares that continue to hold its shares after such amendment has become effective will be deemed to have agreed to the amendment.

We may direct the depositary to terminate the deposit agreement by mailing a notice of termination of holders of depositary shares at least 30 days prior to termination. The depositary may terminate the deposit agreement if 90 days have elapsed after the depositary delivered written notice of its election to resign and a successor depositary is not appointed. In addition, the deposit agreement will automatically terminate if:

- the depositary has redeemed all related outstanding depositary shares;
- all outstanding shares of preferred stock have been converted into or exchanged for common stock; or
- we have liquidated, terminated or wound up our business and the depositary has distributed the preferred stock of the relevant series to the holders of the related depositary shares.

Reports and Obligations

The depositary will forward to the holders of depositary shares all reports and communications from us that are delivered to the depositary and that we are required by law, the rules of an applicable securities exchange or our amended and restated certificate of incorporation, to furnish to the holders of the preferred stock. Neither we nor the depositary will be liable if the depositary is prevented or delayed by law or any circumstances beyond its control in performing its obligations under the deposit agreement. The deposit agreement limits our obligations to performance in good faith of the duties stated in the deposit agreement. The depositary assumes no obligation and will not be subject to liability under the deposit agreement except to perform such obligations as are set forth in the deposit agreement without negligence or bad faith. Neither we nor the depositary will be obligated to prosecute or defend any legal proceeding connected with any depositary shares or class or series of preferred stock unless the holders of depositary shares requesting us to do so furnish us with a satisfactory indemnity. In performing our obligations, we and the depositary may rely and act upon the advice of our counsel on any information provided to us by a person presenting shares for deposit, any holder of a receipt, or any other document believed by us or the depositary to be genuine and to have been signed or presented by the proper party or parties.

Payment of Fees and Expenses

We will pay all fees, charges and expenses of the depositary, including the initial deposit of the preferred stock and any redemption of the preferred stock. Holders of depositary shares will pay taxes and governmental charges and any other charges as are stated in the deposit agreement for their accounts.

Resignation and Removal of Depositary

At any time, the depositary may resign by delivering notice to us, and we may remove the depositary at any time. Resignations or removals will take effect upon the appointment of a successor depositary and its acceptance of the appointment. The successor depositary must be appointed within 90 days after the delivery of the notice of resignation or removal and must be a bank or trust company having its principal office in the United States and having a combined capital and surplus of at least \$50,000,000.

PLAN OF DISTRIBUTION

We may sell the securities offered by this prospectus to one or more underwriters or dealers for public offering, through agents, directly to purchasers or through a combination of any such methods of sale.

We may sell equity securities in an offering “at the market” as defined in Rule 415 under the Securities Act. One or more of Banc One Capital Markets, Inc., Bear, Stearns & Co. Inc., BNP Paribas Securities Corp., Citigroup Global Markets, Inc., Credit Suisse First Boston Corporation, Danske Markets Inc., Deutsche Bank Securities Inc., Fleet Securities, Inc., Goldman, Sachs & Co., J.P. Morgan Securities Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated and UBS Securities LLC, may act as underwriters in connection with such an offering. None of the broker-dealers listed in the preceding sentence shall be an underwriter in connection with any offering of our equity securities unless such broker-dealer is named as an underwriter in the prospectus supplement with respect to such offering of equity securities and such prospectus supplement is filed with the SEC.

For all other offerings, the prospectus supplement with respect to the securities being offered will set forth the terms of the offering, including the names of the underwriters, dealers or agents, if any, the purchase price, the net proceeds to Xerox, any underwriting discounts and other items constituting underwriters’ compensation, and public offering price and any discounts or concessions allowed or reallocated or paid to dealers and any securities exchanges on which such securities may be listed.

We have reserved the right to sell the securities directly to investors on our own behalf in those jurisdictions where we are authorized to do so. The sale of the securities may be effected in transactions (a) on any national or international securities exchange or quotation service on which the securities may be listed or quoted at the time of sale, (b) in the over-the-counter market, (c) in transactions otherwise than on such exchanges or in the over-the-counter market or (d) through the writing of options.

We and our respective agents and underwriters, may offer and sell the securities at a fixed price or prices that may be changed, at market prices prevailing at the time of sale, at prices related to such prevailing market prices or at negotiated prices. The securities may be offered on an exchange, which will be disclosed in the applicable prospectus supplement. We may, from time to time, authorize dealers, acting as our agents, to offer and sell the securities upon such terms and conditions as set forth in the applicable prospectus supplement.

If we use underwriters to sell securities, we will enter into an underwriting agreement with them at the time of the sale to them. In connection with the sale of the securities, underwriters may receive compensation from us in the form of underwriting discounts or commissions and may also receive commissions from purchasers of the securities for whom they may act as agent. Any underwriting compensation paid by us to underwriters or agents in connection with the offering of the securities, and any discounts, concessions or commissions allowed by underwriters to participating dealers, will be set forth in the applicable prospectus supplement to the extent required by applicable law. Underwriters may sell the securities to or through dealers, and such dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters or commissions (which may be changed from time to time) from the purchasers for whom they may act as agents.

Dealers and agents participating in the distribution of the securities may be deemed to be underwriters, and any discounts and commissions received by them and any profit realized by them on resale of the securities may be deemed to be underwriting discounts and commissions under the Securities Act. Unless otherwise indicated in the applicable prospectus supplement, an agent will be acting on a best efforts basis and a dealer will purchase debt securities as a principal, and may then resell the debt securities at varying prices to be determined by the dealer.

If so indicated in the prospectus supplement, we will authorize underwriters, dealers or agents to solicit offers by certain specified institutions to purchase offered securities from us at the public offering price set forth in the prospectus supplement pursuant to delayed delivery contracts providing for payment and delivery on a specified date in the future. Such contracts will be subject to any conditions set forth in the applicable prospectus

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supplement and the prospectus supplement will set forth the commission payable for solicitation of such contracts. The underwriters and other persons soliciting such contracts will have no responsibility for the validity or performance of any such contracts.

Underwriters, dealers and agents may be entitled under agreements entered into with us to indemnification against and contribution towards certain civil liabilities, including any liabilities under the Securities Act.

We may enter into derivative or other hedging transactions with financial institutions. These institutions may in turn engage in sales of our common stock to hedge their position, deliver this prospectus in connection with some or all of those sales and use the shares covered by this prospectus to close out any short position created in connection with those sales.

To facilitate the offering of securities, certain persons participating in the offering may engage in transactions that stabilize, maintain, or otherwise affect the price of the securities. These may include over-allotment, stabilization, syndicate short covering transactions and penalty bids. Over-allotment involves sales in excess of the offering size, which creates a short position. Stabilizing transactions involve bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum. Syndicate short covering transactions involve purchases of securities in the open market after the distribution has been completed in order to cover syndicate short positions. Penalty bids permit the underwriters to reclaim selling concessions from dealers when the securities originally sold by the dealers are purchased in covering transactions to cover syndicate short positions. These transactions may cause the price of the securities sold in an offering to be higher than it would otherwise be. These transactions, if commenced, may be discontinued by the underwriters at any time.

Any securities, other than our common stock issued hereunder, may be new issues of securities with no established trading market. Any underwriters, or agents to or through whom such securities are sold for public offering and sale, may make a market in such securities, but such underwriters or agents will not be obligated to do so and may discontinue any market making at any time without notice. No assurance can be given as to the liquidity of the trading market for any such securities. The amount of expenses expected to be incurred by us in connection with any issuance of securities will be set forth in the applicable prospectus supplement. Certain of the underwriters, dealers or agents and their associates may engage in transactions with, and perform services for, us and certain of our affiliates and in the ordinary course of our business.

The brokers dealers, if any, acting in connection with these sales might be deemed to be “underwriters” within the meaning of section 2(11) of the Securities Act. Any commission they receive and any profit upon the resale of the securities might be deemed to be underwriting discounts and commissions under the Securities Act.

During such time as we may be engaged in a distribution of the securities covered by this prospectus we are required to comply with Regulation M promulgated under the Exchange Act. With certain exceptions, Regulation M precludes us, any affiliated purchasers, and any broker-dealer or other person who participates in such distributing from bidding for or purchasing, or attempting to induce any person to bid for or purchase, any security which is the subject of the distribution until the entire distribution is complete. Regulation M also restricts bids or purchases made in order to stabilize the price of a security in connection with the distribution of that security. All of the foregoing may affect the marketability of our common stock.

ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that Xerox or the “Company” has filed with the SEC utilizing a “shelf” registration process. Under this shelf registration process, we may, from time to time over approximately the next two years, sell any combination of the securities described in this prospectus in one or more offerings up to a total dollar amount of \$2,500,000,000 or the equivalent of this amount in foreign currencies or foreign currency units. References to “we,” “our,” or “us” refer to Xerox Corporation and consolidated subsidiaries unless the context specifically requires otherwise.

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This prospectus provides you with a general description of the securities we may offer. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with additional information described below under the heading “Where You Can Find More Information.”

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

Any statement made in this prospectus or in a document incorporated or deemed to be incorporated by reference in this prospectus will be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus or in any other subsequently filed document that is also incorporated or deemed to be incorporated by reference in this prospectus modifies or supersedes that statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this prospectus. See “Incorporation of Certain Documents By Reference.”

MARKET SHARE, RANKING AND OTHER DATA

The market share, ranking and other data contained or incorporated by reference in this prospectus are based either on management’s own estimates, independent industry publications, reports by market research firms or other published independent sources and, in each case, are believed by management to be reasonable estimates. However, market share data is subject to change and cannot always be verified with complete certainty due to limits on the availability and reliability of raw data, the voluntary nature of the data gathering process and other limitations and uncertainties inherent in any statistical survey of market shares. In addition, consumption patterns and consumer preferences can and do change. As a result, you should be aware that market share, ranking and other similar data set forth herein, and estimates and beliefs based on such data, may not be reliable.

WHERE YOU CAN FIND MORE INFORMATION

We are subject to the information requirements of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). In accordance with the Exchange Act, we file annual, quarterly and current reports, proxy statements and other information with the SEC. Our SEC file number is 1-4471. You can read and copy this information at the following locations of the SEC:

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

You can also obtain copies of these materials from the Public Reference Section of the SEC at 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549, at prescribed rates. Please call the SEC at 1-800-SEC-0330 for further information on its public reference room. The SEC also maintains a web site that contains reports, proxy statements and other information about issuers, like us, who file electronically with the SEC. The address of that site is www.sec.gov.

This prospectus, which forms part of the registration statement, does not contain all of the information that is included in the registration statement. You will find additional information about our company in the registration statement. Any statements made in this prospectus concerning the provisions of legal documents are not necessarily complete and you should read the documents that are filed as exhibits to the registration statement or otherwise filed with the SEC for a more complete understanding of the document or matter.

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The SEC allows us to “incorporate by reference” information that we file with the SEC, which means that we can disclose important information to you by referring you to those documents filed separately with the SEC. The information incorporated by reference is an important part of this prospectus, and information that we subsequently file will automatically update and supersede information in this prospectus and in our other filings with the SEC. We incorporate by reference the documents listed below, which we have already filed with the SEC, and any future filings under Sections 13(a), 13(c), 14, or 15(d) of the Exchange Act, until our offering is completed:

1. Annual Report on Form 10-K for the year ended December 31, 2002, filed with the SEC on March 31, 2003, as amended by Form 10-K/A filed with the SEC on June 30, 2003;
2. Quarterly Report on Form 10-Q for quarter ended March 31, 2003, filed with the SEC on April 30, 2003;
3. Quarterly Report on Form 10-Q for quarter ended June 30, 2003, filed with the SEC on August 11, 2003;
4. Quarterly Report on Form 10-Q for quarter ended September 30, 2003, filed with the SEC on November 3, 2003, as amended by Form 10-Q/A filed with the SEC on November 4, 2003;
5. Current Reports on Form 8-K dated March 21, 2003, April 21, 2003, April 30, 2003, May 12, 2003, June 2, 2003, June 19, 2003, June 25, 2003 (filed June 25, 2003), June 25, 2003 (filed June 26, 2003), June 25, 2003 (filed June 27, 2003), June 25, 2003 (filed July 3, 2003), July 23, 2003 (filed July 24, 2003), July 23, 2003 (filed July 24, 2003), September 15, 2003 and November 14, 2003;
6. Description of Xerox’ Shareholders Rights Plan (the “Rights Plan”) contained in Amendment No. 2 to Form 8-A filed with the SEC on February 8, 2000; and description of the Rights Agreement dated as of April 7, 1997 between us and The First National Bank of Boston, as Rights Agent (the “Rights Agreement”), with respect to the Rights Plan, which is filed as Exhibit 4.10 to our Current Report on Form 8-K dated April 7, 1997. The Rights Plan and the Rights Agreement relate to the Rights to purchase Series A Cumulative preferred stock; and
7. Description of Xerox’s common stock, contained in Amendment No. 5 to Form 8-A filed with the SEC on February 8, 2000.

FORWARD-LOOKING STATEMENTS

This Prospectus, any accompanying prospectus supplement and the documents they incorporate by reference may contain statements that are not historical fact and which are deemed to be forward looking. These forward-looking statements and other information are based on our beliefs as well as assumptions made by us using information currently available.

The words “anticipate,” “believe,” “estimate,” “expect,” “intend,” “will,” and similar expressions, as they relate to us, are intended to identify forward-looking statements. Such statements reflect our current views with respect to future events and are subject to certain risks, uncertainties and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual results may vary materially from those described herein as anticipated, believed, estimated, intended or expected. We do not intend to update these forward-looking statements.

We are making investors aware that such forward-looking statements, because they relate to future events, are by their very nature subject to many important factors which could cause actual results to differ materially from those contained in the forward-looking statements. Such factors include, but are not limited to, those discussed in the section that follows the heading “Forward Looking Statements” in our Quarterly Report on Form 10-Q for the quarter ended September 30, 2003 and under similarly captioned sections in future filings that we make with the SEC under the Exchange Act.

VALIDITY OF THE SECURITIES AND THE GUARANTEES

The validity of the securities, and the guarantees to be offered by Xerox and any subsidiary guarantors, will be passed upon for Xerox by Samuel K. Lee with respect to New York law and the General Corporation Law of Delaware and by Christine A. Perantoni with respect to Pennsylvania law. Cahill Gordon & Reindel LLP, New York, New York, will pass upon the validity of the offered securities for any underwriters, dealers, purchasers or agents.

EXPERTS

The audited consolidated financial statements of Xerox Corporation have been incorporated in this Prospectus by reference to the Current Report on Form 8-K dated July 23, 2003, in reliance on the report of PricewaterhouseCoopers LLP, independent accountants, given on the authority of said firm as experts in auditing and accounting.

The consolidated financial statements of Fuji Xerox Co., Ltd. and Subsidiaries appearing in Amendment No. 1 to Xerox Corporation's Annual Report (Form 10-K/A) for the year ended December 31, 2002, have been audited by Ernst & Young, independent auditors, as set forth in their report thereon included therein and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

PART II
INFORMATION NOT REQUIRED IN THE PROSPECTUS

Item 14. Other Expenses Of Issuance And Distribution.

All expenses in connection with the issuance and distribution of the securities being registered will be paid by the Company. The following is an itemized statement of these expenses (all amounts are estimated except for the SEC registration fee):

SEC Registration Fee	\$ 202,250
Printing expenses	700,000
Legal fees and expenses	350,000
Accounting fees and expenses	300,000
Trustee fees and expenses (including counsel fees)	100,000
Rating agency fees	1,400,000
Miscellaneous	100,000
	<hr/>
Total	\$ 3,152,250

Item 15. Indemnification Of Directors And Officers.

Xerox Corporation, Inc., a New York corporation, is empowered by Sections 721-726 of the New York Business Corporation Law, subject to the procedures and limitations therein, to indemnify and hold harmless any director or officer or other person from and against any and all claims and demands whatsoever, subject to such standards and restrictions, if any, as are set forth in its Certificate of Incorporation or By-laws.

The Certificate of Incorporation of Xerox Corporation Inc. does not contain indemnification provisions. Article VIII of the By-laws of Xerox Corporation, which is filed as an exhibit to this registration statement, requires the company to indemnify any person made or threatened to be made a party in any civil or criminal action or proceeding, including an action or proceeding by or in the right of the company to procure a judgment in its favor or by or in the right of any other company of any type or kind, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan or other enterprise, which any director or officer of the company served in any capacity at the request of the company, by reason of the fact that he, his testator or intestate is or was a director or officer of the company or serves or served such other company, partnership, joint venture, trust, employee benefit plan or other enterprise, in any capacity against judgments, fines, penalties, amounts paid in settlement and reasonable expenses, including attorneys' fees, incurred in connection with such action or proceeding, or any appeal therein, provided that no such indemnification shall be required with respect to any settlement unless the company shall have given its prior approval thereto.

Xerox International Joint Marketing, Inc., a Delaware corporation, is empowered by Sections 145 and 102 of the Delaware General Corporation Law, subject to the procedures and limitations therein, to indemnify and hold harmless any director or officer or other person from and against any and all claims and demands whatsoever, subject to such standards and restrictions, if any, as are set forth in its respective Certificate of Incorporation or By-laws.

The Certificate of Incorporation of Xerox International Joint Marketing, Inc. does not contain indemnification provisions.

Article XII of the By-laws of Xerox International Joint Marketing, Inc. which is filed as an exhibit to this registration statement, requires such company to indemnify any person, made or threatened to be made, a party in any civil or criminal action or proceeding by reason of the fact that he, his testator or intestate is or was a director or officer of the company or served any other company of any type or kind, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan or other enterprise, in any capacity at the request of such company.

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Intelligent Electronics, Inc., a Pennsylvania corporation, is empowered by Sections 1741 through 1750 of Subchapter D, Chapter 17, of the Pennsylvania Business Corporation Law, subject to the procedures and limitations therein, to indemnify and hold harmless any director or officer or other person from and against any and all claims and demands whatsoever, subject to such standards and restrictions, if any, as are set forth in its By-laws.

Article V of the By-laws of Intelligent Electronics, Inc., which is filed as an exhibit to this registration statement, requires the company to indemnify any director and any officer of the company who was or is a party or is threatened to be made a party to any third party proceeding by reason of the fact that he or she was or is an authorized representative of the company against his or her expenses and liabilities, actually and reasonably incurred by him or her in connection with the third party proceeding, if he or she acted in good faith and in a manner reasonably believed by him or her to be in, or not opposed to, the best interests of the company, and with respect to any criminal third party proceeding, had no reasonable cause to believe his or her conduct was unlawful or in violation of applicable rules. Article V of the By-laws of Intelligent Electronics, Inc. further requires the company to indemnify any director or officer of the company who was or is a party or is threatened to be made a party to any derivative action by reason of the fact that the director or officer was or is an authorized representative of the company against his or her expenses, actually and reasonably incurred by the director or officer in the action if he or she acted in good faith and in a manner reasonably believed by him or her to be in, or not opposed to, the best interests of the company; expect that no indemnification shall be made in respect of any claim, issue or matter as to which he or she shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the company unless and only to the extent that the court of common pleas, or other similarly constituted state court, located in the county where the registered office of the company is located or the court in which such derivative action is or was pending, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, he or she is fairly and reasonably entitled to indemnity for expenses which the court shall deem proper.

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Item 16. Exhibits.

- (1)(a) —Form of Underwriting Agreement, incorporated by reference to Exhibit (1)(a) to Xerox Corporation’s Registration Statement on Form S-3, Registration No. 33-44597.
- (1)(b) —Form of Selling Agency Agreement, incorporated by reference to Exhibit (1)(b) to Xerox Corporation’s Current Report on Form 8-K dated March 10, 1992.
- (4)(a)(1) —Restated Certificate of Incorporation of Xerox Corporation filed with the Department of State of New York on November 7, 2003.*
- (4)(a)(2) —By-Laws of Xerox Corporation, as amended through December 10, 2003.*
- (4)(a)(3) —Rights Agreement, dated as of April 7, 1997, between Xerox Corporation and the First National Bank of Boston, as Rights Agent, incorporated by reference to Exhibit 4.10 to Xerox Corporation’s Current Report on Form 8-K dated April 7, 1997.
- (4)(b)(1) —Indenture dated June 25, 2003, between Xerox Corporation and Wells Fargo Bank Minnesota, National Association, as Trustee (the “June 25, 2003 Indenture”), incorporated by reference to Exhibit 4.1 to Xerox Corporation’s Current Report on Form 8-K dated June 25, 2003.
- (4)(b)(2) —First Supplemental Indenture, dated June 25, 2003, among Xerox Corporation, the Guarantors and Wells Fargo Bank Minnesota, National Association, as Trustee (capitalized terms as defined therein), to the June 25, 2003 Indenture, incorporated by reference to Exhibit 4.2 to Xerox Corporation’s Current Report on Form 8-K dated June 25, 2003.
- (4)(b)(3) —Form of Second Supplemental Indenture to the June 25, 2003 Indenture.*
- (4)(b)(4) —Form of Indenture relating to unlimited amounts of debt securities which may be issued from time to time by Registrant when and as authorized by or pursuant to a resolution of Xerox’s Board of Directors incorporated by reference to Exhibit 4(a) to Xerox Corporation’s Registration Statement No. 333-13179.
- (4)(b)(5) —Form of Indenture relating to unlimited amounts of subordinated and/or convertible debt securities which may be issued from time to time by Registrant when and as authorized by or pursuant to a resolution of Xerox’s Board of Directors incorporated by reference to Exhibit 4(e) to Xerox Corporation’s Registration Statement No. 33-54629. The Form of Indenture is hereby modified, effective as of April 22, 2003, by deleting all references therein to “Citibank, N.A.,” “July 15, 1994” and any specific day, month and/or year and substituting therefor blank spaces.
- (4)(c) —A form of debt security will be filed as an exhibit to a current report of Xerox Corporation and incorporated in this registration statement by reference.
- (4)(d)(1) —A form of Warrant Agreement will be filed as an exhibit to a current report of Xerox Corporation and incorporated in this registration statement by reference.
- (4)(d)(2) —Form of Warrant Certificate (included in Exhibit (4)(d)(1)).
- (4)(e)(1) —A form of Deposit Agreement will be filed as an exhibit to a current report of Xerox Corporation and incorporated in this registration statement by reference.
- (4)(e)(2) —Form of Depositary Receipt (included in Exhibit (4)(e)(1)).
- (4)(f) —A form of Securities Purchase Contract will be filed as an exhibit to a current report of Xerox Corporation and incorporated in this registration statement by reference.
- (4)(g) —A form of Securities Purchase Unit will be filed as an exhibit to a current report of Xerox Corporation and incorporated in this registration statement by reference.
- (4)(h) —A Certificate of Designation relating each series of preferred stock will be filed with the Department of State of New York and will be filed as an exhibit to a current report of Xerox Corporation and incorporated in this registration statement by reference.
- (5)(a) —Opinion of Samuel K. Lee as to the legality of the Securities and certain other legal matters.*
- (5)(b) —Opinion of Christine A. Perantoni as to the legality of the Guarantees that may be issued by Intelligent Electronics, Inc., a Pennsylvania corporation.*
- (12) —Computation of Ratio of Earnings to Fixed Charges and Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends of Xerox Corporation, incorporated by reference to Exhibit 12 to Xerox Corporation’s Annual Report on Form 10-K for the fiscal year ended December 31, 2002 and to Exhibit 12 to Xerox Corporation’s Quarterly Report on Form 10-Q

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for the quarterly period ended September 30, 2003.

- (23)(a)(1) —Consent of PricewaterhouseCoopers LLP, Independent Accountants.*
- (23)(a)(2) —Consent of Ernst & Young, Independent Accountants.*
- (23)(b)(1) —Consent of Samuel K. Lee (see Exhibit 5(a)).
- (23)(b)(2) —Consent of Christine A. Perantoni (See Exhibit 5(b)).
- (24)(a) —Certified Resolutions of the Board of Directors of Xerox Corporation and each Guarantor.*
- (24)(b) —Powers of Attorney for Xerox Corporation.*
- (24)(c) —Powers of Attorney for Intelligent Electronics, Inc.*
- (24)(d) —Powers of Attorney for Xerox International Joint Marketing, Inc.*
- (25) —Form T-1 Statement of Eligibility of Wells Fargo Bank, National Association.*

* Filed herewith

Item 17. UNDERTAKINGS.

The undersigned registrants hereby undertake:

(1) To file, during any period in which offers or sales of the securities registered hereby are being made, a post-effective amendment to the registration statement: (i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933 (the "Act"); (ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 42(b), if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and (iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement, *provided, however*, that clauses (i) and (ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Company pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this registration statement.

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

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

(4) That, for purposes of determining any liability under the Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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

Insofar as indemnification for liabilities arising under the Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrants have been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrants of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrants will, unless in the opinion of their counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by them is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Stamford, State of Connecticut on the 30th day of December, 2003.

XEROX CORPORATION

By: /s/ ANNE M. MULCAHY*

**Anne M. Mulcahy
Chairman of the Board and
Chief Executive Officer**

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities indicated on the 30th day of December, 2003.

<u>Name</u>	<u>Capacities</u>
/s/ ANNE M. MULCAHY* <hr/> Anne M. Mulcahy	Chairman of the Board, Chief Executive Officer and Director (Principal Executive Officer)
/s/ LAWRENCE A. ZIMMERMAN* <hr/> Lawrence A. Zimmerman	Senior Vice President and Chief Financial Officer (Principal Financial Officer)
/s/ GARY R. KABURECK* <hr/> Gary R. Kabureck	Assistant Controller and Chief Accounting Officer (Principal Accounting Officer)
/s/ ANTONIA AX:SON JOHNSON* <hr/> Antonia Ax:son Johnson	Director
/s/ VERNON E. JORDAN, JR.* <hr/> Vernon E. Jordan, Jr.	Director
/s/ YOTARO KOBAYASHI* <hr/> Yotaro Kobayashi	Director
/s/ HILMAR KOPPER* <hr/> Hilmar Kopper	Director
/s/ RALPH S. LARSEN* <hr/> Ralph S. Larsen	Director
/s/ N. J. NICHOLAS, JR.* <hr/> N. J. Nicholas, Jr.	Director
/s/ JOHN E. PEPPER* <hr/> John E. Pepper	Director

*By: /s/ SAMUEL K. LEE

**Samuel K. Lee
Attorney-in-Fact**

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Pursuant to the requirements of the Securities Act, XEROX INTERNATIONAL JOINT MARKETING, INC. has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Stamford, State of Connecticut on the 30th day of December, 2003.

XEROX INTERNATIONAL JOINT
MARKETING, INC.

By: /s/ JAMES A. FIRESTONE*

James A. Firestone
President and Chief Executive Officer

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities indicated on the 30th day of December, 2003.

<u>Name</u>	<u>Capacities</u>
<u> /s/ JAMES A. FIRESTONE*</u> James A. Firestone	President, Chief Executive Officer, and Treasurer, Chief Financial Officer, Principal Accounting Officer and Sole Director
<u>*By: /s/ SAMUEL K. LEE</u> Samuel K. Lee Attorney-in-Fact	

**RESTATED CERTIFICATE OF INCORPORATION
OF
XEROX CORPORATION**

**UNDER SECTION 807 OF THE
BUSINESS CORPORATION LAW**

We, the undersigned, ANNE M. MULCAHY and LESLIE F. VARON, being respectively the Chairman of the Board and the Secretary of XEROX CORPORATION, DO HEREBY CERTIFY that:

1. The name of the Corporation is "XEROX CORPORATION". The name under which it was formed is "THE HALOID COMPANY".

2. The Certificate of Incorporation was filed in the Office of the Secretary of State of the State of New York on April 18, 1906.

3. This restatement of the Certificate of Incorporation was authorized by a resolution adopted by the Board of Directors of the Corporation at a meeting thereof duly called and held. The text of the Certificate of Incorporation is hereby restated without further amendment to read as herein set forth in full:

FIRST: The name of the Corporation is XEROX CORPORATION.

SECOND: The purposes for which it is formed are as follows:

To engage in the invention, development, production, operation, sale or lease of devices, papers and other items, processes, and services, relating to the communications, photographic, printing and image reproduction arts;

To engage in any commercial, mercantile, manufacturing, mining, industrial, importing, exporting or trading business, venture, activity or service or other business, venture, activity or service of a kind or type described in these purposes;

To engage in scientific and technological research and pursuits of every lawful kind and description and to utilize, employ and exploit any and all knowledge resulting therefrom;

To purchase, lease or otherwise acquire, own, hold, sell, mortgage, charge or otherwise dispose of, invest, trade and deal in and with real and personal property of every kind and description.

THIRD: The office of the Corporation is to be located in the City of Rochester, Monroe County, New York.

FOURTH: The aggregate number of shares which the Corporation shall have the authority to issue is 1,750,000,000 shares of Common Stock, of the par value of \$1.00 each (hereinafter referred to as "Common Stock"), 600,000 shares of Class B Stock of the par value of \$1.00 each (hereinafter referred to as "Class B Stock"), and 22,043,067 shares of Cumulative Preferred Stock, of the par value of \$1.00 each (hereinafter referred to as "Cumulative Preferred Stock").

The designations, preferences, privileges and voting powers of each class of stock of the Corporation, and the restrictions and qualifications thereof, shall be as follows:

1. The Cumulative Preferred Stock may be issued from time to time as follows:

(a) The Cumulative Preferred Stock may be issued from time to time as shares of one or more series of Cumulative Preferred Stock and the Board of Directors is expressly authorized, prior to issuance, in the resolution or resolutions providing for the issue of shares in each particular series, to fix the following:

(i) the distinctive serial designation and number of shares which shall constitute such series, which number may be increased (except where otherwise provided by the Board of Directors in creating such series) or decreased (but not below the number of shares thereof then outstanding) from time to time by like action of the Board of Directors;

(ii) the annual dividend rate for such series, and the date from which dividends on shares of such series shall be cumulative;

(iii) the redemption provisions and price or prices, if any, for such series, which may consist of a redemption price or scale of redemption prices applicable only to redemption for a sinking fund and the same or a different redemption price or scale of redemption prices applicable to any other redemption;

(iv) the amount or amounts which shall be paid to the holders of the shares of such series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation (but not less than \$1.00 in the case of involuntary liquidation);

(v) the obligation, if any, of the Corporation to retire shares of such series pursuant to a sinking fund which shall be applied to the redemption of shares of such series;

(vi) the terms and conditions (with or without limitations), if any, on which shares of such series shall be convertible into, or exchangeable for, shares of stock of any other class or classes, including the price or prices or at the rate or rates of conversion or exchange and the terms and conditions of adjustment thereof, if any; and

(vii) the voting rights, if any, in addition to those specified herein, and any other preferences, privileges and restrictions or qualifications of such series.

(b) All shares of Cumulative Preferred Stock, regardless of series, shall be of equal rank with each other and shall be identical with each other in all respects except as provided in or permitted by paragraph (a) of this subdivision 1 and except as provided in paragraph (b) of subdivision 6; and the shares of the Cumulative Preferred Stock of any one series shall be identical with each other in all respects except as to the dates from and after which dividends thereon shall be cumulative.

(c) In case the stated dividends and the amounts payable on liquidation are not paid in full, the shares of all series of the Cumulative Preferred Stock shall share ratably in the payment of dividends (including accumulations, if any) in accordance with the sums which would be payable on said shares if all dividends were declared and paid in full, and in any distribution of assets other than by way of dividends in accordance with the sums which would be payable on such distributions if all sums payable were discharged in full.

2. The holders of the Cumulative Preferred Stock of each series shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds legally available for the payment of dividends, cumulative cash dividends at the annual rate for such series (as fixed by the Board of Directors in accordance with subdivision 1 in respect of any series), and no more, payable quarter-yearly, on the first day of January, April, July and October in each year, to shareholders of record on the respective dates, not exceeding forty days preceding such dividend payment dates, fixed for the purpose by the Board of Directors in advance of payment of each particular dividend; provided that if dividends on any shares of the Cumulative Preferred Stock shall be cumulative from a date less than thirty days prior to the first quarter-yearly dividend payment date in respect of such shares, the dividends accrued on such shares to such date shall not be payable on such date but shall be payable on the next following quarter-yearly dividend payment date. The holders of shares of the Cumulative Preferred Stock shall not be entitled to receive any dividends thereon other than the dividends referred to in this subdivision 2.

As provided in paragraph (c) of subdivision 1, no dividend shall be paid upon, or declared or set apart for, any share of Cumulative Preferred Stock of any series for any quarter-yearly dividend period (other than the first quarter-yearly dividend period for any shares if the dividend on such shares for such period shall not then be payable pursuant to the provisions of subdivision 2) unless at the same time a like proportionate dividend for the same quarter-yearly dividend period, ratably in proportion to the respective annual dividend rates fixed therefor, shall be paid upon, or declared and set apart for, all shares of Cumulative Preferred Stock of all series then issued and outstanding and entitled to receive the dividend.

3. So long as any shares of the Cumulative Preferred Stock are outstanding, no dividend whatever shall be paid or declared at any time, and no distribution made, on any junior stock (other than in junior stock) nor shall any shares of junior stock be purchased or otherwise acquired for value or redeemed at any time by the Corporation or any subsidiary:

(a) unless all dividends on the Cumulative Preferred Stock of all series for all past quarter-yearly dividend periods (other than the first quarter-yearly dividend period for any shares if the dividend on such shares for such period shall not then be payable pursuant to the provisions of subdivision 2) shall have been paid and the full dividends thereon for the then current quarter-yearly dividend period shall have been paid or declared and a sum sufficient for the payment thereof set apart; and

(b) unless the Corporation shall have redeemed, retired or purchased all shares of each series of Cumulative Preferred Stock required to have been redeemed, retired or purchased at such time pursuant to the sinking fund fixed for such series by the Board of Directors in accordance with subdivision 1,

provided, however, that the foregoing restrictions in this subdivision 3 shall not apply to the acquisition of any junior stock solely in exchange for, or solely out of the proceeds of sale of, any other junior stock.

Subject to the foregoing provisions of this subdivision 3, and to any further limitations prescribed by the Board of Directors in accordance with subdivision 1, and not otherwise, such dividends (payable in cash, stock or otherwise) as may be determined by the Board of Directors may be declared and paid on any junior stock from time to time out of any funds of the Corporation legally available therefor, and the Cumulative Preferred Stock shall not be entitled to participate in any such dividends.

4. Subject to the provisions of subdivision 5, the Corporation at its option (expressed by resolution of the Board of Directors) or for the purpose of any sinking fund therefor may (except as otherwise provided by the Board of Directors in accordance with subdivision 1 in respect of any series) redeem the outstanding shares of Cumulative Preferred Stock, or of any one or more series thereof, at any time in whole, or from time to time in part, upon notice duly given as hereinafter specified, at the applicable redemption price or prices for such shares (as fixed in accordance with subdivision 1 in respect of any series), including, in each case, an amount equal to all accrued and unpaid dividends thereon to the date fixed for redemption.

Notice of every such redemption of Cumulative Preferred Stock of any series (a) if all the shares of such series are held of record by not more than ten holders, shall be given by mailing such notice not less than 30 nor more than 60 days prior to the date fixed for such redemption to each holder of record of shares of such series so to be redeemed at his address as the same shall appear on the books of the Corporation, or (b) if all the shares of such series are held of record by more than ten holders, shall be given by publication at least once in each of two successive calendar weeks in a newspaper printed in the English language and customarily published on each business day and of general circulation in the Borough of Manhattan, The City of New York, the first publication to be not less than 30 nor more than 60 days prior to the date fixed for such redemption, and notice of such redemption shall also be mailed not less than 30 nor more than 60 days prior to the date fixed for such redemption, to each holder of record of shares of such series so to be redeemed at his address as the same shall appear on the books of the Corporation; but, if publication is required, no failure to mail any such notice nor any defect therein or in the mailing thereof shall affect the validity of the proceeding for the redemption of any shares to be redeemed.

In case of redemption of a part only of the Cumulative Preferred Stock of any series at the time outstanding, whether for the sinking fund therefor or otherwise, the redemption may (subject to any provision made by the Board of Directors in accordance with subdivision 1 in respect of any series) be either pro rata or by lot, as determined by the Board of Directors. Subject to the foregoing, the Board of Directors shall have full power and authority to prescribe the manner in which the drawings by lot or the pro rata redemption shall be conducted and, subject to the provisions contained in the Certificate of Incorporation or provided by the Board of Directors in accordance with subdivision 1, the terms and conditions upon which the Cumulative Preferred Stock shall be redeemed from time to time.

If any such notice of redemption shall have been duly given and if, on or before the redemption date specified therein, all funds necessary for such redemption shall have been set aside by the Corporation, separate and apart from its other funds, in trust for the pro rata benefit of the holders of the shares so called for redemption, so as to be and continue to be available therefor, then, notwithstanding that any certificate for shares so called for redemption shall not have been surrendered for cancellation, all shares so called for redemption shall no longer be deemed outstanding on and after such redemption date, and the right to receive dividends thereon and all other rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on redemption thereof without interest, and the right to exercise, on or before the date fixed for redemption, all privileges of conversion or exchange, if any, not theretofore expired.

If any such notice of redemption shall have been duly given or if the Corporation shall have given to the bank or trust company hereinafter referred to irrevocable written authorization promptly to give or complete such notice, and if on or before the redemption date specified therein the funds necessary for such redemption shall have been deposited by the Corporation with a bank or trust company in good standing, designated in such notice, organized under the laws of the United States of America or of the State of New York, doing business in the Borough of Manhattan, The City of New York, having a capital, surplus, and undivided profits aggregating at least \$5,000,000 according to its last published statement of condition, in trust for the pro rata benefit of the holders of the shares so called for redemption, then, notwithstanding that any certificate for shares so called for redemption shall not have been surrendered for cancellation, from and after the time of such deposit all shares so called for redemption shall no longer be deemed to be outstanding and all rights with respect to such shares shall forthwith cease and terminate, except only the right of the holders thereof to receive from such bank or trust company at any time after the time of such deposit the funds so deposited, without interest, and the right to exercise, on or before the date fixed for redemption, all privileges of conversion or exchange, if any, not theretofore expired. Any interest accrued on such funds shall be paid to the Corporation from time to time.

Any funds so set aside or deposited, as the case may be, and unclaimed at the end of six years from such redemption date shall be released or repaid to the Corporation, after which the holders of the shares so called for redemption shall look only to the Corporation for payment thereof; provided that any funds so deposited which shall not be required for redemption because of the exercise of any privilege of conversion or exchange subsequent to the date of deposit shall be repaid to the Corporation forthwith.

None of the shares of Cumulative Preferred Stock of any series redeemed or retired pursuant to the sinking fund fixed for such series by the Board of Directors in accordance with subdivision 1, shall be reissued and all such shares shall, in the manner provided by law, be eliminated from the authorized capital stock of the Corporation. The Corporation shall not be prohibited from reissuing any shares of Cumulative Preferred Stock redeemed or retired (other than for the sinking fund therefor) or converted into or exchanged for stock pursuant to the provisions fixed by the Board of Directors in accordance with subdivision 1, and after such redemption, retirement or conversion of the Corporation may, in the manner provided by law, restore such shares to the status of authorized but unissued shares of Cumulative Preferred Stock undesignated as to series.

5. If and so long as all dividends on the Cumulative Preferred Stock of all series for all past quarter-yearly dividend periods (other than the first quarter-yearly dividend period for any shares if the dividend on such shares for such period shall not then be payable pursuant to the provisions of subdivision 2) shall not have been paid and the full dividends thereon for the then current quarter-yearly dividend period shall not have been paid or declared and a sum sufficient for the payment thereof set apart, the Corporation shall not redeem (for sinking fund or otherwise) less than all of the Cumulative Preferred Stock at the time outstanding, and neither the Corporation nor any subsidiary shall purchase or otherwise acquire for value (for sinking fund or otherwise) any of the Cumulative Preferred Stock at the time outstanding.

6. Unless the consent of the holders of a greater number of shares shall then be required by law, the consent of the holders of at least two-thirds of the shares of Cumulative Preferred Stock at the time outstanding, given in person or by proxy, either in writing or at any special or annual meeting called for the purpose, at which the Cumulative Preferred Stock shall vote separately as a class, shall be necessary to permit, effect or validate any one or more of the following:

(a) The authorization of, or any increase in the authorized amount of, any class of stock ranking prior to the Cumulative Preferred Stock;

(b) The amendment, alteration or repeal of any of the provisions of the Certificate of Incorporation, or of the By-Laws of the Corporation which would affect adversely any right, preference, privilege or voting power of the Cumulative Preferred Stock or of the holders thereof; provided, however, that if any such amendment, alteration or repeal would affect adversely any right, preference, privilege or voting power of one or more, but not all, of the series of Cumulative Preferred Stock at the time outstanding, the consent of the holders of at least two-thirds of the outstanding shares of each such series so affected, similarly given, shall be required in lieu of (or if such consent is required by law, in addition to) the consent of the holders of two-thirds of the shares of the Cumulative Preferred Stock as a class; and

(c) The voluntary liquidation, dissolution or winding up of the Corporation, or the sale, lease or conveyance (other than by mortgage) of all or substantially all the property or business of the Corporation, or the consolidation or merger of the Corporation with or into any other corporation, except any such consolidation or merger wherein none of the rights, preferences, privileges or voting powers of any series of the Cumulative Preferred Stock or the holders thereof are adversely affected.

No consent of the holders of the Cumulative Preferred Stock or of any series thereof which would otherwise be required to permit, effect or validate any action of the Corporation or a subsidiary pursuant to the provisions of this subdivision 6 or pursuant to any provision fixed by the Board of Directors in accordance with subdivision 1 shall be required if, prior to or concurrently with such action, provision shall be made in accordance with the provisions of the fourth paragraph of subdivision 4 for the redemption of all outstanding shares of Cumulative Preferred Stock or all outstanding shares of such series, as the case may be, and all funds necessary for such redemption shall be deposited in trust in accordance with the provisions of such paragraph.

7. Unless and until six quarter-yearly dividends on the Cumulative Preferred Stock of any series shall be in default, in whole or in part, the entire voting power, except as otherwise provided in the Certificate of Incorporation or By-Laws, shall be vested exclusively in the Common Stock in accordance with the provisions of, and except as otherwise expressly provided in, the Certificate of Incorporation. If and whenever six full quarter-yearly dividends (whether or not consecutive) payable on the Cumulative Preferred Stock of any series shall be in arrears, in whole or in part, the number of Directors then constituting the Board of Directors shall be increased by two and the holders of the Cumulative Preferred Stock, voting separately as a class, regardless of series, shall be entitled to elect the two additional directors at any annual meeting of shareholders or special meeting held in place thereof, or at a special meeting of the holders of the Cumulative Preferred Stock called as hereinafter provided. Whenever all arrears in dividends on the Cumulative Preferred Stock then outstanding shall have been paid and dividends thereon for the current quarter-yearly dividend period shall have been paid or declared and set apart for payment, then the right of the holders of the Cumulative Preferred Stock to elect such additional two Directors shall cease (but subject always to the same provisions for the vesting of such voting rights in the case of any similar future arrearages in dividends), and the terms of office of all persons elected as Directors by the holders of the Cumulative Preferred Stock shall forthwith terminate and the number of the Board of Directors shall be reduced accordingly. At any time after such voting power shall have been so vested in the Cumulative Preferred Stock, the Secretary of the Corporation may, and upon the written request of any holder of the Cumulative Preferred Stock (addressed to the Secretary at the principal office of the Corporation)

shall, call a special meeting of the holders of the Cumulative Preferred Stock for the election of the two Directors to be elected by them as herein provided, such call to be made by notice similar to that provided in the By-Laws for a special meeting of the shareholders or as required by law. If any such special meeting required to be called as above provided shall not be called by the Secretary within twenty days after receipt of any such request, then any holder of Cumulative Preferred Stock may call such meeting, upon the notice above provided, and for that purpose shall have access to the stock books of the Corporation. The Directors elected at any such special meeting shall hold office until the next annual meeting of the shareholders or special meeting held in place thereof. In case any vacancy shall occur among the Directors elected by the holders of the Cumulative Preferred Stock, a successor shall be elected to serve until the next annual meeting of the shareholders or special meeting held in place thereof by the then remaining Director elected by the holders of the Cumulative Preferred Stock or the successor of such remaining Director.

In any case in which the holders of Cumulative Preferred Stock or any series thereof shall be entitled to vote pursuant to the provisions of the Certificate of Incorporation or pursuant to law, each holder of Cumulative Preferred Stock or of such series, as the case may be, shall be entitled to one vote for each share thereof held.

8. In the event of any liquidation, dissolution or winding up of the Corporation, the holders of the Cumulative Preferred Stock of each series shall be entitled to receive out of the assets of the Corporation, before any distribution or payment shall be made to the holders of any junior stock, (i) if such liquidation, dissolution or winding up shall be involuntary, the amount fixed by the Board of Directors in accordance with subdivision 1 but not less than \$1.00, and (ii) if such liquidation, dissolution or winding up shall be voluntary, the amount per share fixed by the Board of Directors in accordance with the provisions of subdivision 1 in the case of any series of Cumulative Preferred Stock, in effect at the time thereof, together with, in each case, all accrued and unpaid dividends thereon to the date fixed for the payment of such distributive amounts; and the holders of the junior stock shall be entitled, to the exclusion of the holders of the Cumulative Preferred Stock of any and all series, to share ratably in all the remaining assets of the Corporation in accordance with their respective rights. As provided in paragraph (c) of subdivision 1, if upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the assets available for distribution shall be insufficient to pay the holders of all outstanding shares of Cumulative Preferred Stock the full amounts to which they respectively shall be entitled, the holders of shares of Cumulative Preferred Stock of all series shall share ratably in any distribution of assets in accordance with the sums which would be payable on such distribution if all sums payable were discharged in full. Neither the consolidation or merger of the Corporation with or into any other corporation, nor any sale, lease or conveyance of all or any part of the property or business of the Corporation, shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this subdivision 8.

9. Except as otherwise expressly provided in the Certificate of Incorporation and except as otherwise provided by law, voting rights upon any and all matters shall be vested exclusively in the holders of the Common Stock and the Class B Stock (each share of Common Stock and of Class B Stock having one vote).

10. No holder of Common Stock, Cumulative Preferred Stock or Class B Stock shall be entitled as such, as a matter of right, to subscribe for or purchase any part of any new or additional issue of stock of any class whatsoever, or of any obligations or other securities convertible into, or exchangeable for, any stock of any class whatsoever, whether now or hereafter authorized and whether issued for cash or other consideration or by way of dividend.

11. The holders of Common Stock and of Class B Stock shall possess equal voting rights and rights as to dividends or distributions, and in the event of any liquidation, dissolution or winding up of the Corporation. No dividend, distribution, split-up, combination, reclassification, or other change in the shares of Common Stock shall be made without the same being made with respect to the Class B Stock.

12. For all purposes of the Certificate of Incorporation:

The term “accrued and unpaid dividends” when used with reference to any share of any series of the Cumulative Preferred Stock shall mean an amount computed at the annual dividend rate for the shares of such series from the date on which dividends on such share became cumulative to and including the date to which such dividends are to be accrued, less the aggregate amount of all dividends theretofore paid on such share; but no interest shall be payable upon any arrearages.

The term “Certificate of Incorporation” shall mean the certificate of incorporation of the Corporation as amended and supplemented by any certificate heretofore or hereafter filed pursuant to law, including any certificate filed pursuant to law with respect to, and providing for the issue of, any series of Cumulative Preferred Stock.

The term “junior stock”, when used with reference to the Cumulative Preferred Stock, shall mean the Common Stock, the Class B Stock and any other stock of the Corporation, now or hereafter authorized, over which the Cumulative Preferred Stock has preference or priority either in the payment of dividends or in the distribution of assets upon any liquidation, dissolution or winding up of the Corporation.

The term “sinking fund”, as applied to any series of preferred stock, shall mean any fund or requirement for the periodic redemption, retirement or purchase of shares of such series.

The term “stock ranking prior to the Cumulative Preferred Stock” shall mean any stock of the Corporation, now or hereafter authorized, which has preference over the Cumulative Preferred Stock either in the payment of dividends or in any liquidation, dissolution or winding up of the Corporation.

THE SERIES A CUMULATIVE PREFERRED STOCK

13. (a) The distinctive serial designation of the second series of Cumulative Preferred Stock is “Series A Cumulative Preferred Stock” (hereinafter called “Series A Preferred Stock”).

(b) The number of shares constituting the Series A Preferred Stock is 1,500,000 shares.

(c) The quarterly dividend rate for the Series A Preferred Stock is an amount per share (rounded to the nearest cent) equal to the greater of (i) \$10.00 or (ii) subject to the provision for adjustment hereinafter set forth, 100 times the aggregate per share amount of all cash dividends, and 100 times the aggregate per share amount (payable in kind) of all noncash dividends or other distributions other than a dividend payable in shares of Common Stock or Class B Stock or a subdivision of the outstanding shares of Common Stock or Class B Stock (by reclassification or otherwise), declared on the Common Stock or Class B Stock of the Corporation since the immediately preceding quarterly dividend payment date, or, with respect to the first quarterly dividend payment date, since the first

issuance of any share or fraction of a share of Series A Preferred Stock. In the event the Corporation shall at any time after April 16, 1987 declare or pay any dividend on Common Stock or Class B Stock payable in shares of Common Stock or Class B Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock or Class B Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock or Class B Stock) into a greater or lesser number of shares of Common Stock or Class B Stock, then in each such case the amount to which holders of Series A Preferred Stock were entitled immediately prior to such event under clause (ii) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock or Class B Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock or Class B Stock that were outstanding immediately prior to such event.

The Corporation shall declare a dividend or distribution on the Series A Preferred Stock as provided in this paragraph (c) immediately after it declares a dividend or distribution on the Common Stock or Class B Stock; provided that, in the event no dividend or distribution shall have been declared on the Common Stock or Class B Stock during the period between any quarterly dividend payment date and the next subsequent quarterly dividend payment date, a dividend of \$10.00 per share on the Series A Preferred Stock shall nevertheless be payable on such subsequent quarterly dividend payment date.

Dividends shall begin to accrue and be cumulative on outstanding Series A Preferred Stock from the date of issue of such shares of Series A Preferred Stock.

(d) Except as prescribed by law and in addition to the rights provided for in Section 7 of Article FOURTH of the Certificate of Incorporation of the Corporation and in paragraph (i) of this Section 13, and subject to the provision for adjustment hereinafter set forth, the holders of the Series A Preferred Stock shall be entitled to one vote for each share held and shall be entitled to exercise such voting rights with the holders of Common Stock and Class B Stock, without distinction as to class, at any annual or special meeting of shareholders for the election of directors and on any other matter coming before such meeting.

(e) Any Series A Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued Cumulative Preferred Stock and may be reissued as part of a new series of Cumulative Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.

(f) (i) Upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, no distribution shall be made to the holders of junior stock unless, prior thereto, the holders of Series A Preferred Stock shall have received the greater of (i) \$100.00 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, or (ii) an amount per share which shall be determined by (A) dividing (1) the value of the assets of the Corporation available for distribution to shareholders, less the amount to be paid upon liquidation, dissolution, or winding up to the holders of all other series of stock ranking on a parity with the Series A Preferred Stock, by (2) the sum of the number of one-hundredths shares of Series A Preferred Stock outstanding as of the date of such event plus the number of shares of Common Stock and Class B Stock, as adjusted by multiplying such number of shares of Common Stock and Class B

Stock outstanding as of the date of such event by the Adjustment Number (as defined below), and (B) multiplying the result obtained in clause (A) by 100, (the "Series A Preferred Stock Liquidation Preference"). Following the payment of the full amount of the Series A Preferred Stock Liquidation Preference, no additional distributions shall be made to the holders of shares of Series A Preferred Stock. Following the payment of the full amount of the Series A Preferred Stock Liquidation Preference in respect of all outstanding shares of Series A Preferred Stock holders of Common Stock and Class B Stock shall receive their ratable and proportionate share of the remaining assets to be distributed, on a per share basis.

(ii) In the event, however, that there are not sufficient assets available to permit payment in full of the Series A Preferred Stock Liquidation Preference and the liquidation preferences of all other series of stock ranking on a parity upon liquidation, dissolution or winding up with the Series A Preferred Stock, then such remaining assets shall be distributed ratably to the holders of the Series A Preferred Stock and such other series of parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon liquidation, dissolution or winding up.

(iii) The Adjustment Number as of the date of this Certificate of Amendment shall be one (1). In the event the Corporation shall at any time after April 16, 1987 declare or pay any dividend on Common Stock payable in shares of Common Stock or Class B Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock or Class B Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock or Class B Stock) into a greater or lesser number of shares of Common Stock or Class B Stock, then in each such case the Adjustment Number in effect immediately prior to such event shall be adjusted by multiplying such Adjustment Number by a fraction, the numerator of which is the number of shares of Common Stock and Class B Stock outstanding immediately prior to such event and the denominator of which is the number of shares of Common Stock and Class B Stock that were outstanding immediately after such event.

(iv) The merger or consolidation of the Corporation with or into any other corporation or the merger or consolidation of any other corporation with or into the Corporation, or the sale, transfer, exchange or conveyance by the Corporation of all or substantially all the assets of the Corporation, as an entirety, shall not be deemed to be a liquidation for purposes of paragraph (f) of this Section 13.

(g) In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock or Class B Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case the Series A Preferred Stock shall at the same time be similarly exchanged or changed in an amount per share (subject to the provision for adjustment hereinafter set forth) equal to 100 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock or Class B Stock is changed or exchanged. In the event the Corporation shall at any time after April 16, 1987 declare or pay any dividend on Common Stock or Class B Stock payable in shares of Common Stock or Class B Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock or Class B Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock or Class B Stock) into a greater or lesser number of

shares of Common Stock or Class B Stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock and Class B Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock and Class B Stock that were outstanding immediately prior to such event.

(h) The Series A Preferred Stock shall not be redeemable.

(i) Series A Preferred Stock may be issued in fractions of a share which shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in liquidating distributions and to have the benefit of all other rights of holders of Series A Preferred Stock.

(j) The Series A Preferred Stock is not convertible into, or exchangeable for, shares of stock of any other class.

THE SERIES B CONVERTIBLE PREFERRED STOCK

14. (a) The distinctive serial designation of the fifth series of Cumulative Preferred Stock is "Series B Convertible Preferred Stock" (hereinafter called "Series B Preferred Stock"); and the number of shares constituting the Series B Preferred Stock is 6,737,708 shares. Each share of Series B Preferred Stock shall have a stated value of \$78.25 per share.

(b) Shares of Series B Preferred Stock shall be issued only to the Trustee of the Employee Stock Ownership Plan of the Corporation, as amended from time to time, or any successor to such plan (the "Plan"). All references to the holder of Series B Preferred Stock shall mean the Trustee or any company with which or into which the Trustee may merge or any successor trustee under the trust agreement with respect to the Plan. In the event of any transfer of record ownership of Series B Preferred Stock to any person other than any successor trustee under the Plan, the shares of Series B Preferred Stock so transferred, upon such transfer and without any further action by the Corporation or the holder thereof, shall be automatically converted into shares of Common Stock on the terms provided for the conversion of shares of Series B Preferred Stock into shares of Common Stock pursuant to subsection (f) of this subdivision 14 and no such transferee shall have any of the voting powers, preferences and relative, participating, optional or special rights ascribed to the Series B Preferred Stock hereunder but, rather, only the powers and rights pertaining to the Common Stock into which such Series B Preferred Stock shall be so converted. In the event of such a conversion, the transferee of the Series B Preferred Stock shall be treated for all purposes as the record holder of the Common Stock into which such Series B Preferred Stock has been automatically converted as of the date of such transfer. Certificates representing Series B Preferred Stock shall bear a legend to reflect the foregoing provisions. Notwithstanding the foregoing provisions of this subsection, shares of Series B Preferred Stock (i) may be converted into shares of Common Stock as provided herein and the shares of Common Stock issued upon such conversion may be transferred by the holder thereof as permitted by law and (ii) shall be redeemable by the Corporation upon the terms and conditions provided by subsections (g), (h) and (i) of this subdivision 14.

(c) Subject to the provisions for adjustment hereinafter set forth, the annual dividend rate for the Series B Preferred Stock is \$6.25 per share. Dividends on the Series B

Preferred Stock shall begin to accrue and be cumulative on outstanding Series B Preferred Stock from the date of original issuance of such shares of Series B Preferred Stock. Series B Preferred Dividends shall accrue on a daily basis whether or not the Corporation shall have earnings or surplus at the time.

(d) Except as prescribed by law and in addition to the rights provided for in subdivision 7 of Article FOURTH of the Certificate of Incorporation, each holder of Series B Preferred Stock shall be entitled to such number of votes for each share held as is equal to the aggregate number of votes of the Common Shares into which each share of Series B Preferred Stock is convertible pursuant to subsections (g), (h) and (i) of this subdivision 14 (as from time to time adjusted as provided in subsection (i) of this subdivision 14) and shall be entitled to exercise such voting rights with the holders of Common Stock and Class B Stock, without distinction as to class, at any annual or special meeting of shareholders for the election of directors and on any other matter coming before such meeting. For all other purposes under the Certificate of Incorporation, each holder of Series B Preferred Stock, when voting as a class with the holders of Cumulative Preferred Stock or with the holders of the shares of any series thereof, as the case may be, shall be entitled to one vote for each share thereof held.

(e) Upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holder of Series B Preferred Stock shall be entitled to receive out of assets of the Corporation, before any distribution shall be made to the holders of any junior stock the per share liquidation price of \$78.25 plus an amount equal to all accrued and unpaid dividends thereon to the date fixed for payments of such distribution amount. Neither the merger or consolidation of the Corporation with or into any other corporation, nor the merger or consolidation of any other corporation with or into the Corporation, nor the sale, lease, exchange or other transfer of all or any portion of the assets of the Corporation, shall be deemed to be a dissolution, liquidation or winding up of the affairs of the Corporation for purposes of this subsection (e), but the holder of Series B Preferred Stock shall nevertheless be entitled in the event of any such merger or consolidation to the rights provided by subsection (h) hereof.

(f) (i) A holder of shares of Series B Preferred Stock shall be entitled, at any time prior to the close of business on the date fixed for redemption of such shares pursuant to subsections (g), (h) and (i) of this subdivision 14, to cause any or all of such shares to be converted into shares of Common Stock, initially at a conversion price equal to \$78.25 per share of Common Stock, with each share of Series B Preferred Stock being valued at \$78.25 for such purpose, which price shall be adjusted as hereinafter provided (and, as so adjusted, is hereinafter sometimes referred to as the "Conversion Price"). The conversion rate initially shall be equivalent to one (1) share of Common Stock for each share of Series B Preferred Stock so converted, and shall be subject to adjustment as the Conversion Price is adjusted as hereinafter provided in subsection (i) of this subdivision 14.

(ii) Any holder of shares of Series B Preferred Stock desiring to convert such shares into shares of Common Stock shall surrender the certificate or certificates representing the shares of Series B Preferred Stock being converted, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), and accompanied by written notice of conversion, at the principal executive office of the Corporation or the offices of the transfer agent for the Series B Preferred Stock or such office or offices in the continental United States of an agent for conversion as may from time to time be designated by notice to the

holder of the Series B Preferred Stock by the Corporation or the transfer agent for the Series B Preferred Stock. Such notice of conversion shall specify (i) the number of shares of Series B Preferred Stock to be converted and the name or names in which such holder wishes the certificate or certificates for Common Stock and for any shares of Series B Preferred Stock not to be so converted to be issued and (ii) the address to which such holder wishes delivery to be made of such new certificates to be issued upon such conversion.

(iii) Upon surrender of a certificate representing a share or shares of Series B Preferred Stock for conversion, the Corporation shall issue and send by hand delivery or, at its option, by first class mail (postage prepaid) to the holder thereof or to such holder's designee, at the address designated by such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled upon conversion. In the event that there shall have been surrendered a certificate or certificates representing Series B Preferred Stock, only part of which are to be converted, the Corporation shall issue and send to such holder or such holder's designee, in the manner set forth in the preceding sentence, a new certificate or certificates representing the number of shares of Series B Preferred Stock which shall not have been converted.

(iv) The issuance by the Corporation of shares of Common Stock upon a conversion of shares of Series B Preferred Stock into shares of Common Stock made at the option of the holder thereof shall be effective as of the earlier of (1) the delivery to such holder or such holder's designee of the certificates representing the shares of Common Stock issued upon conversion thereof or (2) the commencement of business on the second Business Day after the proper surrender of the certificate or certificates for the Series B Preferred Stock to be converted, as provided in subsection (f) (iii) above. On and after the effective date of conversion, the person or persons entitled to receive the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock, but no allowance or adjustment shall be made in respect of dividends payable to holders of record of Common Stock in respect of any period prior to such effective date. The Corporation shall not be obligated to pay any dividends which shall have been declared prior to the effective date of conversion and shall be payable to holders of shares of Series B Preferred Stock subsequent to the effective date of conversion of such shares.

(v) The Corporation shall not be obligated to deliver to holders of Series B Preferred Stock any fractional share of Common Stock issuable upon any conversion of such Series B Preferred Stock, but in lieu thereof may make a cash payment in respect thereof in any manner permitted by law.

(vi) The Corporation shall at all times reserve and keep available out of its authorized and unissued Common Stock, solely for issuance upon the conversion of Series B Preferred Stock as herein provided such number of shares of Common Stock as shall from time to time be issuable upon the conversion of all the Series B Preferred Stock then outstanding. Nothing contained herein shall preclude the Corporation from issuing shares of Common Stock held in its treasury upon the conversion of shares of Series B Preferred Stock into Common Stock pursuant to the terms hereof.

(g) (i) The Board of Directors of the Corporation at any time and from time to time on or after July 10, 1994 may redeem all, or any number less than all, of the outstanding shares of the Series B Preferred Stock. The redemption price per share for the Series B Preferred Stock applicable for redemptions on or after the dates indicated below shall be as follows, plus accrued and unpaid dividends to the date fixed for redemption:

July 10, 1994	81.375
July 10, 1995	80.750
July 10, 1996	80.125
July 10, 1997	79.500
July 10, 1998	78.875
July 10, 1999 and thereafter	78.250

Payment of the redemption price shall be made by the Corporation in cash or shares of Common Stock, or a combination thereof, as permitted by subsection (v) of subsection (g) of this subdivision 14.

(ii) In the event of a change in any statute, rule or regulation of the United States of America or any administrative or judicial interpretation thereof which (1) has the effect of limiting or making unavailable to the Corporation all or any of the tax deductions for amounts paid (including dividends) on the Series B Preferred Stock when such amounts are used as provided under Section 404(k)(2) of the Internal Revenue Code of 1986, as amended, (other than for purposes of determining alternative minimum tax) and in effect on the date shares of Series B Preferred Stock are initially issued, or (2) relates to any aspect or qualification of the Plan which increases by 20% or more the Corporation's cost of maintaining the Plan, the Corporation may, in its sole discretion and notwithstanding anything to the contrary in this subsection (g), elect to redeem any or all of such Series B Preferred Stock at a redemption price per share equal to the higher of (1) \$78.25 and (2) the Fair Market Value (as defined in subparagraph (vii) of subsection (i) hereof) of the shares of Common Stock which would be issuable upon the conversion of the shares of Series B Preferred Stock being redeemed, plus in each case, accrued and unpaid dividends to the date fixed for redemption. The Corporation shall have the right to elect to redeem shares of Series B Preferred Stock pursuant to this subparagraph (ii) at any time prior to the last day of the sixth month following the latest of: (1) the date of the enactment of any such statute, rule, regulation or judicial or administrative interpretation, (2) the effective date of any such statute, rule, regulation or judicial or administrative interpretation, or (3) in the case of any judicial or administrative proceeding in which the Corporation contests in good faith the applicability of any such statute, rule, regulation or interpretation to the Corporation, the date of the final determination of applicability.

(iii) In the event that shares of Series B Preferred Stock are held by the trustee under an employee benefit plan intended to qualify as an employee stock ownership plan within the meaning of Section 4975 of the Internal Revenue Code of 1986, as amended, and such plan does not so qualify, the Corporation may, in its sole discretion and notwithstanding anything to the contrary in subsection (g), elect to redeem any or all of such shares of Series B Preferred Stock at a redemption price per share equal to the higher of (1) \$78.25 and (2) the Fair Market Value (as defined in subparagraph (vii) of subsection (i) hereof) of the shares of Common Stock which would be issuable upon the conversion of the shares of Series B Preferred Stock being redeemed, plus in each case, accrued and unpaid dividends to the date fixed for redemption.

(v) The Corporation may make payment of the redemption price upon any redemption hereunder required upon redemption of Series B Preferred Stock in cash or in a combination of one share of Common Stock for each share of Series B Preferred Stock redeemed and cash, any such shares of Common Stock to be valued for such purposes at their Fair Market Value (as defined in subparagraph (vii) of subsection (i) hereof).

(vi) Notwithstanding anything to the contrary in this subsection (g), at any time and from time to time upon notice to the Corporation given not less than five (5) Business Days prior to the date fixed by the holder in such notice for such redemption, upon certification by such holder to the Corporation that such redemption is necessary for such holder to provide for distributions required to be made to participants under, or to satisfy an investment election provided to participants in accordance with, the Plan, shares of Series B Preferred Stock shall be redeemed by the Corporation at a redemption price per share equal to the higher of (1) \$78.25 and (2) the Fair Market Value (as defined in subparagraph (viii) of subsection (1) hereof) of the shares of Common Stock which would be issuable upon conversion of the shares of Series B Preferred Stock being redeemed, plus in each case, accrued and unpaid dividends to the date fixed for redemption.

(vii) In the event that the Plan is terminated in accordance with its terms, and notwithstanding anything to the contrary in this subsection (g), any or all shares of Series B Preferred Stock may be redeemed by the Corporation, as soon thereafter as practicable, at a redemption price equal to the greater of: (1) the Fair Market Value (as defined in subparagraph (vii) of subsection (i) hereof) of the shares of Common Stock which would be issuable upon conversion of the shares of Series B Preferred Stock being redeemed or (2) the following redemption prices per share, plus in each case, accrued and unpaid dividends to the date fixed for redemption:

During the Twelve-Month Period Beginning July 10	Price Per Share
1989	\$ 84.500
1990	83.875
1991	83.250
1992	82.625
1993	82.000
1994	81.375
1995	80.750
1996	80.125
1997	79.500
1998	78.875
1999 and thereafter	78.250

(h) (i) In the event the Corporation shall enter into any agreement providing for any consolidation or merger or similar business combination described in subparagraph (iii) of this subsection (h), then the Corporation shall as soon as practicable thereafter (and in any event at least ten (10) Business Days before consummation of such transaction) give notice of such agreement and the material terms thereof to

each holder of shares of Series B Preferred Stock and each such holder shall have the right to elect, by written notice to the Corporation, to receive, upon consummation of such transaction (if and when such transaction is consummated), from the Corporation or the successor of the Corporation, in redemption and retirement of such Series B Preferred Stock, a cash payment per share equal to the following amount per share, plus accrued and unpaid dividends to the date fixed for redemption:

<u>During the Twelve-Month Period Beginning July 10</u>	<u>Price Per Share</u>
1989	\$ 84.500
1990	83.875
1991	83.250
1992	82.625
1993	82.000
1994	81.375
1995	80.750
1996	80.125
1997	79.500
1998	78.875
1999 and thereafter	78.250

No such notice of redemption shall be effective unless given to the Corporation prior to the close of business on the second Business Day prior to consummation of such transaction, unless the Corporation or the successor of the Corporation shall waive such prior notice, but any notice of redemption so given prior to such time may be withdrawn by notice of withdrawal given to the Corporation prior to the close of business on the second Business Day prior to consummation of such transaction.

(ii) In the event that the Corporation shall consummate any consolidation or merger or similar business combination, pursuant to which the outstanding shares of Common Stock are by operation of law exchanged solely for or changed, reclassified or converted solely into stock of any successor or resulting corporation (including the Corporation) that constitutes “qualifying employer securities” with respect to a holder of Series B Preferred Stock within the meaning of Section 409(1) of the Internal Revenue Code of 1986, as amended, and Section 407(d)(5) of the Employee Retirement Income Security Act of 1974, as amended, or any successor provisions of law, and, if applicable, for a cash payment in lieu of fractional shares, if any, the shares of Series B Preferred Stock of such holder shall, in connection with such consolidation, merger or similar business combination, be assumed by and shall become preferred stock of such successor or resulting corporation, having in respect of such corporation, insofar as possible, the same powers, preferences and relative, participating, optional or other special rights (including the redemption rights provided by subsections (f), (g) and (h) hereof), and the qualifications, limitations or restrictions thereon, that the Series B Preferred Stock had immediately prior to such transaction, except that after such transaction each share of Series B Preferred Stock shall be convertible, otherwise on the terms and conditions provided by subsection (f) hereof, into the number and kind of qualifying employer securities so receivable by a holder of the number of shares of Common Stock into which such Series B Preferred Stock could have been converted immediately prior to such transaction; provided, however, that, at the election of the Trustee in lieu of the

Series B Preferred Stock becoming preferred stock of such successor or resulting corporation, if by virtue of the structure of such transaction, a holder of Common Stock is required to make an election with respect to the nature and kind of consideration to be received in such transaction, which election cannot practicably be made by the holder of the Series B Preferred Stock, then the shares of Series B Preferred Stock shall, by virtue of such transaction and on the same terms as apply to the holders of Common Stock, be converted into or exchanged for the aggregate amount of stock, securities, cash or other property (payable in kind) receivable by a holder of the number of shares of Common Stock into which such Series B Preferred Stock could have been converted immediately prior to such transaction if such holder of Common Stock failed to exercise any rights of election to receive any kind or amount of stock, securities, cash or other property (other than such qualifying employer securities and a cash payment, if applicable, in lieu of fractional shares) receivable upon such transaction (provided that, if the kind or amount of qualifying employer securities receivable upon such transaction is not the same for each non-electing share, then the kind and amount so receivable upon such transaction for each share of Series B Preferred Stock shall be the kind and amount so receivable per share by the plurality of the non-electing shares). The rights of the Series B Preferred Stock as preferred stock of such successor or resulting corporation shall successively be subject to adjustments pursuant to subsection (i) hereof after any such transaction as nearly equivalent as practicable to the adjustment provided for by such section prior to such transaction. The Corporation shall not consummate any such merger, consolidation or similar transaction unless all then outstanding Series B Preferred Stock shall be assumed and authorized by the successor or resulting corporation as aforesaid.

(iii) In the event that the Corporation shall consummate any consolidation or merger or similar business combination, pursuant to which the outstanding shares of Common Stock are by operation of law exchanged for or changed, reclassified or converted into other stock or securities or cash or any other property, or any combination thereof, other than any such consideration which is constituted solely of qualifying employer securities (as referred to in subparagraph (ii) of this subsection (h)) and cash payments, if applicable, in lieu of fractional shares, outstanding shares of Series B Preferred Stock shall, without any action on the part of the Corporation or any holder thereof (but subject to subparagraph (i) of this subsection (h)) be automatically converted by virtue of such merger, consolidation or similar transaction into the number of shares of Common Stock into which such Series B Preferred Stock could have been converted immediately prior to such consummation so that each share of Series B Preferred Stock shall, by virtue of such transaction and on the same terms as apply to the holders of Common Stock, be converted into or exchanged for the aggregate amount of stock, securities, cash or other property (payable in like kind) receivable by a holder of the number of shares of Common Stock into which such Series B Preferred Stock could have been converted immediately prior to such transaction; provided, however, that if by virtue of the structure of such transaction, a holder of Common Stock is required to make an election with respect to the nature and kind of consideration to be received in such transaction, which election cannot practicably be made by the holder of the Series B Preferred Stock, then the Series B Preferred Stock shall, by virtue of such transaction and on the same terms as apply to the holders of Common Stock, be converted into or exchanged for the aggregate amount of stock, securities, cash or other property (payable in kind) receivable by a holder of the number of shares of Common Stock into

which such shares of Series B Preferred Stock could have been converted immediately prior to such transaction if such holder of Common Stock failed to exercise any rights of election as to the kind or amount of stock, securities, cash or other property receivable upon such transaction (provided that, if the kind or amount of stock, securities, cash or other property receivable upon such transaction is not the same for each non-electing share, then the kind and amount of stock, securities, cash or other property receivable upon such transaction for each non-electing share of Series B Preferred Stock shall be the kind and amount so receivable per share by a plurality of the non-electing shares).

(i) (i) In the event the Corporation shall, at any time or from time to time while any shares of Series B Preferred Stock are outstanding, (i) pay a dividend or make a distribution in respect of the Common Stock in shares of Common Stock, (ii) subdivide the outstanding shares of Common Stock, or (iii) combine the outstanding shares of Common Stock into a smaller number of shares, in each case whether by reclassification of shares, recapitalization of the Corporation (including a recapitalization effected by a merger or consolidation to which subsection (h) hereof does not apply) or otherwise, subject to subparagraphs (v) and (vi) of this subsection (i), the Conversion Price in effect immediately prior to such action shall be adjusted by multiplying such Conversion Price by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately before such event, and the denominator of which is the number of shares of Common Stock outstanding immediately after such event. An adjustment made pursuant to this subparagraph shall be given effect, upon payment of such a dividend or distribution, as of the record date for the determination of shareholders entitled to receive such dividend or distribution (on a retroactive basis) and in the case of a subdivision or combination shall become effective immediately as of the effective date thereof.

(ii) In the event that the Corporation shall, at any time or from time to time while any of the shares of Series B Preferred Stock are outstanding, issue to holders of shares of Common Stock as a dividend or distribution, including by way of a reclassification of shares or a recapitalization of the Corporation, any right or warrant to purchase shares of Common Stock (but not including as such a right or warrant any security convertible into or exchangeable for shares of Common Stock or any right or warrant, if any are issued to the holder of shares of Series B Preferred Stock as though converted into such Common Stock) at a purchase price per share less than the Fair Market Value (as defined in subparagraph (vii) of subsection (i) hereof) of a share of Common Stock on the date of issuance of such right or warrant, then, subject to the provisions of subparagraphs (v) and (vi) of this subsection (i), the Conversion Price shall be adjusted by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately before such issuance of rights or warrants plus the number of shares of Common Stock which could be purchased at the Fair Market Value (as defined in subparagraph (vii) of subsection (i) hereof) of a share of Common Stock at the time of such issuance for the maximum aggregate consideration payable upon exercise in full of all such rights or warrants, and the denominator of which shall be the number of shares of Common Stock outstanding immediately before such issuance of rights or warrants plus the maximum number of shares of Common Stock that could be acquired upon exercise in full of all such rights and warrants.

(iii) In the event the Corporation shall, at any time or from time to time while any shares of Series B Preferred Stock are outstanding, issue, sell or exchange

shares of Common Stock (other than pursuant to any right or warrant to purchase or acquire shares of Common Stock (including as such a right or warrant any security convertible into or exchangeable for shares of Common Stock) and other than pursuant to any employee or director incentive or benefit plan or arrangement, including any employment, severance or consulting agreement, of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted) for a consideration having a Fair Market Value (as defined in subparagraph (vii) of subsection (i) hereof), on the date of such issuance, sale or exchange, less than the Fair Market Value (as defined in subparagraph (vii) of subsection (i) hereof) of such shares of Common Stock on the date of issuance, sale or exchange, then, subject to the provisions of subparagraphs (v) and (vi) of this subsection (i), the Conversion Price shall be adjusted by multiplying such Conversion Price by the fraction the numerator of which shall be the sum of (1) the Fair Market Value (as defined in subparagraph (vii) of subsection (i) hereof) of all the shares of Common Stock outstanding on the day immediately preceding the first public announcement of such issuance, sale or exchange plus (2) the Fair Market Value (as defined in subparagraph (vii) of subsection (i) hereof) of the consideration received by the Corporation in respect of such issuance, sale or exchange of shares of Common Stock, and the denominator of which shall be the product of (a) the Fair Market Value (as defined in subparagraph (vii) of subsection (i) hereof) of a share of Common Stock on the day immediately preceding the first public announcement of such issuance, sale or exchange multiplied by (b) the sum of the number of shares of Common Stock outstanding on such day plus the number of shares of Common Stock so issued, sold or exchanged by the Corporation. In the event the Corporation shall, at any time or from time to time while any shares of Series B Preferred Stock are outstanding, issue, sell or exchange any right or warrant to purchase or acquire shares of Common Stock (including as such a right or warrant any security convertible into or exchangeable for shares of Common Stock), other than any such issuance to holders of shares of Common Stock as a dividend or distribution (including by way of a reclassification of shares or a recapitalization of the Corporation) and other than pursuant to any employee or director incentive or benefit plan or arrangement (including any employment, severance or consulting agreement) of the Corporation or any subsidiary of the Corporation heretofore or hereafter adopted, for a consideration having a Fair Market Value (as defined in subparagraph (vii) of subsection (i) hereof), on the date of such issuance, sale or exchange, less than the Non-Dilutive Amount (as hereinafter defined), then, subject to the provisions of subparagraphs (v) and (vi) of this subsection (i), the Conversion Price shall be adjusted by multiplying such Conversion Price by a fraction the numerator of which shall be the sum of (I) the Fair Market Value (as defined in subparagraph (vii) of subsection (i) hereof) of all the shares of Common Stock outstanding on the day immediately preceding the first public announcement of such issuance, sale or exchange plus (II) the Fair Market Value (as defined in subparagraph (vii) of subsection (i) hereof) of the consideration received by the Corporation in respect of such issuance, sale or exchange of such right or warrant plus (III) the Fair Market Value (as defined in subparagraph (vii) of subsection (i) hereof) at the time of such issuance of the consideration which the Corporation would receive upon exercise in full of all such rights or warrants, and the denominator of which shall be the product of (i) the Fair Market Value (as defined in subparagraph (vii) of subsection (i) hereof) of a share of Common Stock on the day immediately preceding the first public announcement of such issuance, sale or exchange multiplied by (ii) the sum of the number of shares of Common Stock outstanding on such day plus the maximum number of shares of Common Stock which

could be acquired pursuant to such right or warrant at the time of the issuance, sale or exchange of such right or warrant (assuming shares of Common Stock could be acquired pursuant to such right or warrant at such time).

(iv) (A) In the event the Corporation shall, at any time or from time to time while any shares of Series B Preferred Stock are outstanding, make an Extraordinary Distribution (as hereinafter defined) in respect of the Common Stock, whether by dividend, distribution, reclassification of shares or recapitalization of the Corporation (including a recapitalization or reclassification effected by a merger or consolidation to which subsection (h) hereof does not apply), the Conversion Price in effect immediately prior to such Extraordinary Distribution shall, subject to subparagraphs (v) and (vi) of this subsection (i), be adjusted by multiplying such Conversion Price by a fraction the numerator of which is the difference between (1) the product of (x) the number of shares of Common Stock outstanding immediately before such Extraordinary Distribution multiplied by (y) the Fair Market Value (as defined in subparagraph (vii) of subsection (i) hereof) of a share of Common Stock on the day before the ex-dividend date with respect to an Extraordinary Distribution which is paid in cash and on the distribution date with respect to an Extraordinary Distribution which is paid other than in cash, and (2) the Fair Market Value of the Extraordinary Distribution (as defined in subparagraph (vii) of subsection (i) hereof) minus the aggregate amount of regularly scheduled quarterly dividends declared by the Board of Directors of the Corporation and paid by the Corporation in the twelve months immediately preceding such Extraordinary Distribution, and the denominator of which shall be the product of (a) the number of shares of Common Stock outstanding immediately before such Extraordinary Dividend multiplied by (b) the Fair Market Value (as defined in subparagraph (vii) of subsection (i) hereof) a share of Common Stock on the day before the ex-dividend date with respect to an Extraordinary Distribution which is paid in cash and on the distribution date with respect to an Extraordinary Distribution which is paid other than in cash. The Corporation shall send each holder of Series B Preferred Stock notice of its intent to make any such dividend or distribution in each case at the same time as, or as soon as practicable after, such offer is first communicated to holders of Common Stock. Such notice shall indicate the intended record date and the amount and nature of such dividend or distribution, as well as the Conversion Price and the number of shares of Common Stock into which a share of Series B Preferred Stock may be converted at such time.

(B) In the event the Corporation shall, at any time or from time to time while any shares of Series B Preferred Stock are outstanding, effect a Pro Rata Repurchase (as hereinafter defined) of Common Stock, the Conversion Price in effect immediately prior to such Pro Rata Repurchase shall, subject to subparagraphs (v) and (vi) of this subsection (i), be adjusted by multiplying such Conversion Price by a fraction, the numerator of which is the difference between (1) the product of (x) the number of shares of Common Stock outstanding immediately before such Pro Rata Repurchase multiplied by (y) the Fair Market Value (as defined in subparagraph (vii) of subsection (i) hereof) of a share of Common Stock on the applicable expiration date (including all extensions thereof) of any tender offer which is a Pro Rata Repurchase, or on the date of purchase with respect to any Pro Rata Repurchase which is not a

tender offer, as the case may be, and (2) the aggregate purchase price of the Pro Rata Repurchase, and the denominator of which shall be the product of (a) the number of shares of Common Stock outstanding immediately before such Pro Rata Repurchase minus the number of shares of Common Stock repurchased by the Corporation multiplied by (b) the Fair Market Value (as defined in subparagraph (vii) of subsection (i) hereof) of a share of Common Stock on the applicable expiration date (including all extensions thereof) of any tender offer which is a Pro Rata Repurchase or on the date of purchase with respect to any Pro Rata Repurchase which is not a tender offer. The Corporation shall send each holder of Series B Preferred Stock notice of any offer by the Corporation to make a Pro Rata Repurchase at the same time as, or as soon as practicable after, such offer is first communicated to holders of Common Stock. Such notice shall indicate the number of shares subject to such offer for a Pro Rata Repurchase and the purchase price payable by the Corporation pursuant to such offer, as well as the Conversion Price and the number of Shares of Common Stock into which a share of Series B Preferred Stock may be converted at such time.

(v) Notwithstanding any other provisions of this subsection (i), the Corporation shall not be required to make any adjustment to the Conversion Price unless such adjustment would require an increase or decrease of at least one percent (1%) in the Conversion Price. Any lesser adjustment shall be carried forward and shall be made no later than the time of, and together with, the next subsequent adjustment which, together with any adjustment or adjustments so carried forward, shall amount to an increase or decrease of at least one percent (1%) in the Conversion Price.

(vi) If the Corporation shall make any dividend or distribution on the Common Stock or issue any Common Stock, other capital stock or other security of the Corporation or any rights or warrants to purchase or acquire any such security, which transaction does not result in an adjustment to the Conversion Price pursuant to the foregoing provisions of this subsection (i), the Board of Directors of the Corporation shall consider whether such action is of such a nature that an adjustment to the Conversion Price should equitably be made in respect of such transaction. If in such case the Board of Directors of the Corporation determines that an adjustment to the Conversion Price should be made, an adjustment shall be made effective as of such date, as determined by the Board of Directors of the Corporation, which adjustment shall in no event adversely effect the powers, preferences and special rights of the Series B Preferred Stock as set forth herein. The determination of the Board of Directors of the Corporation as to whether an adjustment to the Conversion Price should be made pursuant to the foregoing provisions of this subparagraph (vi), and, if so, as to what adjustment should be made and when, shall be final and binding on the Corporation and all shareholders of the Corporation. The Corporation shall be entitled to make such additional adjustments in the Conversion Price, in addition to those required by the foregoing provisions of this subsection (i), as shall be necessary in order that any dividend or distribution in shares of capital stock of the Corporation, subdivision, reclassification or combination of shares of stock of the Corporation or any recapitalization of the Corporation shall not be taxable to the holders of the Common Stock.

(vii) For purposes of this subdivision 14, the following definitions shall apply:

“Adjustment Period” shall mean the period of five (5) consecutive trading days ending on the day immediately preceding the date on which the Fair Market Value or Current Market Price of a Security is to be determined.

“Business Day” shall mean each day that is not a Saturday, Sunday or a day on which state or federally chartered banking institutions in New York, New York are not required to be open.

“Current Market Price” of publicly traded shares of Common Stock or any other class of capital stock or other security of the Corporation or any other issuer for any day shall mean (i) for purposes of subsections (f) and (g) hereof, the mean between the highest and lowest reported sales price on such day and (ii) for all other purposes hereof, the last reported sales price, regular way, or, in the event that no sale takes place on such day, the average of the reported closing bid and asked prices, regular way, in either case as reported on the New York Stock Exchange Composite Tape or, if such security is not listed or admitted to trading on the New York Stock Exchange, on the principal national securities exchange on which such security is listed or admitted to trading or, if not listed or admitted to trading on any national securities exchange, on the NASDAQ National Market System or, if such security is not quoted on such National Market System, the average of the closing bid and asked prices on each such day in the over-the-counter market as reported by NASDAQ or, if bid and asked prices for such security on each such day shall not have been reported through NASDAQ, the average of the bid and asked prices for such day as furnished by any New York Stock Exchange member firm regularly making a market in such security selected for such purpose by the Board of Directors of the Corporation or a committee thereof, in each case, on each trading day during the Adjustment Period.

“Extraordinary Distribution” shall mean any dividend or other distribution to holders of Common Stock (effected while any shares of Series B Preferred Stock are outstanding) (i) of cash, where the aggregate amount of such cash dividend or distribution together with the amount of all cash dividends and distributions made during the preceding period of 12 months, when combined with the aggregate amount of all Pro Rata Repurchases (for this purpose, including only that portion of the aggregate purchase price of such Pro Rata Repurchase which is in excess of the Fair Market Value of the Common Stock repurchased as determined on the applicable expiration date (including all extensions thereof) of any tender offer or exchange offer which is a Pro Rata Repurchase, or the date of purchase with respect to any other Pro Rata Repurchase which is not a tender offer or exchange offer made during such period), exceeds twelve percent (12%) of the aggregate Fair Market Value of all shares of Common Stock outstanding on the day before the ex-dividend date with respect to such Extraordinary Distribution which is paid in cash and on the distribution date with respect to an Extraordinary Distribution which is paid other than in cash, and/or (ii) of any shares of capital stock of the Corporation (other than shares of Common Stock), other securities of the Corporation (other than securities of the type referred to in subparagraph (ii) or (iii) of this subsection (i), evidences of indebtedness of the Corporation or any other person or any other property (including shares of any subsidiary of the Corporation) or any combination thereof. The Fair Market Value of an Extraordinary Distribution for purposes of subparagraph (iv) of this subsection (i) shall be equal to the sum of the Fair Market Value of the dividend or other distribution to holders referred to in (i) and (ii) above, plus the amount of any cash dividends which are not Extraordinary Distributions made during such 12-month period and not previously included in the calculation of an adjustment pursuant to subparagraph (iv) of this subsection (i).

“Fair Market Value” shall mean, as to shares of Common Stock or any other class of capital stock or securities of the Corporation or any other issuer which are publicly traded, (i) for purposes of subsections (f) and (g) hereof, the Current Market Price on the date as of which the Fair Market Value is to be determined, and (ii) for all other purposes hereof, the average of the Current Market Prices of such shares or securities for each day of the Adjustment Period. The “Fair Market Value” of any security which is not publicly traded or of any other property shall mean the fair value thereof as determined by an independent investment banking or appraisal firm experienced in the valuation of such securities or property selected in good faith by the Board of Directors of the Corporation or a committee thereof, or, if no such investment banking or appraisal firm is in the good faith judgment of the Board of Directors or such committee available to make such determination, as determined in good faith by the Board of Directors of the Corporation or such committee.

“Non-Dilutive Amount” in respect of an issuance, sale or exchange by the Corporation of any right or warrant to purchase or acquire shares of Common Stock (including any security convertible into or exchangeable for shares of Common Stock) shall mean the difference between (i) the product of the Fair Market Value of a share of Common Stock on the day preceding the first public announcement of such issuance, sale or exchange multiplied by the maximum number of shares of Common Stock which could be acquired on such date upon the exercise in full of such rights and warrants (including upon the conversion or exchange of all such convertible or exchangeable securities), whether or not exercisable (or convertible or exchangeable) at such date, and (ii) the aggregate amount payable pursuant to such right or warrant to purchase or acquire such maximum number of shares of Common Stock; provided, however, that in no event shall the Non-Dilutive Amount be less than zero. For purposes of the foregoing sentence, in the case of a security convertible into or exchangeable for shares of Common Stock, the amount payable pursuant to a right or warrant to purchase or acquire shares of Common Stock shall be the Fair Market Value of such security on the date of the issuance, sale or exchange of such security by the Corporation.

“Pro Rata Repurchase” shall mean any purchase of shares of Common Stock by the Corporation or any subsidiary thereof, whether for cash, shares of capital stock of the Corporation, other securities of the Corporation, evidences of indebtedness of the Corporation or any other person or any other property (including shares of a subsidiary of the Corporation), or any combination thereof, effected while any shares of Series B Preferred Stock are outstanding, pursuant to any tender offer or exchange offer subject to Section 13(e) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or any successor provision of law, or pursuant to any other offer available to substantially all holders of Common Stock; provided, however, that no purchase of shares by the Corporation or any subsidiary thereof made (1) pursuant to the “Dutch auction” self-tender offer announced by the Corporation on July 10, 1989 or (2) in open market transactions shall be deemed a Pro Rata Repurchase. For purposes of this subparagraph (vii) shares shall be deemed to have been purchased by the Corporation or any subsidiary thereof “in open market transactions” if they have been purchased substantially in accordance with the requirements of Rule 10b-18 as in effect under the Exchange Act, on the date shares of Series B Preferred Stock are initially issued by the Corporation or on such

other terms and conditions as the Board of Directors of the Corporation or a committee thereof shall have determined are reasonably designed to prevent such purchases from having a material effect on the trading market for the Common Stock.

(viii) Whenever an adjustment to the Conversion Price and the related voting rights of the Series B Preferred Stock is required, the Corporation shall forthwith place on file with the transfer agent for the Common Stock and the Series B Preferred Stock, and with the Secretary of the Corporation, a statement signed by two officers of the Corporation stating the adjusted Conversion Price determined as provided herein and the resulting conversion ratio, and the voting rights (as appropriately adjusted), of the Series B Preferred Stock. Such statement shall set forth in reasonable detail such facts as shall be necessary to show the reason and the manner of computing such adjustment, including any determination of Fair Market Value involved in such computation. Promptly after each adjustment to the Conversion Price of the Series B Preferred Stock, the Corporation shall mail a notice thereof and of the then prevailing conversion ratio to each holder of Series B Preferred Stock.

(ix) In the event that, at any time as a result of an adjustment made pursuant to subsection (i) of this subdivision 14, the holder of any shares of Series B Preferred Stock upon thereafter surrendering such shares for conversion, shall become entitled to receive any shares or other securities of the Corporation other than shares of Common Stock, the Conversion Price in respect of such other shares or securities so receivable upon conversion of Series B Preferred Stock shall thereafter be adjusted, and shall be subject to further adjustment from time to time, in a manner and on terms as nearly equivalent as practicable to the provisions with respect to Common Stock contained in subsection (i) hereof, and the provisions of subsections (a) through (h) of this subdivision 14 with respect to the Common Stock shall apply on like or similar terms to any such other shares or securities.

THE 6.25% SERIES C MANDATORY CONVERTIBLE PREFERRED STOCK

14. (a) *Designation and Ranking.* The distinctive serial designation of the sixth series of Cumulative Preferred Stock shall be called the “6.25% Series C Mandatory Convertible Preferred Stock” and is hereinafter referred to as the “Series C Mandatory Convertible Preferred Stock”; and the number of shares constituting the Series C Mandatory Convertible Preferred Stock shall be 9,200,000 shares. The Series C Mandatory Convertible Preferred Stock shall rank, with respect to dividend distributions and distributions upon the dissolution, liquidation and winding-up of the Corporation, (i) senior to the common stock, par value \$1.00 per share, of the Corporation (the “*Common Stock*”) and the class B common stock, par value \$1.00 per share, of the Corporation (the “*Class B Common Stock*”) and to each other class or series of stock of the Corporation (including any series of Cumulative Preferred Stock established after June 25, 2003 by the Board of Directors), now or hereafter existing, the terms of which do not expressly provide that such class or series will rank senior to or *pari passu* with the Series C Senior Mandatory Convertible Preferred Stock as to dividend distributions and distributions upon the liquidation, dissolution or winding-up of the Company (collectively referred to as “*Junior Securities*”); (ii) *pari passu* with the Corporation’s Series B Convertible Preferred Stock (the “*Series B Convertible Preferred Stock*”) and together, with the “*Series C Mandatory Convertible Preferred Stock*,” the “*Cumulative Preferred Stock*”) and with each other class or series of stock of the Corporation, now or hereafter existing, the terms of which expressly provide that such class or series will rank *pari passu* with the Series C Mandatory Convertible Preferred Stock as to dividend distributions and distributions upon liquidation, dissolution

or winding-up of the Corporation (collectively referred to as “*Parity Securities*”); and (iii) junior to each other class or series of stock of the Corporation, now or hereafter existing, the terms of which expressly provide that such class or series will rank senior to the Series C Mandatory Convertible Preferred Stock as to dividend distributions and distributions upon liquidation, dissolution or winding-up of the Corporation (collectively referred to as “*Senior Securities*”).

(b) *Dividends.*

(i) *General.* Dividends on the Series C Mandatory Convertible Preferred Stock shall be payable quarterly, when, as and if declared by the Board of Directors or a duly authorized committee thereof, out of the assets of the Corporation legally available therefor, on the first calendar day (or the following Business Day if the first calendar day is not a Business Day) of January, April, July and October of each year (each such date being referred to herein as a “*Dividend Payment Date*”) at the annual rate of \$6.25 per share subject to adjustment as provided in Section 18(l)(ii). The initial dividend on the Series C Mandatory Convertible Preferred Stock for the dividend period commencing on June 25, 2003, to but excluding October 1, 2003, will be \$1.6667, and shall be payable, when, as and if declared, on October 1, 2003. The dividend on the Series C Mandatory Convertible Preferred Stock for each subsequent dividend period shall be \$1.5625 per share. The amount of dividends payable on each share of Series C Mandatory Convertible Preferred Stock for each full quarterly period thereafter shall be computed by dividing the annual dividend rate by four. The amount of dividends payable for any other period that is shorter or longer than a full quarterly dividend period will be computed on the basis of a 360-day year consisting of twelve 30-day months.

A dividend period with respect to a Dividend Payment Date is the period commencing on the preceding Dividend Payment Date or, if none, the date of issue and ending on the day immediately prior to the next Dividend Payment Date. Dividends payable, when, as and if declared, on a Dividend Payment Date shall be payable to Holders (as defined below) of record on the date not exceeding forty calendar days preceding the relevant Dividend Payment Date, fixed by the Board of Directors in advance of payment of the relevant dividend (each, a “*Dividend Record Date*”).

Dividends on the Series C Mandatory Convertible Preferred Stock shall be cumulative if the Corporation fails to declare one or more dividends on the Series C Mandatory Convertible Preferred Stock in any amount, whether or not there are assets of the Corporation legally available for the payment of such dividends in whole or in part.

The Corporation may pay dividends, at its sole option, (a) in cash, (b) by delivering shares of Common Stock to the Transfer Agent (as defined below) on behalf of the Holders, to be sold on the Holders’ behalf for cash or (c) in any combination thereof. By and upon acquiring the Series C Mandatory Convertible Preferred Stock each Holder is deemed to appoint the Transfer Agent as such Holder’s agent for any such sale, and the Transfer Agent shall serve as a designated agent of the Holders in making any such sales. To pay dividends in shares of Common Stock, the Corporation must deliver to the Transfer Agent a number of shares of Common Stock which, when sold by the Transfer Agent on the Holders’ behalf, will result in net cash proceeds to be distributed to the Holders in an amount equal to the cash dividend otherwise payable to the Holders.

If the Corporation pays dividends in shares of Common Stock by delivering them to the Transfer Agent, those shares shall be owned beneficially by the Holders upon delivery to the Transfer Agent, and the Transfer Agent shall hold those shares and the net cash proceeds from the sale of those shares up to the amount of such dividends for the exclusive benefit of the Holders until the Dividend Payment Date, or such other date as is fixed by the Board of Directors pursuant to the terms and conditions set forth in the last paragraph of this Section 18(b)(i), at which time the portion of such net cash proceeds equal to the non-cash component of the declared dividend on the Series C Mandatory Convertible Preferred Stock shall be distributed to the Holders entitled thereto with any remainder to be returned to the Company.

Holders shall not be entitled to any dividend, whether payable in cash, property or stock, in excess of the then applicable full dividends calculated pursuant to this Section 15(b)(i) (including accrued dividends, if any) on shares of Series C Mandatory Convertible Preferred Stock. No interest or sum of money in lieu of interest shall be payable in respect of any dividend or payment which may be in arrears.

(ii) In order to pay dividends on any Dividend Payment Date, or such other date as is fixed by the Board of Directors or a duly authorized committee thereof pursuant to the terms and conditions set forth in the last paragraph of Section 15(b)(i) hereof, in shares of Common Stock, (A) the shares of Common Stock delivered to the Transfer Agent shall have been duly authorized, (B) the Corporation shall have provided to the Transfer Agent an effective registration statement under the Securities Act of 1933, as amended, and the rules and regulations thereunder (the “*Securities Act*”) permitting the immediate sale of the shares of Common Stock in the public market, (C) the shares of Common Stock, once purchased by the purchasers thereof, shall be validly issued, fully paid and non-assessable and (D) such shares shall have been registered under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder, if required, and shall be listed or admitted for trading on each United States securities exchange on which the Common Stock is then listed.

(c) *Liquidation Preference.* In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, the Holders shall be entitled to receive out of the assets of the Corporation available for distribution to shareholders, before any distribution or payment of assets is made on any Junior Securities, \$100.00 per share, subject to adjustment as provided in Section 15(l)(ii) hereof, plus an amount equal to the sum of all accrued and unpaid dividends (whether or not declared) for the then-current dividend period and all dividend periods prior thereto.

Neither the sale, lease or conveyance of all or substantially all of the property or business of the Corporation (other than in connection with the voluntary or involuntary liquidation, dissolution or winding-up of the Corporation), nor the consolidation, or merger of the Corporation into or with any other Person, shall constitute a voluntary or involuntary liquidation, dissolution or winding-up of the Corporation for the purposes of the foregoing paragraph.

In the event the assets of the Corporation available for distribution to the holders of Cumulative Preferred Stock upon any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation shall be insufficient to pay in full all amounts to which such holders are entitled as provided above, the holders of shares of the Cumulative Preferred Stock, including the Series C Mandatory Convertible Preferred Stock, shall share ratably in any distribution of assets of the Corporation based on the relative aggregate liquidation preference of the outstanding shares of each series.

After the payment to the Holders of the full preferential amounts provided above, the Holders will have no right or claim to any remaining assets of the Corporation.

(d) *Voting Rights.*

(i) The Holders shall have no voting rights, except as otherwise set forth in the Certificate of Incorporation of the Corporation or as expressly required by applicable state law. In exercising any such vote, each outstanding share of Series C Mandatory Convertible Preferred Stock shall be entitled to one vote.

(ii) Unless the consent of the holders of a greater number of shares shall then be required by law, the consent of the holders of at least two-thirds of the shares of Cumulative Preferred Stock, including the Series C Mandatory Convertible Preferred Stock, at the time outstanding, given in person or by proxy, either in writing or at any special or annual meeting called for the purpose, at which the Cumulative Preferred Stock, including the Series C Mandatory Convertible Preferred Stock, shall vote separately as a class, shall be necessary to permit, effect or validate any one or more of the following:

(1) The authorization of, or any increase in the authorized amount of any class of stock ranking prior to the Cumulative Preferred Stock, including the Series C Mandatory Convertible Preferred Stock.

(2) The amendment, alteration or repeal of any of the provisions of the Certificate of Incorporation, or of the By-Laws of the Corporation, in either case by way of merger, consolidation or otherwise, which would affect adversely any right, preference, privilege or voting power of the Cumulative Preferred Stock, including the Series C Mandatory Convertible Preferred Stock, or the holders thereof; *provided, however*, that if any such amendment, alteration or repeal would affect adversely any right, preference, privilege or voting power of one or more, but not all, of the series of Cumulative Preferred Stock, including the Series C Mandatory Convertible Preferred Stock, at the time outstanding, the consent of the holders of at least two-thirds of the outstanding shares of each such series so affected, similarly given, shall be required in lieu of (or if such consent is required by law, in addition to) the consent of the holders of two-thirds of the shares of the Cumulative Preferred Stock, including the Series C Mandatory Convertible Preferred Stock, as a class; or

(3) The voluntary liquidation, dissolution or winding up of the Corporation, or the sale, lease or conveyance (other than by mortgage) of all or substantially all the property or business of the Corporation, or the consolidation or merger of the Corporation with or into any other corporation, except any such consolidation or merger wherein none of the rights, preferences, privileges or voting powers of any series of the Cumulative Preferred Stock or the holders thereof are adversely affected.

(e) *Automatic Conversion.* Each share of Series C Mandatory Convertible Preferred Stock will automatically convert (unless previously converted at the option of the Corporation in accordance with Section 15(f) or at the option of the Holder in accordance with Section 15(g), or a Merger Early Conversion has occurred in accordance with Section

15(h)), on July 1, 2006 (the “Automatic Conversion Date”), into a number of newly issued shares of Common Stock equal to the number of shares of Common Stock resulting from the application of the Conversion Rate (as defined in Section 18(i) below). The Holders on the Automatic Conversion Date shall have the right to receive a dividend payment of cash, shares of Common Stock, or any combination thereof, as the Corporation determines in its sole discretion, in an amount equal to any accrued and unpaid dividends on the Series C Mandatory Convertible Preferred Stock as of the Automatic Conversion Date (other than previously declared dividends on the Series C Mandatory Convertible Preferred Stock payable to a Holder of record as of a prior date), whether or not declared, out of legally available assets of the Corporation. To the extent the Corporation pays some or all of such dividend in shares of Common Stock, the number of shares of Common Stock issuable to a Holder in respect of such accrued and unpaid dividends shall equal the amount of accrued and unpaid dividends on the Series C Mandatory Convertible Preferred Stock on the Automatic Conversion Date that the Corporation determines to pay in shares of Common Stock divided by the 5-Day Average Market Price (as defined below).

Dividends on the shares of Series C Mandatory Convertible Preferred Stock shall cease to accrue and such shares of Series C Mandatory Convertible Preferred Stock shall cease to be outstanding on the Automatic Conversion Date. The Corporation shall make such arrangements as it deems appropriate for the issuance of certificates, if any, representing shares of Common Stock (both for purposes of the automatic conversion of shares of Series C Mandatory Convertible Preferred Stock and for purposes of any dividend payment by the Corporation of shares of Common Stock in respect of accrued and unpaid dividends on the Series C Mandatory Convertible Preferred Stock), and for any payment of cash in respect of accrued and unpaid dividends on the Series C Mandatory Convertible Preferred Stock or cash in lieu of fractional shares, if any, in exchange for and contingent upon the surrender of certificates representing the shares of Series C Mandatory Convertible Preferred Stock (if such shares are held in certificated form), and the Corporation may defer the payment of dividends on such shares of Common Stock and the voting thereof until, and make such payment and voting contingent upon, the surrender of such certificates representing the shares of Series C Mandatory Convertible Preferred Stock, *provided, however*, that the Corporation shall give the Holders such notice of any such actions as the Corporation deems appropriate and upon such surrender such Holders shall be entitled to receive such dividends declared and paid on such shares of Common Stock subsequent to the Automatic Conversion Date. Amounts payable in cash in respect of the shares of Series C Mandatory Convertible Preferred Stock or in respect of such shares of Common Stock shall not bear interest.

(f) *Provisional Conversion at the Option of the Corporation.*

(i) Prior to the Automatic Conversion Date, the Corporation may, at its option, cause the conversion of all, but not less than all, the shares of Series C Mandatory Convertible Preferred Stock then outstanding into shares of Common Stock at a rate of 8.1301 shares of Common Stock for each share of Series C Mandatory Convertible Preferred Stock (the “Provisional Conversion Rate”), subject to adjustment as set forth in Section 15(i)(ii) below (as though references in Section 15(i)(ii) to the Conversion Rate were replaced with references to the Provisional Conversion Rate); *provided, however*, that the Closing Price of the Common Stock has exceeded 150% of the Threshold Appreciation Price (as defined below) for at least 20 Trading Days (as defined below) within a period of 30 consecutive Trading Days ending on the Trading Day prior to the date on which the Corporation notifies the Holders (pursuant to Section 15(f)(ii)) that it is exercising its option to cause the

conversion of the Series C Mandatory Convertible Preferred Stock pursuant to this Section 15(f) (the “*Provisional Conversion Notice Date*”). The Corporation shall be able to cause this conversion only if, in addition to issuing the Holders shares of Common Stock, the Corporation pays the Holders in cash (a) an amount equal to any accrued and unpaid dividends on the shares of Series C Mandatory Convertible Preferred Stock then outstanding, whether or not declared, and (b) the present value of all remaining dividend payments on the shares of Series C Mandatory Convertible Preferred Stock then outstanding, through and including July 1, 2006, in each case, out of legally available assets of the Corporation. The present value of the remaining dividend payments will be computed using a discount rate equal to the Treasury Yield.

(ii) A written notice (the “*Provisional Conversion Notice*”) shall be sent by or on behalf of the Corporation, by first class mail, postage prepaid, to the Holders of record as they appear on the stock register of the Corporation on the Provisional Conversion Notice Date (a) notifying such Holders of the election of the Corporation to convert and of the Provisional Conversion Date (as defined below), which date shall not be less than 30 days nor be more than 60 days after the Provisional Conversion Notice Date, and (b) stating the Corporate Trust Office of the Transfer Agent at which the shares of Series C Mandatory Convertible Preferred Stock called for conversion shall, upon presentation and surrender of the certificate(s) (if such shares are held in certificated form) evidencing such shares, be converted, and the Provisional Conversion Rate to be applied thereto.

(iii) The Corporation shall deliver to the Transfer Agent irrevocable written instructions authorizing the Transfer Agent, on behalf and at the expense of the Corporation, to cause the Provisional Conversion Notice to be duly mailed as soon as practicable after receipt of such irrevocable instructions from the Corporation and in accordance with the above provisions. The shares of Common Stock to be issued upon conversion of the Series C Mandatory Convertible Preferred Stock pursuant to this Section 15(f) and all funds necessary for the payment in cash of (1) any accrued and unpaid dividends on the shares of Series C Mandatory Convertible Preferred Stock then outstanding, whether or not declared, and (2) the present value of all remaining dividend payments on the shares of Series C Mandatory Convertible Preferred Stock then outstanding through and including July 1, 2006, shall be deposited with the Transfer Agent in trust at least one Business Day prior to the Provisional Conversion Date, for the *pro rata* benefit of the Holders of record as they appear on the stock register of the Corporation, so as to be and continue to be available therefor. Neither failure to mail such Provisional Conversion Notice to one or more such Holders nor any defect in such Provisional Conversion Notice shall affect the sufficiency of the proceedings for conversion as to other Holders.

(iv) If a Provisional Conversion Notice shall have been given as hereinbefore provided, then each Holder shall be entitled to all preferences and relative, participating, optional and other special rights accorded by this certificate until and including the Provisional Conversion Date. From and after the Provisional Conversion Date, upon delivery by the Corporation of the Common Stock and payment of the funds to the Transfer Agent as described in paragraph (iii) above, the Series C Mandatory Convertible Preferred Stock shall no longer be deemed to be outstanding, and all rights of such Holders shall cease and terminate, except the right of the Holders, upon surrender of certificates therefor, to receive Common Stock and any amounts to be paid hereunder.

(v) The deposit of monies in trust with the Transfer Agent up to the amount necessary for the Provisional Conversion shall be irrevocable except that the Corporation shall be entitled to receive from the Transfer Agent the interest or other earnings, if any, earned on any monies so deposited in trust, and the Holders of the shares converted shall have no claim to such interest or other earnings, and any balance of monies so deposited by the Corporation and unclaimed by the Holders entitled thereto at the expiration of two years from the Provisional Conversion Date shall be repaid, together with any interest or other earnings thereon, to the Corporation, and after any such repayment, the Holders of the shares entitled to the funds so repaid to the Corporation shall look only to the Corporation for such payment without interest.

(g) *Early Conversion at the Option of the Holder.*

(i) Shares of Series C Mandatory Convertible Preferred Stock are convertible, in whole or in part, at the option of the Holders thereof (“*Optional Conversion*”), at any time prior to the Automatic Conversion Date, into shares of Common Stock at a rate of 8.1301 shares of Common Stock for each share of Series C Mandatory Convertible Preferred Stock (the “*Optional Conversion Rate*”), subject to adjustment as set forth in Section 15(i)(ii) below (as though references in Section 15(i)(ii) to the Conversion Rate were replaced with references to the Optional Conversion Rate).

(ii) Optional Conversion of shares of Series C Mandatory Convertible Preferred Stock may be effected by delivering certificates evidencing such shares (if such shares are held in certificated form), together with written notice of conversion and a proper assignment of such certificates to the Corporation or in blank (and, if applicable, payment of an amount equal to the dividend payable on such shares pursuant to paragraph (iii) below), to the Corporate Trust Office of the Transfer Agent for the Series C Mandatory Convertible Preferred Stock or to any other office or agency maintained by the Corporation for that purpose. Each Optional Conversion shall be deemed to have been effected immediately prior to the close of business on the date on which the foregoing requirements shall have been satisfied.

(iii) Holders of shares of Series C Mandatory Convertible Preferred Stock at the close of business on a Dividend Record Date shall be entitled to receive the dividend payable on such shares on the corresponding Dividend Payment Date (if such dividend has been declared) notwithstanding the Optional Conversion of such shares following such Dividend Record Date and prior to such Dividend Payment Date. However, shares of Series C Mandatory Convertible Preferred Stock surrendered for Optional Conversion after the close of business on a Dividend Record Date and before the opening of business on the corresponding Dividend Payment Date must be accompanied by payment in cash of an amount equal to the dividend payable on such shares on such Dividend Payment Date. Except as provided above, upon any Optional Conversion of shares of Series C Mandatory Convertible Preferred Stock, the Corporation shall make no payment or allowance for unpaid preferred dividends, whether or not in arrears, on such shares of Series C Mandatory Convertible Preferred Stock as to which Optional Conversion has been effected or for dividends or distributions on the shares of Common Stock issued upon such Optional Conversion.

(h) *Early Conversion upon Cash Merger.*

(i) In the event of a merger or consolidation of the Corporation of the type described in Section 15(i)(iii)(1) in which the Common Stock outstanding immediately prior to such merger or consolidation is exchanged for consideration consisting of at least 30% cash or cash equivalents (any such event a "*Cash Merger*"), then the Corporation (or the successor to the Corporation hereunder) shall be required to offer all Holders of shares of Series C Mandatory Convertible Preferred Stock that remain outstanding after the Cash Merger (if any) the right to convert their shares of Series C Mandatory Convertible Preferred Stock prior to the Automatic Conversion Date ("*Merger Early Conversion*") as provided herein.

On or before the fifth Business Day after the consummation of a Cash Merger, the Corporation or, at the request and expense of the Corporation, the Transfer Agent shall give all Holders notice of the occurrence of the Cash Merger and of the right of Merger Early Conversion arising as a result thereof. The Corporation shall also deliver a copy of such notice to the Transfer Agent. Each such notice shall contain:

- (1) the date, which shall be not less than 20 nor more than 30 calendar days after the date of such notice, on which the Merger Early Conversion will be effected (the "*Merger Early Conversion Date*");
- (2) the date, which shall be on or one Business Day prior to the Merger Early Conversion Date, by which the Merger Early Conversion right must be exercised;
- (3) the Conversion Rate (as adjusted pursuant to Section 15(i)(ii)) in effect immediately before such Cash Merger and the kind and amount of securities, cash and other property receivable by the Holder upon conversion of its shares of Series C Mandatory Convertible Preferred Stock pursuant to Section 15(i)(iii); and
- (4) the instructions a Holder must follow to exercise the Merger Early Conversion right.

(ii) To exercise a Merger Early Conversion right, a Holder shall deliver to the Transfer Agent at the Corporate Trust Office (as defined below) by 5:00 p.m., New York City time, on or before the date by which the Merger Settlement right must be exercised as specified in the notice, the certificate(s) (if such shares are held in certificated form) evidencing the shares of Series C Mandatory Convertible Preferred Stock with respect to which the Merger Early Conversion right is being exercised duly endorsed for transfer to the Corporation or in blank with a written notice to the Corporation stating the Holder's intention to convert early in connection with the Cash Merger and providing the Corporation with payment instructions.

(iii) On the Merger Early Conversion Date, the Corporation shall deliver or cause to be delivered the cash, securities and other property to be received by such exercising Holder determined by assuming the Holder had converted the shares of Series C Mandatory Convertible Preferred Stock for which such Merger Early Conversion right was exercised into Common Stock immediately before the Cash Merger at the Conversion Rate (as adjusted pursuant to Section 15(i)(ii)).

(iv) Upon a Merger Early Conversion, the Transfer Agent shall, in accordance with the instructions provided by the Holder thereof on the notice provided to the Corporation as set forth in paragraph (ii) above, deliver to the Holder such cash, securities or other property issuable upon such Merger Early Conversion together with payment in lieu of any fractional shares, as provided herein.

(v) In the event that Merger Early Conversion is effected with respect to shares of Series C Mandatory Convertible Preferred Stock representing less than all the shares of Series C Mandatory Convertible Preferred Stock held by a Holder, upon such Merger Early Conversion the Corporation (or the successor to the Corporation hereunder) shall execute and the Transfer Agent shall authenticate, countersign and deliver to the Holder thereof, at the expense of the Corporation, a certificate evidencing the shares as to which Merger Early Conversion was not effected.

(i) *Definition of Conversion Rate; Anti-dilution Adjustments.*

(i) Subject to the immediately following sentence, the “Conversion Rate” is equal to:

(1) if the 20-Day Average Market Price is greater than or equal to \$12.30 (the “*Threshold Appreciation Price*”), 8.1301 shares of Common Stock per share of Series C Mandatory Convertible Preferred Stock;

(2) if the 20-Day Average Market Price is less than the Threshold Appreciation Price, but is greater than \$10.25, the number of shares of Common Stock per share of Series C Mandatory Convertible Preferred Stock equal to \$100.00 (the “*Stated Amount*”) divided by the 20-Day Average Market Price; and

(3) if the 20-Day Average Market Price is equal to or less than \$10.25, 9.7561 shares of Common Stock per share of Series C Mandatory Convertible Preferred Stock,

in each case subject to adjustment as provided in Section 15(i)(ii) (and in each case rounded upward or downward to the nearest 1/10,000th of a share). In each of the clauses in the immediately preceding sentence, the number of newly issued shares of Common Stock issuable upon conversion of each share of the Series C Mandatory Convertible Preferred Stock on the Automatic Conversion Date in respect of a conversion pursuant to Section 18(e) shall be increased by an amount equal to any accrued and unpaid dividends on the Series C Mandatory Convertible Preferred Stock on the Automatic Conversion Date (taking into account any payment of such dividends on the Automatic Conversion Date) divided by the 20-Day Average Market Price.

(ii) In connection with the Conversion Rate as set forth in Section 15(i)(i), the formula for determining the Conversion Rate and the number of shares of Common Stock to be delivered on any conversion date on an early conversion as set forth in Section 15(f), (g) or (h) shall be subject to the following adjustments:

(1) *Stock Dividends.* In case the Corporation shall pay or make a dividend or other distribution on the Common Stock or Class B Common Stock in Common Stock or Class B Common Stock, the Conversion Rate, as in effect

at the opening of business on the day following the date fixed for the determination of shareholders entitled to receive such dividend or other distribution, shall be increased by dividing such Conversion Rate by a fraction of which the numerator shall be the number of shares of Common Stock and Class B Common 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 increase to become effective immediately after the opening of business on the day following the date fixed for such determination.

(2) *Stock Purchase Rights.* In case the Corporation shall issue to all holders of its Common Stock and/or Class B Common Stock (such issuance not being available on an equivalent basis to Holders of the shares of Series C Mandatory Convertible Preferred Stock upon conversion) (1) rights, options or warrants entitling them to subscribe for or purchase shares of Common Stock or Class B Common Stock, or (2) securities convertible or exchangeable into shares of Common Stock or Class B Common Stock or rights, options or warrants to purchase or acquire securities convertible or exchangeable into shares of Common Stock or Class B Common Stock, in each case at a price per share of Common Stock or Class B Common Stock, as applicable, less than the Current Market Price on the date fixed for the determination of shareholders entitled to receive such rights, options, warrants or securities (other than pursuant to a dividend reinvestment, share purchase or similar plan), the Conversion Rate in effect at the opening of business on the day following the date fixed for such determination shall be increased by dividing such Conversion Rate by a fraction, the numerator of which shall be the number of shares of Common Stock and Class B Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock and Class B Common Stock, as applicable, which the aggregate consideration expected to be received by the Corporation upon the exercise, conversion or exchange of such rights, options, warrants or securities (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution) would purchase at such Current Market Price and the denominator of which shall be the number of shares of Common Stock and Class B Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock or Class B Common Stock, as applicable, so offered for subscription or purchase, either directly or indirectly, or into which such securities are convertible or exchangeable, such increase to become effective immediately after the opening of business on the day following the date fixed for such determination.

(3) *Stock Subdivisions, Splits, Reclassifications and Combinations.* In case outstanding shares of Common Stock and/or Class B Common Stock shall be subdivided, split or reclassified into a greater number of shares of Common Stock or Class B Common Stock, respectively, the Conversion Rate in effect at the opening of business on the day following the day upon which such subdivision, split or reclassification becomes effective shall be proportionately increased, and, conversely, in case outstanding shares of Common Stock and/or Class B Common Stock shall each be combined or reclassified into a smaller number of shares of Common Stock or Class B Common Stock,

respectively, the Conversion Rate in effect at the opening of business on the day following the day upon which such combination or reclassification becomes effective shall be proportionately reduced, such increase or reduction, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision, split, reclassification or combination becomes effective.

(4) *Debt, Asset or Security Distributions.*

(A) In case the Corporation shall, by dividend or otherwise, distribute to all holders of its Common Stock and/or Class B Common Stock evidences of its indebtedness, assets or securities (but excluding (w) any rights, options, warrants or securities referred to in Section 15(i)(ii)(2), (x) any dividend or distribution paid exclusively in cash, (y) any dividend, shares of capital stock of any class or series, or similar equity interests, of or relating to a subsidiary or other business unit in the case of a Spin-Off referred to in Section 15(i)(ii)(4)(B), or (z) any dividend or distribution referred to in Section 15(i)(ii)(1)), the Conversion Rate shall be increased by dividing the Conversion Rate in effect immediately prior to the close of business on the date fixed for the determination of shareholders entitled to receive such distribution by a fraction, the numerator of which shall be the Current Market Price on the date fixed for such determination less the then fair market value (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution) of the portion of the assets or evidences of indebtedness so distributed applicable to one share of Common Stock or Class B Common Stock, as the case may be, and the denominator of which shall be such Current Market Price, such adjustment to become effective immediately prior to the opening of business on the day following the date fixed for the determination of shareholders entitled to receive such distribution. In any case in which this Section 15(i)(ii)(4)(A) is applicable, Section 15(i)(ii)(4)(B) shall not be applicable.

(B) In the case of a Spin-Off, the Conversion Rate in effect immediately before the close of business on the record date fixed for determination of shareholders entitled to receive that distribution will be increased by multiplying the Conversion Rate by a fraction, the numerator of which is the Current Market Price plus the Fair Market Value (as defined below) of the portion of those shares of Capital Stock or similar equity interests so distributed applicable to one share of Common Stock or Class B Common Stock, as the case may be, and the denominator of which is the Current Market Price. Any adjustment to the Conversion Rate under this Section 15(i)(ii)(4)(B) will occur at the earlier of (A) the tenth Trading Day from, and including, the effective date of the Spin-Off and (B) the date of the securities being offered in the Initial Public Offering of the Spin-Off, if that Initial Public Offering is effected simultaneously with the Spin-Off.

(5) *Cash Distributions.* In case the Corporation shall (A) by dividend or otherwise, distribute to all holders of its Common Stock and/or Class B Common Stock, cash (excluding (x) any cash that is distributed in a Reorganization Event to which Section 15(i)(iii) applies or as part of a distribution referred to in

Section 15(i)(ii)(4)) in an aggregate amount that, combined together with (B) the aggregate amount of any other distributions to all holders of Common Stock and/or Class B Common Stock made exclusively in cash within the 12 months preceding the date of payment of such distribution and in respect of which no adjustment pursuant to this Section 15(i)(ii)(5) or (6) has been made and (C) the aggregate of any cash plus the fair market value, as of the date of the expiration of the tender or exchange offer referred to below (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution), of the consideration payable in respect of any tender or exchange offer by the Corporation or any of its subsidiaries for all or any portion of the Common Stock and/or Class B Common Stock concluded within the 12 months preceding the date of payment of the distribution described in clause (A) of this Section 15(i)(ii)(5) and in respect of which no adjustment pursuant to this Section 15(i)(ii)(5) or (6) has been made, exceeds 10% of the product of the Current Market Price on the date for the determination of shareholders entitled to receive such distribution times the number of shares of Common Stock and Class B Common Stock outstanding on such date, then, and in each such case, immediately after the close of business on such date for determination, the Conversion Rate shall be increased by dividing the Conversion Rate in effect immediately prior to the close of business on the date fixed for determination of the shareholders entitled to receive such distribution by a fraction (A) the numerator of which shall be equal to the Current Market Price on the date fixed for such determination less an amount equal to the quotient of (x) the combined amount distributed or payable in the transactions described in clauses (A), (B) and (C) of this Section 15(i)(ii)(5) and (y) the number of shares of Common Stock and Class B Common Stock outstanding on the date fixed for such determination and (B) the denominator of which shall be equal to the Current Market Price on the date fixed for such determination.

(6) *Tender Offers*. In case (A) a tender or exchange offer made by the Corporation or any subsidiary of the Corporation for all or any portion of the Common Stock and/or Class B Common Stock shall expire and such tender or exchange offer (as amended through the expiration thereof) shall require the payment to shareholders (based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of Purchased Shares (as defined below)) of an aggregate consideration having a fair market value (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution) that combined together with (B) the aggregate of the cash plus the fair market value (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution), as of the expiration of such tender or exchange offer, of consideration payable in respect of any other tender or exchange offer by the Corporation or any subsidiary of the Corporation for all or any portion of the Common Stock and/or Class B Common Stock expiring within the 12 months preceding the expiration of such tender or exchange offer and in respect of which no adjustment pursuant to Section 15(i)(ii)(5) or (6) has been made and (C) the aggregate amount of any distributions to all holders of shares of Common Stock and/or Class B Common Stock made exclusively in cash within the 12 months preceding the expiration of such tender or exchange offer and in respect of which no adjustment pursuant

to Section 15(i)(ii)(5) or (6) has been made, exceeds 10% of the product of the Current Market Price as of the last time (the “*Expiration Time*”) tenders could have been made pursuant to such tender or exchange offer (as amended through the expiration thereof) times the number of shares of Common Stock and Class B Common Stock outstanding (including any tendered shares) at the Expiration Time, then, and in each such case, immediately prior to the opening of business on the day after the date of the Expiration Time, the Conversion Rate shall be increased by dividing the Conversion Rate immediately prior to the close of business on the date of the Expiration Time by a fraction (A) the numerator of which shall be equal to (x) the product of (I) the Current Market Price on the date of the Expiration Time and (II) the number of shares of Common Stock and Class B Common Stock outstanding (including any tendered shares) on the date of the Expiration Time less (y) the amount of cash plus the fair market value (determined as aforesaid) of the aggregate consideration payable to shareholders based on the transactions described in clauses (A), (B) and (C) of this Section 15(i)(ii)(6) (assuming in the case of clause (A) the acceptance, up to any maximum specified in the terms of the tender or exchange offer, of Purchased Shares), and (B) the denominator of which shall be equal to the product of (x) the Current Market Price on the date of the Expiration Time and (y) the number of shares of Common Stock and Class B Common Stock outstanding (including any tendered shares) on the date of the Expiration Time less the number of all shares validly tendered, not withdrawn and accepted for payment on the date of the Expiration Time (such validly tendered shares, up to any such maximum, being referred to as the “*Purchased Shares*”).

(7) *Calculation of Adjustments.* All adjustments to the Conversion Rate shall be calculated to the nearest 1/10,000th of a share of Common Stock (or if there is not a nearest 1/10,000th of a share to the next lower 1/10,000th of a share). No adjustment in the Conversion Rate shall be required unless such adjustment would require an increase or decrease of at least one percent therein; *provided*, that any adjustments which by reason of this subparagraph are not required to be made shall be carried forward and taken into account in any subsequent adjustment. If an adjustment is made to the Conversion Rate pursuant to Section 15(i)(ii)(1), (2), (3), (4), (5), (6) or (7), an adjustment shall also be made to the 20-Day Average Market Price solely to determine which of clauses (1), (2) or (3) of the definition of Conversion Rate will apply on the Automatic Conversion Date. Such adjustment shall be made by multiplying the 20-Day Average Market Price by a fraction, the numerator of which shall be the Conversion Rate immediately before such adjustment and the denominator of which shall be the Conversion Rate immediately after such adjustment pursuant to Section 15(i)(ii)(1), (2), (3), (4), (5), (6) or (7); *provided, however*, that if such adjustment to the Conversion Rate is required to be made pursuant to the occurrence of any of the events contemplated Section 15(i)(ii)(1), (2), (3), (4), (5), (6) or (7) during the period taken into consideration for determining the 20-Day Average Market Price, appropriate and customary adjustments shall be made to the Conversion Rate.

(8) *Increase of Conversion Rate.* The Corporation may make such increases in the Conversion Rate, in addition to those required by this Section 15(i)(ii), as it considers to be advisable in order to avoid or diminish any income

tax to any holders of shares of Common Stock resulting from any dividend or distribution of stock or issuance of rights or warrants to purchase or subscribe for stock or from any event treated as such for income tax purposes or for any other reasons.

(9) *Notice of Adjustment.* Whenever the Conversion Rate is adjusted in accordance with this Section 15(i)(ii), the Corporation shall: (A) forthwith compute the Conversion Rate in accordance with this Section 15(i)(ii) and prepare and transmit to the Transfer Agent an Officer's Certificate setting forth the Conversion Rate, the method of calculation thereof in reasonable detail, and the facts requiring such adjustment and upon which such adjustment is based; and (B) as soon as practicable following the occurrence of an event that requires an adjustment to the Conversion Rate pursuant to this Section 15(i)(ii) (or if the Corporation is not aware of such occurrence, as soon as practicable after becoming so aware), provide a written notice to the Holders of the occurrence of such event and a statement setting forth in reasonable detail the method by which the adjustment to the Conversion Rate was determined and setting forth the adjusted Conversion Rate.

(iii) In the event of:

(1) any consolidation or merger of the Corporation with or into another Person or of another Person with or into the Corporation; or

(2) any sale, transfer, lease or conveyance to another Person of the property of the Corporation as an entirety or substantially as an entirety; or

(3) any reclassification (other than a reclassification to which Section 15(i)(ii)(3) applies),

(any such event, a "*Reorganization Event*"), each share of Series C Mandatory Convertible Preferred Stock prior to such Reorganization Event shall, after such Reorganization Event, be converted into the right to receive the kind and amount of securities, cash and other property receivable in such Reorganization Event (without any interest thereon, and without any right to dividends or distributions thereon which have a record date that is prior to the date of the Reorganization Event) per share of Series C Mandatory Convertible Preferred Stock by a holder of Common Stock that (A) is not a Person with which the Corporation consolidated or into which the Corporation merged or which merged into the Corporation or to which such sale or transfer was made, as the case may be (any such Person, a "*Constituent Person*"), or an Affiliate (as defined below) of a Constituent Person to the extent such Reorganization Event provides for different treatment of Common Stock held by Affiliates of the Corporation and non-Affiliates, and (B) has failed to exercise the rights of election, if any, as to the kind or amount of securities, cash and other property receivable upon such Reorganization Event (provided that if the kind or amount of securities, cash and other property receivable upon such Reorganization Event is not the same for each share of Common Stock held immediately prior to such Reorganization Event by other than a Constituent Person or an Affiliate thereof and in respect of which such rights of election shall not have been exercised ("*Non-electing Share*"), then for the purpose of this Section 15(i)(iii) the kind and amount of securities, cash and other property receivable upon such Reorganization Event by each Non-electing Share shall be deemed to be the kind and amount so receivable per share by a

plurality of the Non-electing Shares). On the Automatic Conversion Date, the Conversion Rate then in effect shall be applied to the value or amount on the Automatic Conversion Date of such securities, cash or other property.

On the occurrence of such a Reorganization Event, the Person formed by such consolidation or merger or the Person which acquires the assets of the Corporation shall execute and deliver to the Transfer Agent an agreement supplemental hereto providing that the Holder of each share of Series C Mandatory Convertible Preferred Stock that remains outstanding after the Reorganization Event (if any) shall have the rights provided by this Section 15(i) (iii). Such supplemental agreement shall provide for adjustments which, for events subsequent to the effective date of such supplemental agreement, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 15(i). The above provisions of this Section 15(i)(iii) shall similarly apply to successive Reorganization Events.

(j) *Definitions.*

(i) “*5-Day Average Market Price*” as of any date means the arithmetic average of the volume-weighted average price per share of the Common Stock for each of the five Trading Days ending on the earlier of the day preceding the date in question and the day before the “ex date” with respect to the issuance or distribution requiring such computation, as reported by Bloomberg Professional Service accessed using the reference “XRX Equity VAP” for the period beginning at 9:30 am, New York City time, and ending at 4:00 pm, New York City time. If such day is not a Trading Day, the five Trading Days will end on the last Trading Day prior to such day. For purposes of this paragraph, the term “Ex Date,” when used with respect to any such issuance or distribution, means the first date on which the Common Stock trades without the right to receive such issuance or distribution. If, on any trading day no volume-weighted average price is reported for the Common Stock by Bloomberg Professional Service, the Closing Price of a share of the Common Stock will be substituted for the volume-weighted average price for such day.

(ii) “*20-Day Average Market Price*” as of any conversion date means the arithmetic average of the volume-weighted average price per share of the Common Stock for each of the 20 Trading Days ending on the third business day prior to the applicable conversion date, as reported by Bloomberg Professional Service accessed using the reference “XRX Equity VAP” for the period beginning at 9:30 am, New York City time, and ending at 4:00 pm, New York City time. If the third business day prior to such conversion date is not a Trading Day, the 20 Trading Days will end on the last trading day prior to the third business day prior to such conversion date. For purposes of this definition, the term “ex date,” when used with respect to any such issuance or distribution, means the first date on which the Common Stock trades without the right to receive such issuance or distribution. If, on any Trading Day no volume-weighted average price is reported for the Common Stock by Bloomberg Professional Service, the Closing Price of a share of the Common Stock will be substituted for the volume-weighted average price for such day.

(iii) “*Affiliate*” has the same meaning as given to that term in Rule 405 of the Securities Act or any successor rule thereunder.

(iv) “*Board Resolution*” means a copy of a resolution certified by the Secretary or any Assistant Secretary of the Corporation to have been duly adopted by the Board of Directors or any authorized committee thereof and to be in full force and effect and filed with the Transfer Agent.

(v) “*Business Day*” means any day other than a Saturday or Sunday or any other day on which banks in The City of New York are authorized or required by law or executive order to close.

(vi) “*Capital Stock*” of any Person means any and all shares, interests, participations or other equivalents however designated of corporate stock or other equity participations, including partnership interests, whether general or limited, of such Person and any rights (other than debt securities convertible or exchangeable into an equity interest), warrants or options to acquire an equity interest in such Person.

(vii) The “*Closing Price*” of the Common Stock or any securities distributed in a Spin-Off, as the case may be, on any date of determination means the closing sale price (or, if no closing sale price is reported, the last reported sale price) per share on the New York Stock Exchange (the “*NYSE*”) on such date or, if such security is not listed for trading on NYSE on any such date, as reported in the composite transactions for the principal United States securities exchange on which such security is so listed or quoted or, if such security is not so listed or quoted on a United States national or regional securities exchange, as reported by the Nasdaq stock market or, if such security is not so reported, the last quoted bid price for such security in the over-the-counter market as reported by the National Quotation Bureau or similar organization or, if such bid price is not available, the market value of such security on such date as determined by a nationally recognized independent investment banking firm retained for this purpose by the Corporation.

(viii) “*Corporate Trust Office*” means the principal corporate trust office of the Transfer Agent at which, at any particular time, its corporate trust business shall be administered.

(ix) “*Current Market Price*” means (1) on any day the average of the Closing Prices of the Common Stock for the five consecutive Trading Days preceding the earlier of the day preceding the day in question and the day before the “ex date” with respect to the issuance or distribution requiring computation, (2) in the case of any Spin-Off that is effected simultaneously with an Initial Public Offering of the securities being distributed in the Spin-Off, the Closing Price of the Common Stock on the Trading Day on which the initial public offering price of the securities being distributed in the Spin-Off is determined, and (3) in the case of any other Spin-Off, the average of the Closing Prices of the Common Stock over the first 10 Trading Days after the effective date of such Spin-Off. For purposes of this paragraph, the term “ex date,” when used with respect to any issuance or distribution, shall mean the first date on which the Common Stock trades in a regular way on such exchange or in such market without the right to receive such issuance or distribution.

(x) “*Fair Market Value*” means (1) in the case of any Spin-Off that is effected simultaneously with an Initial Public Offering of the securities being distributed in the Spin-Off, the initial public offering price of those securities, and (2) in the case of any other Spin-Off, the average of the Closing Prices of the securities being distributed in the Spin-Off over the first 10 Trading Days after the effective date of such Spin-Off.

(xi) “*Holder*” means the Person in whose name a share of Series C Mandatory Convertible Preferred Stock is registered.

(xii) “*Initial Public Offering*” means the first time securities of the same class or type as the securities being distributed in the Spin-Off are offered to the public for cash.

(xiii) “*Officer*” means the Chairman of the Board, the Chief Executive Officer, the Chief Financial Officer, the President, any Vice President, the Treasurer or the Secretary of the Corporation.

(xiv) “*Officer’s Certificate*” means a certificate signed by two Officers.

(xv) “*Person*” means any individual, corporation, limited liability corporation, partnership, joint venture, trust, unincorporated organization or government or any agency or political subdivision thereof.

(xvi) “*Provisional Conversion Date*” means the date fixed for conversion of shares of Series C Mandatory Convertible Preferred Stock into shares of Common Stock pursuant to Section 15(f) above or, if the Corporation shall default in the cash payment of (1) an amount equal to any accrued and unpaid dividends on the shares of Series C Mandatory Convertible Preferred Stock then outstanding, whether or not declared, and (2) the present value of all remaining dividend payments on the shares of Series C Mandatory Convertible Preferred Stock then outstanding, through and including July 1, 2006, in connection with such conversion on such date, the date the Corporation actually makes such payment.

(xvii) “*Spin-Off*” means a dividend or other distribution of shares of capital stock of any class or series, or similar equity interests, of or relating to a subsidiary or other business unit of the Corporation.

(xviii) “*Subsidiary*” means, with respect to any Person, (1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person (or a combination thereof) and (2) any partnership (A) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (B) the only general partners of which are such Person or one or more Subsidiaries of such Person (or any combination thereof).

(xix) “*Trading Day*” means a day on which the Common Stock or any security distributed in a Spin-Off, as the case may be, (1) is not suspended from trading on any national or regional securities exchange or association or over-the-counter market at the close of business and (2) has traded at least once on the national or regional securities exchange or association or over-the-counter market that is the primary market for the trading of such security.

(xx) “*Treasury Yield*” means the yield to maturity at the time of computation of U.S. Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) which has become publicly available at least two Business Days prior to the Provisional Conversion Date (or, if such Statistical Release is no longer published, any publicly available source

for similar market data)) most nearly equal to the then remaining term to July 1, 2006; *provided, however*, that if the then remaining term to July 1, 2006 is not equal to the constant maturity of a U.S. Treasury security for which a weekly average yield is given, the Treasury Yield shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of U.S. Treasury securities for which such yields are given, except that if the then remaining term to July 1, 2006 is less than one year, the weekly average yield on actually traded U.S. Treasury securities adjusted to a constant maturity of one year shall be used.

(xxi) “*Transfer Agent*” means the Equiserve Trust Company, N.A. unless and until a successor is selected by the Corporation, and then such successor.

(k) *Fractional Shares*.

No fractional shares of Common Stock shall be issued to Holders. In lieu of any fraction of a share of Common Stock which would otherwise be issuable in respect of the aggregate number of shares of the Series C Mandatory Convertible Preferred Stock surrendered by the same Holder upon a conversion as described in Section 15(e), (f)(i), (g)(ii) or (h)(i) or which would otherwise be issuable in respect of a stock dividend payment upon a conversion as described in Section 18(e), such Holder shall have the right to receive an amount in cash (computed to the nearest cent) equal to the same fraction of (i) in the case of Section 15(e), the 5-Day Average Market Price or (b) in the case of Section 6(a), 7(b) or 8(c), the Closing Price of the Common Stock determined as of the second Trading Day immediately preceding the effective date of conversion. If more than one share of Series C Mandatory Convertible Preferred Stock shall be surrendered for conversion at one time by or for the same Holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of the Series C Mandatory Convertible Preferred Stock so surrendered.

(l) *Miscellaneous*.

(i) Procedures for conversion of shares of Series C Mandatory Convertible Preferred Stock, in accordance with Section 15(e), (f), (g) or (h), not held in certificated form will be governed by arrangements among the depository of the shares of Series C Mandatory Convertible Preferred Stock, its participants and persons that may hold beneficial interests through such participants designed to permit settlement without the physical movement of certificates. Payments, transfers, deliveries, exchanges and other matters relating to beneficial interests in global security certificates may be subject to various policies and procedures adopted by the depository from time to time.

(ii) The Liquidation Preference and the annual dividend rate set forth in this Section 15 each shall be subject to equitable adjustment whenever there shall occur a stock split, combination, reclassification or other similar event involving the Series C Mandatory Convertible Preferred Stock. Such adjustments shall be determined in good faith by the Board of Directors and submitted by the Board of Directors to the Transfer Agent.

(iii) For the purposes of Section 15(i), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Corporation but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

(iv) If the Corporation shall take any action affecting the Common Stock, other than any action described in Section 15(i), that in the opinion of the Board of Directors would materially adversely affect the conversion rights of the Holders, then the Conversion Rate, the Provisional Conversion Rate and/or the Optional Conversion Rate for the Series C Mandatory Convertible Preferred Stock may be adjusted, to the extent permitted by law, in such manner, and at such time, as the Board of Directors may determine to be equitable in the circumstances.

(v) The Corporation covenants that it will at all times reserve and keep available, free from preemptive rights, out of the aggregate of its authorized but unissued shares of Common Stock for the purpose of effecting conversion of the Series C Mandatory Convertible Preferred Stock, the full number of shares of Common Stock deliverable upon the conversion of all outstanding shares of Series C Mandatory Convertible Preferred Stock not theretofore converted. For purposes of this Section 15(l)(v), the number of shares of Common Stock that shall be deliverable upon the conversion of all outstanding shares of Series C Mandatory Convertible Preferred Stock shall be computed as if at the time of computation all such outstanding shares were held by a single Holder.

(vi) The Corporation covenants that any shares of Common Stock issued upon conversion of the Series C Mandatory Convertible Preferred Stock or issued in respect of a stock dividend payment upon a conversion described in Section 15(e) shall be validly issued, fully paid and non-assessable.

(vii) The Corporation shall use its best efforts to list the shares of Common Stock required to be delivered upon conversion of the Series C Mandatory Convertible Preferred Stock or upon issuance in respect of a stock dividend payment upon a conversion described in Section 18(e), prior to such delivery, upon each national securities exchange or quotation system, if any, upon which the outstanding Common Stock is listed at the time of such delivery.

(viii) Prior to the delivery of any securities that the Corporation shall be obligated to deliver upon conversion of the Series C Mandatory Convertible Preferred Stock or upon issuance in respect of a stock dividend payment upon a conversion described in Section 15(e), the Corporation shall use its best efforts to comply with all federal and state laws and regulations thereunder requiring the registration of such securities with, or any approval of or consent to the delivery thereof by, any governmental authority.

(ix) The Corporation shall pay any and all documentary, stamp or similar issue or transfer taxes payable in respect of the issue or delivery of shares of Common Stock or other securities or property upon conversion of the Series C Mandatory Convertible Preferred Stock pursuant thereto or upon issuance in respect of a stock dividend payment upon a conversion described in Section 15(e); *provided, however*, that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issue or delivery of shares of Common Stock or other securities or property in a name other than that of the Holder of the Series C Mandatory Convertible Preferred Stock to be converted and no such issue or delivery shall be made unless and until the person requesting such issue or delivery has paid to the Corporation the amount of any such tax or established, to the reasonable satisfaction of the Corporation, that such tax has been paid or is not applicable.

(x) The Series C Senior Mandatory Convertible Preferred Stock is not redeemable.

(xi) The Series C Senior Mandatory Convertible Preferred Stock is not entitled to any preemptive or subscription rights in respect of any securities of the Corporation.

(xii) Whenever possible, each provision hereof shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision hereof is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating or otherwise adversely affecting the remaining provisions hereof. If a court of competent jurisdiction should determine that a provision hereof would be valid or enforceable if a period of time were extended or shortened or a particular percentage were increased or decreased, then such court may make such change as shall be necessary to render the provision in question effective and valid under applicable law.

(xiii) Series C Mandatory Convertible Preferred Stock may be issued in fractions of a share which shall entitle the Holder, in proportion to such Holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and have the benefit of all other rights of Holders of Series C Mandatory Convertible Preferred Stock.

(xiv) Subject to applicable escheat laws, any monies set aside by the Corporation in respect of any payment with respect to shares of the Series C Mandatory Convertible Preferred Stock, or dividends thereon, and unclaimed at the end of two years from the date upon which such payment is due and payable shall revert to the general funds of the Corporation, after which reversion the Holders of such shares shall look only to the general funds of the Corporation for the payment thereof. Any interest accrued on funds so deposited shall be paid to the Corporation from time to time.

(xv) Except as may otherwise be required by law, the shares of Series C Mandatory Convertible Preferred Stock shall not have any voting powers, preferences and relative, participating, optional or other special rights, other than those specifically set forth in this Certificate of Incorporation.

(xvi) The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(xvii) If any of the voting powers, preferences and relative, participating, optional and other special rights of the Series C Mandatory Convertible Preferred Stock and qualifications, limitations and restrictions thereof set forth herein is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other voting powers, preferences and relative, participating, optional and other special rights of the Series C Mandatory Convertible Preferred Stock and qualifications, limitations and restrictions thereof set forth herein which can be given effect without the invalid, unlawful or unenforceable voting powers, preferences and relative, participating, optional and other special rights of the Series C Mandatory Convertible Preferred Stock and qualifications, limitations and restrictions thereof shall, nevertheless, remain in full force and effect, and no voting powers, preferences and relative, participating, optional or other special rights of the Series C Mandatory

Convertible Preferred Stock and qualifications, limitations and restrictions thereof herein set forth shall be deemed dependent upon any other such voting powers, preferences and relative, participating, optional or other special rights of the Series C Mandatory Convertible Preferred Stock and qualifications, limitations and restrictions thereof unless so expressed herein.

(xviii) Shares of Series C Mandatory Convertible Preferred Stock that (a) have not been issued on or before August 1, 2003 or (b) have been issued and reacquired in any manner, including shares purchased or redeemed or exchanged or converted, shall (upon compliance with any applicable provisions of the laws of New York) have the status of authorized but unissued shares of Cumulative Preferred Stock of the Corporation undesignated as to series and may be designated or redesignated and issued or reissued, as the case may be, as part of any series of preferred stock of the Corporation; *provided, however*, that any issuance of such shares as Series C Mandatory Convertible Preferred Stock must be in compliance with the terms hereof.

(xix) If any of the Series C Mandatory Convertible Preferred Stock certificates shall be mutilated, lost, stolen or destroyed, the Corporation shall issue, in exchange and in substitution for and upon cancellation of the mutilated Series C Mandatory Convertible Preferred Stock certificate, or in lieu of and substitution for the Series C Mandatory Convertible Preferred Stock certificate lost, stolen or destroyed, a new Series C Mandatory Convertible Preferred Stock certificate of like tenor and representing an equivalent number of shares of Series C Mandatory Convertible Preferred Stock, but only upon receipt of evidence of such loss, theft or destruction of such Series C Mandatory Convertible Preferred Stock certificate and indemnity, if requested, satisfactory to the Corporation and the Transfer Agent. The Corporation is not required to issue any certificates representing Series C Mandatory Convertible Preferred Stock on or after the Automatic Conversion Date. In place of the delivery of a replacement certificate following the Automatic Conversion Date, the Transfer Agent, upon delivery of the evidence and indemnity described above, will deliver the shares of Common Stock pursuant to the terms of the Series C Mandatory Convertible Preferred Stock evidenced by the certificate.

FIFTH: The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom process in any action or proceeding against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against it served on him is:

XEROX CORPORATION
800 Long Ridge Road
P.O. Box 1600
Stamford, CT 06904-1600
Attention: General Counsel

SIXTH: Its duration is to be perpetual.

SEVENTH: The number of directors shall be not less than five (5) nor more than twenty-one (21) as determined in the manner prescribed by the By-Laws.

EIGHTH: The Corporation may purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and may issue in exchange therefor, its stock, bonds or other obligations.

NINTH: A person who is or was a director of the Corporation shall not be personally liable to the Corporation or its shareholders for damages for any breach of duty in such capacity, except to the extent that the Business Corporation Law of the State of New York as in effect from time to time expressly provides that the foregoing provisions shall not eliminate or limit such personal liability. Nothing in this Article shall directly or indirectly increase the liability of any such person based upon acts or omissions occurring before the adoption hereof. No amendment, modification or repeal of this Article shall adversely affect any right or protection of any director that exists at the time of such change.

IN WITNESS WHEREOF, this Certificate has been signed on the 6th day of November, 2003 and the statements contained therein are affirmed as true under penalties of perjury.

/s/ Anne M. Mulcahy

Anne M. Mulcahy
Chairman of the Board

/s/ Leslie F. Varon

Leslie F. Varon
Secretary

BY-LAWS
of
XEROX CORPORATION
December 10, 2003

ARTICLE I
MEETINGS OF STOCKHOLDERS

SECTION 1. *Annual Meetings*: A meeting of shareholders entitled to vote shall be held for the election of Directors and the transaction of other business each year in such month and on such day (except a Saturday, Sunday, or holiday) as determined by the Board of Directors.

SECTION 2. *Special Meetings*: Special Meetings of the shareholders may be called at any time by the Chairman of the Board or the Board of Directors.

SECTION 3. *Place of Meetings*: Meetings of shareholders shall be held at the principal office of the Company or at such other place, within or without the State of New York, as may be fixed by the Board of Directors.

SECTION 4. Notice of Meetings:

(a) Notice of each meeting of shareholders shall be in writing and shall state the place, date and hour of the meeting. Notice of a Special Meeting shall state the purpose or purposes for which it is being called and shall also indicate that it is being issued by or at the direction of the person or persons calling the meeting. If, at any meeting, action is proposed to be taken which would, if taken, entitle shareholders, fulfilling the requirements of Section 623 of the Business Corporation Law to receive payment for their shares, the notice of such meeting shall include a statement of that purpose and to that effect.

(b) A copy of the notice of any meeting shall be given, personally or by mail, not less than ten nor more than sixty days before the date of the meeting, to each shareholder entitled to vote at such meeting. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the shareholder at his or her address as it appears on the record of shareholders, or, if he or she shall have filed with the Secretary a written request that notices to him or her be mailed to some other address, then directed to him or her at such other address.

(c) Notice of meeting need not be given to any shareholder who submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of any shareholder at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by him or her.

SECTION 5. *Quorum and Adjourned Meetings:*

(a) At any Annual or Special Meeting the holders of a majority of the votes of shares entitled to vote thereat, present in person or by proxy, shall constitute a quorum for the transaction of any business, provided that when a specified item of business is required to be voted on by a class or series, voting as a class, the holders of a majority of the votes of shares of such class or series shall constitute a quorum for the transaction of such specified item of business. When a quorum is once present to organize a meeting, it is not broken by the subsequent withdrawal of any shareholders.

(b) Despite the absence of a quorum, the shareholders present may adjourn the meeting to another time and place, and it shall not be necessary to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken. At the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. If after the adjournment, however, the Board of Directors fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder on the new record date entitled to notice under Section 4 of this Article I of the By-Laws.

SECTION 6. *Nominations and Business at Meetings:*

At any annual meeting of shareholders, only persons who are nominated or business which is proposed in accordance with the procedures set forth in this Section 6 shall be eligible for election as Directors or considered for action by shareholders. Nominations of persons for election to the Board of Directors of the Company may be made or business proposed at a meeting of shareholders (i) by or at the direction of the Board of Directors or (ii) by any shareholder of the Company entitled to vote at the meeting who complies with the notice and other procedures set forth in this Section 6. Such nominations or business proposals, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the Company and such business proposals must, under applicable law, be a proper matter for shareholder action. To be timely, a shareholder's notice shall be delivered to or mailed and received at the principal executive offices of the Company not less than 120 days nor more than 150 days in advance of the date which is the anniversary of the date the Company's proxy statement was released to security holders in connection with the previous year's annual meeting; provided, that, if the Company did not hold such previous year's annual meeting or if the anniversary date of the current year's annual meeting has been changed by more than 30 days from the date of the previous year's annual meeting, then such shareholder's notice shall be so delivered or mailed and received within a reasonable time before the Company begins to print and mail its proxy statement.

Such shareholder's notice shall set forth (a) as to each person whom such shareholder proposes to nominate for election or reelection as a Director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (including such person's written consent to being named in the proxy statement as a nominee and to serving as a Director if elected); (b) as to any other business that the shareholder proposes to bring before the meeting, a brief description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and any material interest in such business of such person on whose behalf such proposal is made; and (c) as to the shareholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made, (i) the name and address of such

shareholder, as they appear on the Company's books and (ii) the class and number of shares of the Company which are beneficially owned by such shareholder. No person shall be eligible for election as a Director of the Company and no business shall be conducted at the annual meeting of shareholders unless nominated or proposed in accordance with the procedures set forth in this Section 6. The Chairman of the meeting may, if the facts warrant, determine and declare to the meeting that a nomination or proposal was not made in accordance with the provisions of this Section 6 and, if he or she should so determine, he or she shall so declare to the meeting and the defective nomination or proposal shall be disregarded.

SECTION 7. *Organization:* At every meeting of the shareholders, the Chairman of the Board, or in his or her absence an Executive Vice President designated by the Chairman of the Board, or in the absence of such officers, a person selected by the meeting, shall act as chairman of the meeting. The Secretary or, in his or her absence, an Assistant Secretary shall act as secretary of the meeting, and in the absence of both the Secretary and an Assistant Secretary, a person selected by the meeting shall act as secretary of the meeting.

SECTION 8. *Voting:*

(a) Whenever any corporate action, other than the election of Directors, is to be taken by vote of the shareholders, it shall, except as otherwise required by law or by the Certificate of Incorporation be authorized by a majority of the votes cast in favor of or against such action at a meeting of shareholders by the holders of shares entitled to vote thereon. An abstention shall not constitute a vote cast.

(b) Directors shall, except as otherwise required by law, be elected by a plurality of the votes cast at a meeting of shareholders by holders of shares entitled to vote in the election.

SECTION 9. *Qualification of Voters:*

(a) Every shareholder of record of Common Stock and Series B Convertible Preferred Stock of the Company shall be entitled at every meeting of such shareholders to one vote for every share of Common Stock and Series B Convertible Preferred Stock, respectively, standing in his or her name on the record of shareholders.

(b) Shares of stock belonging to the Company and shares held by another domestic or foreign corporation of any type or kind, if a majority of the shares entitled to vote in the election of directors of such other corporation is held by the Company, shall not be shares entitled to vote or to be counted in determining the total number of outstanding shares.

(c) Shares held by an administrator, executor, guardian, conservator, committee, or other fiduciary, except a trustee, may be voted by him or her, either in person or by proxy, without transfer of such shares into his or her name. Shares held by a trustee may be voted by him or her, either in person or by proxy, only after the shares have been transferred into his or her name as trustee or into the name of his or her nominee.

(d) Shares standing in the name of another domestic or foreign corporation of any type or kind may be voted by such officer, agent or proxy as the By-Laws of such corporation may provide, or in the absence of such provision, as the Board of Directors of such corporation may provide.

SECTION 10. *Proxies:*

(a) Every shareholder entitled to vote at a meeting of shareholders or to express consent or dissent without a meeting may authorize another person or persons to act for him or her by proxy.

(b) No proxy shall be valid after the expiration of eleven months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the shareholder executing it, except as otherwise provided by law.

(c) The authority of the holder of a proxy to act shall not be revoked by the incompetence or death of the shareholder who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such incompetence or of such death is received by the Secretary or an Assistant Secretary.

(d) Without limiting the manner in which a shareholder may authorize another person or persons to act for him or her as proxy pursuant to paragraph (a) of this Section, the following shall constitute a valid means by which a shareholder may grant such authority:

(1) A shareholder may execute a writing authorizing another person or persons to act for him or her as proxy. Execution may be accomplished by the shareholder or the shareholder's authorized officer, director, employee or agent signing such writing or causing his or her signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature.

(2) A shareholder may authorize another person or persons to act for the shareholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that such telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be reasonably determined that the telegram, cablegram or other electronic transmission was authorized by the shareholder. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors shall specify the nature of the information upon which they relied.

(e) Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to paragraph (d) of this Section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile, telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

SECTION 11. *Inspectors of Election:*

(a) The Board of Directors, in advance of any shareholders' meeting, shall appoint one or more inspectors to act at the meeting or any adjournment thereof. The Board of Directors may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate has been appointed, or if such persons are unable to act at a meeting of shareholders, the person presiding at a shareholders' meeting shall appoint one or more inspectors. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his or her ability.

(b) The inspectors shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all shareholders. On request of the person presiding at the meeting or any shareholder entitled to vote thereat, the inspectors shall make a report in writing of any challenge, question or matter determined by them and execute a certificate of any fact found by them. Any report or certificate made by them shall be prima facie evidence of the facts stated and of the vote as certified by them.

SECTION 12. *List of Shareholders at Meetings*: A list of shareholders as of the record date, certified by the Secretary or by the transfer agent, shall be produced at any meeting of shareholders upon the request thereat or prior thereto of any shareholder. If the right to vote at any meeting is challenged, the inspectors of election, or person presiding thereat shall require such list of shareholders to be produced as evidence of the right of the persons challenged to vote at such meeting, and all persons who appear from such list to be shareholders entitled to vote thereat may vote at such meeting.

ARTICLE II

BOARD OF DIRECTORS

SECTION 1. *Power of Board and Qualification of Directors*: The business of the Company shall be managed under the direction of the Board of Directors, each of whom shall be at least eighteen years of age.

SECTION 2. *Number, Term of Office and Classification*:

(a) The Board of Directors shall consist of not less than five nor more than twenty-one members. The number of Directors shall be determined from time to time by resolution of a majority of the entire Board of Directors then in office, provided that no decrease in the number of Directors shall shorten the term of any incumbent Director. At each Annual Meeting of shareholders Directors shall be elected to hold office until the next annual meeting.

(b) If and whenever six full quarter-yearly dividends (whether or not consecutive) payable on the Cumulative Preferred Stock of any series shall be in arrears, in whole or in part, the number of Directors then constituting the Board of Directors shall be increased by two and the holders of the Cumulative Preferred Stock, voting separately as a class, regardless of series, shall be entitled to elect the two additional Directors at any annual meeting of shareholders or special meeting held in place thereof, or at a special meeting of the holders of the Cumulative Preferred Stock called as hereinafter provided. Whenever all arrears in dividends on the Cumulative Preferred Stock then outstanding shall have been paid and dividends thereon for the current quarter-yearly dividend period shall have been paid or declared and set apart for payment, then the right of the holders of the Cumulative Preferred Stock to elect such additional two Directors shall cease (but subject always to the same provisions for the vesting of such voting rights in the case of any similar future arrearages in dividends), and the terms of office of all persons elected as Directors by the holders of the Cumulative Preferred Stock shall forthwith

terminate and the number of the Board of Directors shall be reduced accordingly. At any time after such voting power shall have been so vested in the Cumulative Preferred Stock, the Secretary of the Company may, and upon the written request of any holder of the Cumulative Preferred Stock (addressed to the Secretary at the principal office of the Company) shall, call a special meeting of the holders of the Cumulative Preferred Stock for the election of the two Directors to be elected by them as herein provided, such call to be made by notice similar to that provided in the By-Laws for a special meeting of the shareholders or as required by law. If any such special meeting required to be called as above provided shall not be called by the Secretary within twenty days after receipt of any such request, then any holder of Cumulative Preferred Stock may call such meeting, upon the notice above provided, and for that purpose shall have access to the stock books of the Company. The Directors elected at any such special meeting shall hold office until the next annual meeting of the shareholders or special meeting held in place thereof. In case any vacancy shall occur among the Directors elected by the holders of the Cumulative Preferred Stock, a successor shall be elected to serve until the next annual meeting of the shareholders or special meeting held in place thereof by the then remaining Director elected by the holders of the Cumulative Preferred Stock or the successor of such remaining Director.

(c) All Directors shall have equal voting power.

SECTION 3. *Organization*: At each meeting of the Board of Directors, the Chairman of the Board, or in his or her absence, a chairman chosen by a majority of the Directors present shall preside. The Secretary shall act as secretary of the Board of Directors. In the event the Secretary shall be absent from any meeting of the Board of Directors, the meeting shall select its secretary.

SECTION 4. *Resignations*: Any Director of the Company may resign at any time by giving written notice to the Chairman of the Board or to the Secretary of the Company. Such resignation shall take effect at the time specified therein or, if no time be specified, then on delivery.

SECTION 5. *Vacancies*: Newly created directorships resulting from an increase in the number of Directors and vacancies occurring in the Board of Directors for any reason except the removal of Directors without cause may be filled by a vote of a majority of the Directors then in office, although less than a quorum exists. A Director elected to fill a vacancy shall hold office until the next annual meeting.

SECTION 6. *Place of Meeting*: The Board of Directors may hold its meetings at such place or places within or without the State of New York as the Board of Directors may from time to time by resolution determine.

SECTION 7. *First Meeting*: On the day of each annual election of Directors, the Board of Directors shall meet for the purpose of organization and the transaction of other business. Notice of such meeting need not be given. Such first meeting may be held at any other time which shall be specified in a notice given as hereinafter provided for special meetings of the Board of Directors.

SECTION 8. *Regular Meetings*: Regular meetings of the Board of Directors may be held at such times as may be fixed from time to time by resolution of the Board of Directors without notice.

SECTION 9. *Special Meetings*: Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board, or by any two of the Directors. Oral, telegraphic or written notice shall be given, sent or mailed not less than one day before the meeting and shall state, in addition to the purposes, the date, place and hour of such meeting.

SECTION 10. *Waivers of Notice*: Notice of a meeting need not be given to any Director who submits a signed waiver of notice whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her.

SECTION 11. *Quorum and Manner of Acting*:

(a) If the number of Directors is twelve or more, seven Directors shall constitute a quorum for the transaction of business or any specified item of business. If the number of Directors is less than twelve, a majority of the entire Board of Directors shall constitute a quorum.

(b) A majority of the Directors present, whether or not a quorum is present, may adjourn any meeting to another time and place without notice to any Director.

SECTION 12. *Written Consents*: Any action required or permitted to be taken by the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board or the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the Board or committee shall be filed with the minutes of the proceedings of the Board or committee.

SECTION 13. *Participation At Meetings By Telephone*: Any one or more members of the Board of Directors or any committee thereof may participate in a meeting of such Board or committee by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

SECTION 14. *Compensation*: The Board of Directors shall have authority to fix the compensation of Directors for services in any capacity.

SECTION 15. *Interested Directors*:

(a) No contract or other transaction between the Company and one or more of its Directors, or between the Company and any other corporation, firm, association or other entity in which one or more of its Directors are directors or officers, or are financially interested, shall be either void or voidable for this reason alone or by reason alone that such Director or Directors are present at the meeting of the Board of Directors, or of a committee thereof, which approves such contract or transaction, or that his or her or their votes are counted for such purpose, provided that the parties to the contract or transaction establish affirmatively that it was fair and reasonable as to the Company at the time it was approved by the Board, a committee, or the shareholders.

(b) Any such contract or transaction may not be avoided by the Company for the reasons set forth in (a) if

(1) the material facts as to such Director's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in

good faith or known to the Board or committee, and the Board or committee approves such contract or transaction by a vote sufficient for such purpose without counting the vote of such interested Director or, if the votes of the disinterested Directors are insufficient for such purpose, by unanimous vote of the disinterested Directors (although common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which approves such contract or transactions), or

(2) the material facts as to such Director's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the shareholders entitled to vote thereon, and such contract or transaction is approved by vote of such shareholders.

SECTION 16. *Loans to Directors:* The Company may not lend money to or guarantee the obligation of a Director of the Company unless the particular loan or guarantee is approved by the shareholders, with the holders of a majority of the shares entitled to vote thereon constituting a quorum, but shares held of record or beneficially by Directors who are benefited by such loan or guarantee shall not be entitled to vote or to be included in the determination of a quorum.

ARTICLE III COMMITTEES

SECTION 1. *How Constituted and Powers:* The Board of Directors by resolution adopted by a majority of the entire Board may designate from among its members committees of the Board, each of which shall consist of one or more Directors and shall have such authority as provided in the resolution designating the committee, except such committees shall have no authority as to the following matters:

- (a) The submission to shareholders of any action that needs shareholders' authorization.
- (b) The filling of vacancies in the Board or in any committee.
- (c) The fixing of compensation of the Directors for serving on the Board or on any committee.
- (d) The amendment or repeal of the By-Laws, or the adoption of new By-Laws.
- (e) The amendment or repeal of any resolution of the Board which, by its terms, shall not be so amendable or repealable.
- (f) The declaration of dividends.

SECTION 2. *Quorum and Manner of Acting:* Unless otherwise provided by resolution of the Board of Directors, a majority of each committee of the Board shall constitute a quorum for the transaction of business and the act of a majority of all of the members of the committee, whether present or not, shall be the act of the committee. The members of the committee shall act only as a committee. The procedure of the committee and its manner of acting shall be subject at all times to the directions of the Board of Directors.

SECTION 3. *Alternate Members*: The Board of Directors may designate one or more eligible Directors as alternate members of any committee of the Board who may replace any absent or disqualified member or members at any meeting of any such committee.

ARTICLE IV

OFFICERS

SECTION 1. *Number*: The officers of the Company shall be a Chairman of the Board, one or more Vice Presidents, a Treasurer, a Secretary, and such other officers as the Board of Directors may in its discretion elect. Any two or more offices may be held by the same person.

SECTION 2. *Term of Offices and Qualifications*: Those officers whose titles are specifically mentioned in Section 1 of this Article IV shall be chosen by the Board of Directors on the day of the Annual Meeting. Unless a shorter term is provided in the resolution of the Board electing such officer, the term of office of such officer shall extend to and expire at the meeting of the Board held on the day of the next Annual Meeting. The Chairman of the Board shall be chosen from among the Directors.

SECTION 3. *Additional Officers*: Additional officers other than those whose titles are specifically mentioned in Section 1 of this Article IV shall be elected for such period, have such authority and perform such duties, either in an administrative or subordinate capacity, as the Board of Directors may from time to time determine.

SECTION 4. *Removal of Officers*: Any officer may be removed by the Board of Directors with or without cause, at any time. Removal of an officer without cause shall be without prejudice to his or her contract rights, if any, but his or her election as an officer shall not of itself create contract rights.

SECTION 5. *Resignation*: Any officer may resign at any time by giving written notice to the Board of Directors, or to the Chairman of the Board or to the Secretary. Any such resignation shall take effect at the time specified therein, or if no time be specified, then upon delivery.

SECTION 6. *Vacancies*: A vacancy in any office shall be filled by the Board of Directors.

SECTION 7. *Chairman of the Board*: The Chairman of the Board shall preside at all meetings of the shareholders at which he or she is present, unless at such meetings the shareholders shall appoint a chairman other than the Chairman of the Board. The Chairman of the Board shall preside at all meetings of the Directors at which he or she is present. The Chairman shall act as the Chief Executive Officer of the Company and it shall be his or her duty to supervise generally the management of the business of the Company with responsibility direct to the Board and subject to the control of the Board. The Chairman of the Board shall have such powers and perform such other duties as may be assigned to him or her by the Board.

SECTION 8. *The Vice Presidents*: Each Vice President shall have such powers and shall perform such duties as may be assigned to him or her by the Board of Directors or the Chairman of the Board.

SECTION 9. *The Treasurer*: The Treasurer shall, if required by the Board of Directors, give a bond for the faithful discharge of his or her duties, in such sum and with such sureties as

the Board of Directors shall require. He or she shall have charge and custody of, and be responsible for, all funds and securities of the Company, and deposit all such funds in the name of and to the credit of the Company in such banks, trust companies, or other depositories as shall be selected by the Board of Directors. The Treasurer may sign certificates for stock of the Company authorized by the Board of Directors. He or she shall also perform all other duties customarily incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the Board of Directors.

SECTION 10. *The Secretary*: It shall be the duty of the Secretary to act as secretary of all meetings of the Board of Directors, and of the shareholders, and to keep the minutes of all such meetings at which he or she shall so act in a proper book or books to be provided for that purpose; he or she shall see that all notices required to be given by the Company are duly given and served; he or she may sign and execute in the name of the Company certificates for the stock of the Company, deeds, mortgages, bonds, contracts or other instruments authorized by the Board of Directors; he or she shall prepare, or cause to be prepared, for use at meetings of shareholders the list of shareholders as of the record date referred to in Article I, Section 12 of these By-Laws and shall certify, or cause the transfer agent to certify, such list; he or she shall keep a current list of the Company's Directors and officers and their residence addresses; he or she shall be custodian of the seal of the Company and shall affix the seal, or cause it to be affixed, to all agreements, documents and other papers requiring the same. The Secretary shall have custody of the Minute Book containing the minutes of all meetings of shareholders, Directors, and the committees of the Board which may keep minutes, and of all other contracts and documents which are not in the custody of the Treasurer of the Company, or in the custody of some other person authorized by the Board of Directors to have such custody.

SECTION 11. *Appointed Officers*: The Board of Directors may delegate to any officer or committee the power to appoint and to remove any subordinate officer, agent or employee.

SECTION 12. *Assignment and Transfer of Stocks, Bonds, and Other Securities*: The Chairman of the Board, the Treasurer, the Secretary, any Assistant Secretary, any Assistant Treasurer, and each of them, shall have power to assign, or to endorse for transfer, under the corporate seal, and to deliver, any stock, bonds, subscription rights, or other securities, or any beneficial interest therein, held or owned by the Company.

ARTICLE V

CONTRACTS, CHECKS, DRAFTS AND BANK ACCOUNTS

SECTION 1. *Execution of Contracts*: The Board of Directors, except as in these By-Laws otherwise provided, may authorize any officer or officers, agent, or agents, in the name of and on behalf of the Company to enter into any contract or execute and deliver any instrument, and such authority may be general or confined to specific instances; but, unless so authorized by the Board of Directors, or expressly authorized by these By-Laws, no officer, agent or employee shall have any power or authority to bind the Company by any contract or engagement or to pledge its credit or to render it liable pecuniarily in any amount for any purpose.

SECTION 2. *Loans*: No loans shall be contracted on behalf of the Company, and no negotiable paper shall be issued in its name unless specifically authorized by the Board of Directors.

SECTION 3. *Checks, Drafts, etc.*: All checks, drafts, and other orders for the payment of money out of the funds of the Company, and all notes or other evidences of indebtedness of the Company, shall be signed on behalf of the Company in such manner as shall from time to time be determined by resolution of the Board of Directors.

SECTION 4. *Deposits*: All funds of the Company not otherwise employed shall be deposited from time to time to the credit of the Company in such banks, trust companies or other depositories as the Board of Directors may select.

ARTICLE VI

STOCKS AND DIVIDENDS

SECTION 1. *Shares of Stock*: Shares of stock of the Company shall be represented by certificates except to the extent that the Board of Directors of the Company shall provide by resolution that some or all of any or all classes and series of the Company's shares shall be uncertificated shares, provided that such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Company. Except as otherwise expressly provided by law, the rights and obligations of holders of uncertificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series shall be identical.

SECTION 2. *Certificates For Shares*. To the extent that shares of stock of the Company are to be represented by certificates, the certificates therefor shall be in such form as shall be approved by the Board of Directors. The certificates of stock shall be numbered in order of their issue, shall be signed by the Chairman of the Board or a Vice President, and the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer. The signature of the officers upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent or registered by a registrar other than the Company itself or its employee. In case any officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the Company with the same effect as if he or she were an officer at the date of issue.

SECTION 3. *Transfer of Stock*: Transfers of stock of the Company shall be made only on the books of the Company by the holder thereof, or by his or her duly authorized attorney, on surrender of the certificate or certificates for stock represented by certificates, properly endorsed, or in the case of shares of stock not represented by certificates, on delivery to the Company of proper transfer instructions. Within a reasonable time after the issuance or transfer of uncertificated stock, the Company shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to the Business Corporation Law of the State of New York. Every certificate surrendered to the Company shall be marked "Canceled", with the date of cancellation, and no new certificate shall be issued in exchange therefor until the old certificate has been surrendered and canceled. A person in whose name stock of the Company stands on the books of the Company shall be deemed the owner thereof as regards the Company; provided that, whenever any transfer of stock shall be made for collateral security, and not absolutely, such fact, if known to the Secretary of the Company, or to its transfer agent shall be so expressed in the entry of the transfer. No transfer of stock shall be valid as against the Company, or its shareholders for any purpose, until it shall have been entered in the stock records of the Company as specified in these By-Laws by an entry showing from and to whom transferred.

SECTION 4. *Transfer and Registry Agents*: The Company may, from time to time, maintain one or more transfer offices or agencies and/or registry offices at such place or places as may be determined from time to time by the Board of Directors; and the Board of Directors may, from time to time, define the duties of such transfer agents and registrars and make such rules and regulations as it may deem expedient, not inconsistent with these By-Laws, concerning the issue, transfer and registration of certificates for stock or uncertificated stock of the Company.

SECTION 5. *Lost, Destroyed and Mutilated Certificates*: The holder of any certificated stock of the Company shall immediately notify the Company of any loss, destruction or mutilation of the certificate therefor. The Company may issue a new certificate or uncertificated stock in place of the lost or destroyed certificate, but as a condition to such issue, the holder of such certificate must make satisfactory proof of the loss or destruction thereof, and must give to the Company a bond of indemnity in form and amount and with one or more sureties satisfactory to the Treasurer, the Secretary or any Assistant Treasurer or Assistant Secretary. Such bond of indemnity shall also name as obligee each of the transfer agents and registrars for the stock the certificate for which has been lost or destroyed.

SECTION 6. *Record Dates for Certain Purposes*: The Board of Directors of the Company shall fix a day and hour not more than sixty days preceding the date of any meeting of shareholders, or the date for payment of any cash or stock dividend, or the date for the allotment of any rights of subscription, or the date when any change or conversion or exchange of capital stock shall go into effect, as a record date for the determination of the shareholders entitled to notice of, and to vote at, any such meeting and any adjournment thereof, or entitled to receive payment of any such dividend, or entitled to receive any such allotment of rights of subscription, or entitled to exercise rights in respect of any such change, conversion or exchange of capital stock, and in such case, such shareholders and only such shareholders as shall be shareholders of record on the day and hour so fixed shall be entitled to such notice of, and to vote at, such meeting or any adjournment thereof, or to receive payment of such dividend, or to receive such allotment of rights of subscription, or to exercise rights in connection with such change or conversion or exchange of capital stock, as the case may be, notwithstanding any transfer of any stock on the books of the Company after such day and hour fixed as aforesaid.

SECTION 7. *Dividends and Surplus*: Subject to the limitations prescribed by law, the Board of Directors (1) may declare dividends on the stock of the Company whenever and in such amounts as, in its opinion, the condition of the affairs of the Company shall render it advisable, (2) may use and apply, in its discretion, any part or all of the surplus of the Company in purchasing or acquiring any of the shares of stock of the Company, and (3) may set aside from time to time out of such surplus or net profits such sum or sums as it in its absolute discretion, may think proper as a reserve fund to meet contingencies or for equalizing dividends, or for the purpose of maintaining or increasing the property or business of the Company, or for any other purpose it may think conducive to the best interest of the Company.

ARTICLE VII

OFFICES AND BOOKS

SECTION 1. *Offices*: The Company shall maintain an office at such place in the County of Monroe, State of New York, as the Board of Directors may determine. The Board of Directors may from time to time and at any time establish other offices of the Company or branches of its business at whatever place or places seem to it expedient.

SECTION 2. Books and Records:

(a) There shall be kept at one or more offices of the Company (1) correct and complete books and records of account, (2) minutes of the proceedings of the shareholders, Board of Directors and the committees of the Board, (3) a current list of the Directors and officers of the Company and their residence addresses, and (4) a copy of these By-Laws..

(b) The stock records may be kept either at the office of the Company or at the office of its transfer agent or registrar in the State of New York, if any, and shall contain the names and addresses of all shareholders, the number and class of shares held by each and the dates when they respectively became the owners of record thereof.

ARTICLE VIII

GENERAL

SECTION 1. Seal: The corporate seal shall be in the form of a circle and shall bear the full name of the Company and the words and figures “Incorporated 1906, Rochester, N. Y.”.

SECTION 2. Indemnification of Directors and Officers: Except to the extent expressly prohibited by law, the Company shall indemnify any person, made or threatened to be made, a party in any civil or criminal action or proceeding, including an action or proceeding by or in the right of the Company to procure a judgment in its favor or by or in the right of any other corporation of any type or kind, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan or other enterprise, which any Director or officer of the Company served in any capacity at the request of the Company, by reason of the fact that he or she, his or her testator or intestate is or was a Director or officer of the Company or serves or served such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, in any capacity, against judgments, fines, penalties, amounts paid in settlement and reasonable expenses, including attorneys’ fees, incurred in connection with such action or proceeding, or any appeal therein, provided that no such indemnification shall be required with respect to any settlement unless the Company shall have given its prior approval thereto. Such indemnification shall include the right to be paid advances of any expenses incurred by such person in connection with such action, suit or proceeding, consistent with the provisions of applicable law. In addition to the foregoing, the Company is authorized to extend rights to indemnification and advancement of expenses to such persons by i) resolution of the shareholders, ii) resolution of the Directors or iii) an agreement, to the extent not expressly prohibited by law.

ARTICLE IX

FISCAL YEAR

SECTION 1. Fiscal Year: The fiscal year of the Company shall end on the 31st day of December in each year.

ARTICLE X

AMENDMENTS

SECTION 1. Amendments: By-Laws of the Company may be amended, repealed or adopted by a majority of the votes of the shares at the time entitled to vote in the election of any

Directors. If, at any meeting of shareholders, action is proposed to be taken to amend, repeal or adopt By-Laws, the notice of such meeting shall include a brief statement or summary of the proposed action. The By-Laws may also be amended, repealed or adopted by the Board of Directors, but any By-Law adopted by the Board may be amended or repealed by shareholders entitled to vote thereon as hereinabove provided. If any By-Law regulating an impending election of Directors is adopted, amended or repealed by the Board of Directors, there shall be set forth in the notice of the next meeting of shareholders for the election of Directors the By-Law so adopted, amended or repealed, together with a concise statement of the changes made.

XEROX CORPORATION,

as Issuer,

EACH OF THE GUARANTORS FROM TIME TO TIME PARTY HERETO,

as Guarantors

and

WELLS FARGO BANK MINNESOTA, NATIONAL ASSOCIATION,

as Trustee

SECOND SUPPLEMENTAL INDENTURE

Dated as of []

to Indenture dated as of June 25, 2003

XEROX CORPORATION

RECONCILIATION AND TIE BETWEEN TRUST
INDENTURE ACT OF 1939 AND INDENTURE

<u>Trust Indenture Act Section</u>	<u>Indenture Section</u>
310 (a)(1)	707
(a)(2)	707
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	N.A.
(b)	704, 708(d)
(c)	N.A.
311 (a)	704
(b)	704
(c)	N.A.
312 (a)	801
(b)	207,801
(c)	801
313 (a)	201,802
(b)	802
(c)	206,701,802
(d)	802
314 (a)	203,1105,1114
(b)	N.A.
(c)(1)	203
(c)(2)	203
(c)(3)	N.A.
(d)	N.A.
(e)	203
(f)	N.A.
315 (a)	702
(b)	206,701,702
(c)	702
(d)	702
(e)	603, 708(d)
316 (a)(last sentence)	N.A.
(a)(1)(A)	612
(a)(1)(B)	613
(a)(2)	N.A.
(b)	608
(c)	1102
317 (a)(1)	603
(a)(2)	604
(b)	417
318 (a)	213

N.A. means not applicable.

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

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SECOND SUPPLEMENTAL INDENTURE, dated as of [] (the "Supplemental Indenture"), by and among XEROX CORPORATION, a corporation duly organized and existing under the laws of the State of New York (herein called, the "Company"), having its principal office at 800 Long Ridge Road, P.O. Box 1600, Stamford, Connecticut 06904, the Guarantors listed on the signature page hereto (the "Guarantors") and WELLS FARGO BANK MINNESOTA, NATIONAL ASSOCIATION, a national banking association, as trustee (herein called, the "Trustee") to the Indenture, dated as of June 25, 2003 between the Company and the Trustee (the "Base Indenture" and as supplemented by this Supplemental Indenture, in respect of the Notes, the "Indenture").

RECITALS OF THE COMPANY

WHEREAS, the Company and the Trustee entered into the Base Indenture to provide for the issuance from time to time of unsecured debentures, notes, bonds or other evidences of indebtedness (including instruments in global, temporary or definitive form) to be issued in one or more series (hereinafter called the "Securities") as the Base Indenture provides;

WHEREAS, Section 9.01 of the Base Indenture provides, among other things, that the Company and the Trustee may enter into indentures supplemental to the Base Indenture, without the consent of any Holders of Securities, to establish the form of any Security, as permitted by Section 2.02 of the Base Indenture, and to provide for the issuance of any series of Securities, as permitted by Section 3.01 of the Base Indenture, and to set forth the terms thereof;

WHEREAS, the Guarantors have duly authorized the execution and delivery of this Supplemental Indenture to provide for the guarantee of Securities by the Guarantors as evidenced by the notation of guarantee substantially in the form of Exhibit C hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by the Indenture;

WHEREAS, this Supplemental Indenture shall be subject to and governed by the provisions of the Trust Indenture Act; and

WHEREAS, the execution of this Supplemental Indenture has been duly authorized by the Board of Directors of the Company and the Guarantors and all things necessary to make this Supplemental Indenture a valid, binding and legal instrument according to its terms have been done and performed;

NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities, as follows:

ARTICLE ONE

APPLICATION OF SUPPLEMENTAL INDENTURE

SECTION 101. Application of This Supplemental Indenture.

Notwithstanding any other provision of this Supplemental Indenture, the provisions of this Supplemental Indenture, including as provided in Section 102 below, are expressly and solely for the benefit of the Holders of the Notes and the Guarantees.

SECTION 102. Effect of Supplemental Indenture.

With respect to the Notes (and any Guarantee endorsed thereon) only, the Base Indenture shall be supplemented pursuant to Section 9.01 thereof as set forth in this Supplemental Indenture, including as follows:

(a) Definitions. The definitions and other provisions of general application set forth in Section 1.01 of the Base Indenture are deleted and replaced in their entirety by the provisions of Section 201 of this Supplemental Indenture;

(b) Provisions of General Application and Security Forms. Sections 1.02 through 1.15 of the Base Indenture are deleted and replaced in their entirety by the provisions of Article Two of this Supplemental Indenture;

(c) Transfer and Exchange. The provisions of Article Three of the Base Indenture are deleted and replaced in their entirety by the provisions of Article Four of this Supplemental Indenture;

(d) Covenants. The provisions of Article Five of the Base Indenture are deleted and replaced in their entirety by the provisions of Article Eleven of this Supplemental Indenture;

(e) Holdings Lists and Reports by Trustee and Company. The provisions of Article Six of the Base Indenture are deleted and replaced in their entirety by Article Eight of this Supplemental Indenture;

(f) Remedies. The provisions of Article Seven of the Base Indenture are deleted and replaced in their entirety by the provisions of Article Six of this Supplemental Indenture;

(g) The Trustee. The provisions of Article Eight of the Base Indenture are deleted and replaced in their entirety by the provisions of Article Seven of this Supplemental Indenture;

(h) Amendments and Waivers. The provisions of Article Nine of the Base Indenture are deleted and replaced in their entirety by the provisions of Article Ten of this Supplemental Indenture;

(i) Consolidation, Merger, Sale of Assets. The provisions of Article Ten of the Base Indenture are deleted and replaced in their entirety by the provisions of Article Nine of this Supplemental Indenture;

(j) Satisfaction and Discharge. The provisions of Article Eleven of the Base Indenture are deleted and replaced in their entirety by the provisions of Article Five of this Supplemental Indenture;

(k) Immunity of Incorporators, Stockholders, Officers and Directors. The provisions of Article Twelve of the Base Indenture are deleted in their entirety; and

(l) Meetings of Holders of Securities. The provisions of Article Thirteen of the Base Indenture are deleted in their entirety.

The provisions of Articles Thirteen and Fourteen of this Supplemental Indenture shall supplement the Base Indenture.

To the extent that the provisions of this Supplemental Indenture (including those referred to in clauses (a) through (m) above) conflict with any provision of the Base Indenture, the provisions of this Supplemental Indenture shall govern and be controlling, solely with respect to the Notes (and any Guarantee endorsed thereon).

ARTICLE TWO

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 201. Definitions.

For all purposes of this Supplemental Indenture, except as otherwise expressly provided or unless the context otherwise requires:

“Acquired Indebtedness” means Indebtedness of a Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary of the Company or at the time it merges or consolidates with or into the Company or any of its Subsidiaries or assumed in connection with the acquisition of property or assets from such Person and in each case not incurred by such Person in connection with, or in anticipation or contemplation of, such Person becoming a Restricted Subsidiary of the Company or such acquisition, merger or consolidation.

“Act,” when used with respect to any Holder, has the meaning specified in Section 205.

“Affiliate” means, with respect to any specified Person, any other Person who directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative of the foregoing.

“Agent Members” has the meaning specified in Section 412.

“Asset Acquisition” means (1) an Investment by the Company or any Restricted Subsidiary of the Company in any other Person pursuant to which such Person shall become a Restricted Subsidiary of the Company or any Restricted Subsidiary of the Company, or shall be merged with or into the Company or any Restricted Subsidiary of the Company or (2) the acquisition by the Company or any Restricted Subsidiary of the Company of the assets of any Person (other than a Restricted Subsidiary of the Company) which constitute all or substantially all of the assets of such Person or comprise any division or line of business of such Person or any other properties or assets of such Person, other than (i) in the ordinary course of business or (ii) any transaction or series of related transactions involving aggregate consideration (other than Qualified Capital Stock) of \$100.0 million or less.

“Asset Sale” means any direct or indirect sale, issuance, conveyance, transfer, lease (other than operating leases entered into in the ordinary course of business), assignment or other transfer for value by the Company or any of its Restricted Subsidiaries (including any Sale and Leaseback Transaction) to any Person other than the Company or a Restricted Subsidiary of the Company of: (1) any Capital Stock of any Restricted Subsidiary of the Company (other than directors’ qualifying shares or shares required by applicable law to be held by a Person other than the Company or a Restricted Subsidiary) or (2) any other property or assets of the Company or any Restricted Subsidiary of the Company other than in the ordinary course of business; provided, however, that asset sales or other dispositions shall not include: (a) a transaction or series of related transactions for which the Company or its Restricted Subsidiaries receive aggregate consideration of up to \$25.0 million, (b) the sale, lease, conveyance, disposition or other transfer of all or substantially all of the assets of the Company in accordance with and as permitted by Section 901, (c) any Restricted Payment permitted by Section 1108 or that constitutes a Permitted Investment, (d) the sale, lease, conveyance, disposition or other transfer of any Capital Stock or other ownership interest in or assets or property of an Unrestricted Subsidiary or a Person which is not a Subsidiary pursuant to any foreclosure of assets or other remedy provided by applicable law to a creditor of the Company or any Subsidiary of the Company with a Lien on such assets, which Lien is permitted under this Supplemental Indenture; provided that such foreclosure or other remedy is conducted in a commercially reasonable manner or in accordance with any bankruptcy law, (e) a disposition of obsolete or worn out property or property that is no

longer useful in the conduct of the business of the Company and its Restricted Subsidiaries, (f) the discounting or compromising by the Company or any Restricted Subsidiary for less than the face value thereof of notes or accounts receivable in order to resolve disputes that occur in the ordinary course of business and not in connection with a factoring or financing transaction and (g) for purposes of clauses (1) and (2) of Section 1109(a) only, any disposition, sale or transfer of property or assets that are part of the Business Effectiveness Actions.

“Asset Sale Agreement” has the meaning specified in Section 1109.

“Bankruptcy Law” means Title 11, United States Bankruptcy Code of 1978, as amended, or any similar United States federal or state law relating to bankruptcy, insolvency, receivership, winding-up, liquidation, reorganization or relief of debtors or any amendment to, succession to or change in any such law.

“Base Indenture” has the meaning provided in the first paragraph hereto.

“Board of Directors” means, as to any Person, the board of directors or similar governing body of such Person or any duly authorized committee thereof.

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

“Business Day” means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in The City of New York are authorized or obligated by law or executive order to close.

“Business Effectiveness Actions” means (a) the Third-Party Vendor Financing Program, including the creation and maintenance of joint ventures in furtherance thereof (including Xerox Capital Services, LLC), (b) the outsourcing of manufacturing activities, including transfers and closings of any related manufacturing sites, offices or other real property or assets and the creation and maintenance of joint ventures in furtherance thereof, (c) transfers of assets related to the SOHO business, (d) deployment of, and transition to, a “distributor” model in the “Developing Markets Operations” or other markets outside North America pursuant to which the Company or any of its Subsidiaries’ products or services, or any receivables relating to any thereof, would be sold or disposed of to third-party vendors or any other Person, including transfers of offices, equipment and real estate relating to such markets and the creation and maintenance of joint ventures in furtherance thereof, (e) the following types of transactions in respect of research and development and intellectual property of the Company and its Subsidiaries: (i) the creation of IP Companies, whether alone or with third parties, (ii) the transfer of assets of, or Capital Stock in, any IP Company, (iii) the transfer to any IP Company of any offices, real property, equipment or other tangible assets relating to the business of the applicable IP Company and (iv) the transfer to any IP Company of intellectual property; provided that the terms of any

such transfer pursuant to this clause (e)(iv) do not restrict in any material manner the ability of the Company and its Subsidiaries to utilize any such intellectual property that is material to the production or office businesses of the Company and its Subsidiaries and, where ownership of such intellectual property is transferred to any IP Company by the Company or any of its Subsidiaries, all rights (if any) of the Company or any of its Subsidiaries to use such intellectual property are evidenced by a license or other agreement that in no event shall include any transfer of ownership of the "Xerox" name, and (f) to the extent not covered in clause (a), (b), (c), (d) or (e) above, charges relating to cost reduction initiatives or measures relating to workforce reductions.

"Capitalized Lease Obligation" means, as to any Person, the obligations of such Person under a lease that are required to be classified and accounted for as capital lease obligations under GAAP and, for purposes of this definition, the amount of such obligations at any date shall be the capitalized amount of such obligations at such date, determined in accordance with GAAP.

"Capital Markets Debt" means any Indebtedness that is a security (other than syndicated commercial loans) that is eligible for resale in the United States pursuant to Rule 144A under the Securities Act or outside the United States pursuant to Regulation S of the Securities Act or a security (other than syndicated commercial loans) that is sold or subject to resale pursuant to a registration statement under the Securities Act.

"Capital Stock" means:

- (1) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock, including each class of Common Stock and Preferred Stock of such Person; and
- (2) with respect to any Person that is not a corporation, any and all partnership, membership or other equity interests of such Person.

"Cash Equivalents" means:

- (1) marketable direct obligations issued by, or unconditionally guaranteed by, the United States government or the government of any Eligible Jurisdiction or issued by any agency thereof and backed by the full faith and credit of such government, in each case maturing within one year from the date of acquisition thereof;
- (2) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either S&P or Moody's;

(3) commercial paper and other securities maturing no more than one year from the date of acquisition thereof and, at the time of acquisition, having a rating of at least A-2 from S&P or at least P-2 from Moody's;

(4) certificates of deposit or bankers' acceptances maturing within one year from the date of acquisition thereof issued by any bank organized under the laws of the United States of America or any state thereof or the District of Columbia or any Eligible Jurisdiction or any U.S. branch of a foreign bank having at the date of acquisition thereof combined capital and surplus of not less than \$100.0 million;

(5) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clause (1) above entered into with any bank meeting the qualifications specified in clause (4) above; and

(6) investments in money market funds which invest substantially all their assets in securities of the types described in clauses (1) through (5) above.

"Certificated Note" means a definitive Note registered in physical certificated form.

"Change of Control" means the occurrence of one or more of the following events:

(1) any "person," including its affiliates and associates, other than the Company, its Subsidiaries or the Company's or such Subsidiaries' employee benefit plans, or any "group" files a Schedule 13D or Schedule TO (or any successor schedule, form or report under the Exchange Act) disclosing that such person or group has become the "beneficial owner" of 50% or more of the combined voting power of the Company's Capital Stock or other Capital Stock into which the Company's Common Stock is reclassified or changed, with certain exceptions having ordinary power to elect directors, or has the power to, directly or indirectly, elect managers, trustees or a majority of the members of the Company's Board of Directors;

(2) there shall be consummated any share exchange, consolidation or merger of the Company pursuant to which the Company's Common Stock would be converted into cash, securities or other property, or the Company sells, assigns, conveys, transfers, leases or otherwise disposes of all or substantially all of its assets, in each case other than pursuant to a share exchange, consolidation or merger of the Company in which the holders of the Company's Common Stock immediately prior to the share exchange, consolidation or merger have, directly or indirectly, at least a majority of the total voting power in the aggregate of all classes of Capital Stock of the continuing or surviving corporation immediately after the share exchange, consolidation or merger; or

(3) the Company is dissolved or liquidated.

For purposes of this Change of Control definition:

(i) “person” or “group” has the meaning given to it for purposes of Sections 13(d) and 14(d) of the Exchange Act or any successor provisions, and the term “group” includes any group acting for the purpose of acquiring, holding or disposing of securities within the meaning of Rule 13d-5(b) (1) under the Exchange Act or any successor provision;

(ii) a “beneficial owner” will be determined in accordance with Rule 13d-3 under the Exchange Act, as in effect on the date of this Supplemental Indenture; and

(iii) the number of shares of the Company’s voting stock outstanding will be deemed to include, in addition to all outstanding shares of the Company’s voting stock and unissued shares deemed to be held by the “person” or “group” or other person with respect to which the Change of Control determination is being made, all unissued shares deemed to be held by all other persons.

“Change of Control Offer” has the meaning specified in Section 1106(a).

“Change of Control Payment Date” has the meaning specified in Section 1106(b).

“Code” has the meaning specified in Section 414.

“Commission” means the Securities and Exchange Commission.

“Common Stock” of any Person means any and all shares, interests or other participations in, and other equivalents (however designated and whether voting or non-voting) of such Person’s common stock, whether outstanding on January 17, 2002 or issued thereafter, and includes, without limitation, all series and classes of such common stock.

“Company” means the Person named as the “Company” in the first paragraph hereto, until a successor Person shall have become such pursuant to the applicable provisions of this Supplemental 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, any Vice Chairman, its President, any Vice President, its Treasurer or an Assistant Treasurer, and delivered to the Trustee.

“Consolidated EBITDA” means, with respect to any Person, for any period, the sum, all as determined on a consolidated basis for such Person and its Restricted Subsidiaries in accordance with GAAP (without duplication), of:

(1) Consolidated Net Income; and

(2) to the extent Consolidated Net Income has been reduced thereby:

- (a) all income taxes of such Person and its Restricted Subsidiaries paid or accrued in accordance with GAAP for such period (other than income taxes attributable to extraordinary, or nonrecurring gains or losses, taxes attributable to Asset Sales and taxes attributable to discontinued operations);
- (b) Consolidated Fixed Charges; and
- (c) Consolidated Non-cash Charges.

“Consolidated Fixed Charge Coverage Ratio” means, with respect to any Person, the ratio of Consolidated EBITDA of such Person during the four full fiscal quarters (the “Four Quarter Period”) ending prior to the date of the transaction giving rise to the need to calculate the Consolidated Fixed Charge Coverage Ratio for which financial statements are available (the “Transaction Date”) to Consolidated Fixed Charges of such Person for the Four Quarter Period. In addition to and without limitation of the foregoing, for purposes of this definition, “Consolidated EBITDA” and “Consolidated Fixed Charges” shall be calculated after giving effect on a pro forma basis for the period of such calculation to:

(1) the incurrence or repayment of any Indebtedness of such Person or any of its Restricted Subsidiaries (and the application of the proceeds thereof) giving rise to the need to make such calculation and any incurrence or repayment of other Indebtedness (and the application of the proceeds thereof), other than the incurrence or repayment of Indebtedness in the ordinary course of business for working capital purposes pursuant to working capital facilities, occurring during the Four Quarter Period or at any time subsequent to the last day of the Four Quarter Period and on or prior to the Transaction Date, as if such incurrence or repayment, as the case may be (and the application of the proceeds thereof), occurred on the first day of the Four Quarter Period; and

(2) any asset sales or other dispositions or Asset Acquisitions (including, without limitation, any Asset Acquisition giving rise to the need to make such calculation as a result of such Person or one of its Restricted Subsidiaries (including any Person who becomes a Restricted Subsidiary as a result of the Asset Acquisition) incurring, assuming or otherwise being liable for Acquired Indebtedness and also including any Consolidated EBITDA (including any pro forma expense and cost reductions calculated on a basis consistent with Regulation S-X under the Exchange Act) attributable to the assets which are the subject of the Asset Acquisition or asset sale or other disposition during the Four Quarter Period) occurring during the Four Quarter Period or at any time subsequent to the last day of the Four Quarter Period and on or prior to the Transaction Date, as if such asset sale or other disposition or Asset Acquisition (including the incurrence, assumption or liability for any such Acquired Indebtedness) occurred on the first day of the Four Quarter Period.

If such Person or any of its Restricted Subsidiaries directly or indirectly guarantees Indebtedness of a third Person, the preceding sentence shall give effect to the incurrence of such guaranteed Indebtedness, without duplication, as if such Person or any Restricted Subsidiary of such Person had directly incurred or otherwise assumed such guaranteed Indebtedness.

Furthermore, in calculating “Consolidated Fixed Charges”:

(1) for purposes of determining the numerator (but not the denominator) of this “Consolidated Fixed Charge Coverage Ratio,” interest income determined on a fluctuating basis as of the Transaction Date and which will continue to be so determined thereafter, shall be deemed to have accrued at a fixed rate per annum equal to the applicable rate of interest in effect on the Transaction Date;

(2) for purposes of determining the denominator (but not the numerator) of this “Consolidated Fixed Charge Coverage Ratio,” interest on outstanding Indebtedness determined on a fluctuating basis as of the Transaction Date and which will continue to be so determined thereafter, shall be deemed to have accrued at a fixed rate per annum equal to the applicable rate of interest in effect on the Transaction Date; and

(3) notwithstanding clause (2) above, interest on Indebtedness determined on a fluctuating basis, to the extent such interest is covered by agreements relating to Interest Swap Obligations, shall be deemed to accrue at the rate per annum resulting after giving effect to the operation of such agreements.

“Consolidated Fixed Charges” means, with respect to any Person for any period, the sum, without duplication, of:

(1) Consolidated Interest Expense; plus

(2) the amount of all dividends on any series of Preferred Stock of such Person and its Restricted Subsidiaries paid, declared or accrued during such period multiplied, to the extent such dividend payments are not otherwise a deduction to such Person’s federal income tax liabilities by a fraction, the numerator of which is one and the denominator of which is one minus the then current effective consolidated federal, state and local tax rate of such Person, expressed as a decimal.

“Consolidated Interest Expense” means, with respect to any Person for any period, total interest expense (including that portion attributable to Capitalized Lease Obligations in accordance with GAAP) of the Company and its Restricted Subsidiaries for such period, on a consolidated basis, determined in conformity with GAAP.

“Consolidated Net Income” means, with respect to any Person, for any period, the aggregate net income (or loss) of such Person and its Restricted Subsidiaries for such period on a

consolidated basis, determined in accordance with GAAP; provided that there shall be excluded therefrom:

- (1) after-tax gains or losses from Asset Sales or abandonments or reserves relating thereto;
- (2) after-tax items classified as extraordinary or nonrecurring gains or losses;
- (3) the net income (but not loss) of any Restricted Subsidiary of the referent Person to the extent that the declaration of dividends or similar distributions by that Restricted Subsidiary of that income is restricted by a contract, operation of law or otherwise;
- (4) the net income of any other Person, other than a Restricted Subsidiary of the referent Person, joint ventures described in the definition of “Permitted Joint Venture Investments” and any joint ventures in which the Company or any Restricted Subsidiary is a party that exists as of January 17, 2002, except to the extent of cash dividends or distributions paid to the referent Person or to a Restricted Subsidiary of the referent Person by such Person;
- (5) after-tax income or loss attributable to discontinued operations; and
- (6) in the case of a successor to the referent Person by consolidation or merger or as a transferee of the referent Person’s assets, any earnings of the successor corporation prior to such consolidation, merger or transfer of assets.

For purposes of determining the Consolidated Fixed Charge Coverage Ratio only, any loss, charge or cost attributable to the Business Effectiveness Actions shall also be excluded, provided that any loss, charge or cost described in clause (f) of the definition of Business Effectiveness Actions shall be so excluded only to the extent it is non-cash.

“Consolidated Net Worth” means, at any time, as to a given entity (a) the sum of the amounts appearing on the latest consolidated balance sheet of such entity and its Subsidiaries, prepared in accordance with generally accepted accounting principles consistently applied, as (i) the par or stated value of all outstanding Capital Stock (including preferred stock), (ii) capital paid-in and earned surplus or earnings retained in the business plus or minus cumulative transaction adjustments, (iii) any unappropriated surplus reserves, (iv) any net unrealized appreciation of equity investment, and (v) minorities’ interests in equity of subsidiaries, less (b) treasury stock, plus (c) in the case of the Company, \$600.0 million.

“Consolidated Non-cash Charges” means, with respect to any Person, for any period, the aggregate depreciation and amortization of such Person and its Restricted Subsidiaries reducing Consolidated Net Income of such Person and its Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

“Convertible Subordinated Debentures” means the 3.625% Convertible Subordinated Debentures due 2018 of the Company.

“Convertible Trust Preferred Securities” means the \$650.0 million aggregate liquidation amount of 8% Convertible Trust Preferred Securities of Xerox Capital Trust I and the \$1,035.0 million aggregate liquidation amount of 7½% Convertible Trust Preferred Securities of Xerox Capital Trust II, in each case, as in effect on January 17, 2002.

“Corporate Trust Office” means a corporate trust office of the Trustee, at which at any particular time its corporate trust business shall be administered, which office at the date of execution of this Supplemental Indenture is located at Sixth Street and Marquette Avenue, Minneapolis, MN 55479, Attn: Corporate Trust Services, Jane Schweiger and an office of an agent of the Trustee located at c/o The Depository Trust Company, 1st Floor, TADS Department, 55 Water Street, New York, New York 10041.

“Covenant Defeasance” has the meaning specified in Section 1303.

“Credit Agreement” means the Credit Agreement, dated as of June 19, 2003, among the Company, the lenders party thereto in their capacities as lenders thereunder and the agents named therein, together with the related documents thereto (including, without limitation, any guarantee agreements and security documents), in each case as such agreement may be amended (including any amendment and restatement thereof), supplemented or otherwise modified from time to time, including any agreements extending the maturity of, refinancing, replacing (whether or not contemporaneously) or otherwise restructuring (including increasing the amount of available borrowings thereunder (provided that such increase in borrowings is permitted by Section 1107) or adding Restricted Subsidiaries of the Company as additional borrowers or collateral guarantors thereunder) all or any portion of the Indebtedness under such agreement or any successor or replacement agreements and whether by the same or any other agent, lender or group of lenders or investors and whether such refinancing or replacement is under one or more debt facilities or commercial paper facilities, indenture or other agreements, in each case with banks or other institutional lenders or trustees or investors providing for revolving credit loans, term loans, notes or letters of credit, together with related documents thereto (including, without limitation, any guaranty agreements and security documents).

“Currency Agreement” means any foreign exchange contract, currency swap agreement or other similar agreement or arrangement designed to protect the Company or any Restricted Subsidiary of the Company against fluctuations in currency values.

“Custodian” means the Trustee, in its capacity as custodian for the Depository or its nominee.

“Default” means an event or condition the occurrence of which is, or with the lapse of time or the giving of notice or both would be, an Event of Default.

“Defaulted Interest” has the meaning specified in Section 408.

“Depository” means The Depository Trust Company, its nominees and their respective successors.

“Disqualified Capital Stock” means that portion of any Capital Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder thereof), or upon the happening of any event (other than an event which would constitute an Asset Sale or Change of Control), matures or is mandatorily redeemable (other than such Capital Stock that will be redeemed with Qualified Capital Stock), pursuant to a sinking fund obligation or otherwise, or is redeemable at the sole option of the holder thereof (except, in each case, upon the occurrence of an Asset Sale or Change of Control) on or prior to the final maturity date of the Notes.

“Domestic Restricted Subsidiary” means a Restricted Subsidiary incorporated or otherwise organized or existing under the laws of the United States, any state thereof or any territory or possession of the United States.

“Eligible Jurisdiction” means any country in the European Union (as it exists on the Issue Date) or Switzerland.

“Event of Default” has the meaning specified in Section 601.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, or any successor statute or statutes thereto.

“fair market value” means, with respect to any asset or property, the price which could be negotiated in an arm’s-length, free market transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction.

“Finance SPE” means (a) any Receivables SPE and (b) any Restricted Subsidiary that (i) is a special purpose financing vehicle, (ii) was created solely for the purpose of facilitating the incurrence of Capital Markets Debt by the Company or any Restricted Subsidiary or any equity issuance by the Company or any Restricted Subsidiary (including the issuance of any Preferred Stock), (iii) has no business other than the facilitation of such incurrence or issuance and activities incidental thereto and (iv) is capitalized with no more than an amount equal to the cash proceeds received by such Finance SPE from such transaction; provided that such transaction does not constitute or create Indebtedness secured by a Lien that is not permitted by Section 1112.

“Financing Subsidiary” has the meaning specified in Section 1113 of this Supplemental Indenture.

“Foreign Subsidiary” means a Restricted Subsidiary that is incorporated or formed in a jurisdiction other than the United States or a State thereof or the District of Columbia.

“GAAP” means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States, which are in effect from time to time.

“Global Note” means each Note in global form issued under this Supplemental Indenture, substantially in the form set forth in Exhibit B-1, in the case of Seven Year Notes, and Exhibit B-2, in the case of Ten Year Notes, attached hereto.

“Global Note Legend” means the legend in the form set forth in Exhibit A attached hereto, which is required to be placed on all Global Notes issued under the Indenture.

“Guarantee” means any guarantee of the Notes by a Guarantor.

“Guarantor” means each of the Company’s Restricted Subsidiaries that has agreed or in the future agrees to be bound by the terms of this Supplemental Indenture as a Guarantor; provided that any Person constituting a Guarantor as described above shall cease to constitute a Guarantor when its respective Guarantee is released in accordance with the terms of this Supplemental Indenture.

“Holder” with respect to any series of Notes means a Person in whose name a Note of such series is registered in a Security Register.

“Indebtedness” means with respect to any Person, without duplication:

- (1) all indebtedness of such Person for borrowed money;
- (2) all indebtedness of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (3) all Capitalized Lease Obligations of such Person;
- (4) all indebtedness of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations and all indebtedness under any title retention agreement (but excluding trade accounts payable incurred in the ordinary course with a maturity of not greater than 90 days);
- (5) all indebtedness for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction (other than obligations with

respect to letters of credit supporting obligations not for money borrowed entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the fifth business day following payment on the letter of credit);

(6) guarantees and other contingent obligations in respect of Indebtedness referred to in clauses (1) through (5) above and clause (8) below;

(7) all indebtedness of any other Person of the type referred to in clauses (1) through (6) which are secured by any Lien on any property or asset of such Person, the amount of such indebtedness being deemed to be the lesser of the fair market value of such property or asset or the amount of the indebtedness so secured;

(8) all indebtedness under currency agreements and interest swap agreements of such Person; and

(9) all Disqualified Capital Stock issued by such Person or any Preferred Stock of such Person or any Restricted Subsidiary of such Person with the amount of Indebtedness represented by such Disqualified Capital Stock or Preferred Stock being equal to the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price, but excluding accrued dividends, if any.

For purposes of this Supplemental Indenture, the “maximum fixed repurchase price” of any Disqualified Capital Stock or Preferred Stock which does not have a fixed repurchase price shall be calculated in accordance with the terms of such Disqualified Capital Stock or Preferred Stock as if such Disqualified Capital Stock or Preferred Stock were purchased on any date on which Indebtedness shall be required to be determined pursuant to this Supplemental Indenture, and if such price is based upon, or measured by, the fair market value of such Disqualified Capital Stock or Preferred Stock, such fair market value shall be determined reasonably and in good faith by the Board of Directors of the issuer of such Disqualified Capital Stock or Preferred Stock.

Accrual of interest, accrual of dividends, the accretion of accreted value, the payment of interest in the form of additional Indebtedness and the payment of dividends in the form of additional shares of Preferred Stock will not be deemed to be an incurrence of Indebtedness. The amount of any Indebtedness outstanding as of any date shall be (i) the accreted value of the Indebtedness in the case of any Indebtedness issued with original issue discount and (ii) the principal amount or liquidation preference thereof.

For purposes of determining compliance with Section 1107, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term Indebtedness, or first committed, in the case of revolving credit Indebtedness. Notwithstanding any other provision of Section 1107, the maximum amount of

Indebtedness that the Company or any Restricted Subsidiary may incur pursuant to Section 1107 shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness incurred to Refinance other Indebtedness, if incurred in a different currency from the Indebtedness being Refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such Refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

“Indenture” has the meaning specified in the first paragraph hereto.

“Interest Swap Obligations” means the obligations of any Person pursuant to any arrangement with any other Person, whereby, directly or indirectly, such Person is entitled to receive from time to time periodic payments calculated by applying either a floating or a fixed rate of interest on a stated notional amount in exchange for periodic payments made by such other Person calculated by applying a fixed or a floating rate of interest on the same notional amount and shall include, without limitation, interest rate swaps, caps, floors, collars and similar agreements.

“Investment” means, with respect to any Person, any direct or indirect loan or other extension of credit (including, without limitation, a guarantee of Indebtedness) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or any purchase or acquisition by such Person of any Capital Stock, bonds, notes, debentures or other securities or evidences of Indebtedness issued by, any Person, or any keep-well agreement of any Person. “Investment” shall exclude extensions of trade credit by the Company and its Restricted Subsidiaries in the ordinary course of business. If the Company or any Restricted Subsidiary of the Company sells or otherwise disposes of any Capital Stock of any direct or indirect Restricted Subsidiary of the Company such that, after giving effect to any such sale or disposition, such Restricted Subsidiary is no longer a Restricted Subsidiary of the Company, the Company shall be deemed to have made an Investment on the date of any such sale or disposition equal to the fair marketvalue of the Common Stock of such Restricted Subsidiary not sold or disposed of. If the Company designates any of its Subsidiaries to be an Unrestricted Subsidiary, the Company shall be deemed to have made an Investment on the date of such designation equal to the Designation Amount determined in accordance with the definition of “Unrestricted Subsidiary.”

“Investment Grade Status”, with respect to the Company, shall occur when the Notes have both (i) a rating of “BBB-” or higher from S&P and (ii) a rating of “Baa3” or higher from Moody’s, and each such rating shall have been published by the applicable agency.

“IP Company” means any Person, whether now existing or hereafter formed, in which the Company or any of its Restricted Subsidiaries owns or acquires any Capital Stock, which Person (a) has as its primary business one or more of the following: (i) research and development, (ii) the generation or management of intellectual property or (iii) the commercialization or maximization of the value of intellectual property developed by or transferred to such

Person by one or more of the Company or any of its Restricted Subsidiaries, and activities incidental thereto, and (b) has no other significant business; provided that each of the following Persons and its Subsidiaries shall be deemed to be an IP Company: (i) Palo Alto Research Center Incorporated, (ii) Integic Corporation, (iii) ScanSoft, Inc., (iv) Telesensory Corporation, (v) dpiX, LLC, (vi) ContentGuard Holdings, Inc., (vii) InXight Software, Inc. and (viii) Gyricon, LLC.

“Issue Date” means, with respect to each series of Notes, the date of original issuance of that series of Notes.

“Legal Defeasance” has the meaning specified in Section 1302.

“Lien” means any lien, mortgage, deed of trust, pledge, security interest, charge or encumbrance of any kind (including any conditional sale or other title retention agreement, any lease in the nature thereof and any agreement to give any security interest).

“Maturity Date” means, with respect to any Note, the date on which any principal of such Note becomes due and payable as therein or herein provided, whether at the Stated Maturity with respect to such principal or by declaration of acceleration, call for redemption or purchase or otherwise.

“Moody's” means Moody's Investors Service, Inc., and its successors.

“Net Cash Proceeds” means, with respect to any Asset Sale, the proceeds in the form of cash or Cash Equivalents including payments in respect of deferred payment obligations when received in the form of cash or Cash Equivalents (other than the portion of any such deferred payment constituting interest) received by the Company or any of its Restricted Subsidiaries from such Asset Sale net of:

(1) out-of-pocket expenses and fees relating to such Asset Sale (including, without limitation, legal, accounting and investment banking fees and sales commissions);

(2) all legal, title and recording tax expenses, commissions and other fees and expenses incurred, and all federal, state, foreign and local taxes required to be accrued as a liability under GAAP, as a consequence of such Asset Sale;

(3) repayment of Indebtedness and any accrued interest and premium that is secured by the property or assets that are the subject of such Asset Sale;

(4) appropriate amounts to be provided by the Company or any Restricted Subsidiary, as the case may be, as a reserve, in accordance with GAAP, against any liabilities associated with such Asset Sale and retained by the Company or any Restricted Subsidiary, as the case may be, after such Asset Sale, including, without limitation, pension

and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale; and

(5) all distributions and other payments required to be made to minority interest holders in Restricted Subsidiaries as a result of such Asset Sale.

“Net Proceeds Offer” has the meaning specified in Section 1109.

“Net Proceeds Offer Amount” has the meaning specified in Section 1109.

“Net Proceeds Offer Payment Date” has the meaning specified in Section 1109.

“Net Proceeds Offer Trigger Date” has the meaning specified in Section 1109.

“Non-Guarantor Subsidiary” means any Subsidiary of the Company that is not a Guarantor.

“Notes” means all Securities issued after the date of this Supplemental Indenture.

“Officers’ Certificate” means, with respect to any Person, a certificate signed by the chief executive officer, the president or any vice president and the chief financial officer, the treasurer, any assistant treasurer or the controller of such Person that shall comply with applicable provisions of this Supplemental Indenture and delivered to the Trustee.

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

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

(i) Notes of such series theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(ii) Notes of such series, or portions thereof, 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 Notes; provided that, if Notes of such series are to be redeemed, notice of such redemption shall have been duly given pursuant to the Indenture or provision therefor satisfactory to the Trustee has been made;

(iii) Notes of such series, except to the extent provided in Sections 1302 and 1303, with respect to which the Company has effected Legal Defeasance and/or Covenant Defeasance as provided in Article Thirteen with respect to such series of Notes; and

(iv) Notes of such series in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to the Indenture, other than any such Notes in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Notes are held by a bona fide purchaser in whose hands the Notes are valid obligations of the Company; provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Notes of any series of Notes have given any request, demand, authorization, direction, consent, notice or waiver hereunder, and for the purpose of making the calculations required by Section 313 of the Trust Indenture Act, Notes of such series owned by the Company or any other obligor upon the Notes of such series or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in making such calculation or in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes of such series which the Trustee actually knows to be so owned shall be so disregarded. Notes of a series so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Notes and that the pledgee is not the Company or any other obligor upon such Notes or any Affiliate of the Company or such other obligor.

“Pari Passu Indebtedness” means any Indebtedness of the Company that is not subordinated to the Notes.

“Paying Agent” means any Person (including the Company acting as Paying Agent) authorized by the Company to pay the principal of (and premium, if any, on) or interest on any Notes on behalf of the Company.

“Permitted Indebtedness” means, without duplication, each of the following:

(1) Indebtedness under the Notes of the series being issued for which compliance with Section 1107 is being confirmed.

(2) Indebtedness of the Company or any Restricted Subsidiary incurred in the ordinary course of business (including, without limitation, in connection with the Business Effectiveness Actions) so long as the proceeds thereof are not used, directly or indirectly, to finance an Asset Acquisition or to make a Restricted Payment (other than a Permitted Investment) or to effect a refinancing of Indebtedness or Capital Stock (other than Refinancing Indebtedness incurred to Refinance any Indebtedness originally permitted to be incurred under this clause (2));

(3) Indebtedness incurred pursuant to the Credit Agreement in an aggregate principal amount at any time outstanding not to exceed \$4.75 billion;

(4) other Indebtedness of the Company and its Restricted Subsidiaries outstanding on the Issue Date;

(5) Interest Swap Obligations of the Company or any Restricted Subsidiary of the Company covering Indebtedness of the Company or any of its Restricted Subsidiaries; provided, however, that such Interest Swap Obligations are entered into to protect the Company or its Restricted Subsidiaries from fluctuations in interest rates on outstanding Indebtedness to the extent the notional principal amount of such Interest Swap Obligation does not, at the time of the incurrence thereof, exceed the principal amount of the Indebtedness to which such Interest Swap Obligation relates;

(6) Indebtedness under Currency Agreements; provided that in the case of Currency Agreements which relate to Indebtedness, such Currency Agreements do not increase the Indebtedness of the Company and its Restricted Subsidiaries outstanding other than as a result of fluctuations in foreign currency exchange rates or by reason of fees, indemnities and compensation payable thereunder;

(7) Indebtedness of a Restricted Subsidiary of the Company to the Company or to a Restricted Subsidiary of the Company for so long as such Indebtedness is held by the Company or a Restricted Subsidiary of the Company, in each case subject to no Lien held by a Person other than the Company or a Restricted Subsidiary of the Company (other than in favor of a senior secured credit agreement that is permitted to be incurred under clause (3) above); provided that if as of any date any Person other than the Company or a Restricted Subsidiary of the Company owns or holds any such Indebtedness or holds a Lien (other than in favor of a senior secured credit agreement that is permitted to be incurred under clause (3) above) in respect of such Indebtedness, such date shall be deemed the incurrence of Indebtedness not constituting Permitted Indebtedness by the issuer of such Indebtedness;

(8) Indebtedness of the Company to a Restricted Subsidiary of the Company for so long as such Indebtedness is held by a Restricted Subsidiary of the Company and subject to no Lien (other than in favor of a senior secured credit agreement that is permitted to be incurred under clause (3) above); provided that if as of any date any Person other than a Restricted Subsidiary of the Company owns or holds any such Indebtedness or any Person holds a Lien (other than in favor of a senior secured credit agreement that is permitted to be incurred under clause (3) above) in respect of such Indebtedness, such date shall be deemed the incurrence of Indebtedness not constituting Permitted Indebtedness by the Company;

(9) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; provided, however, that such Indebtedness is extinguished within five Business Days of incurrence;

(10) Indebtedness of the Company or any Restricted Subsidiary in respect of performance bonds, bankers' acceptances, workers' compensation claims, surety or appeal bonds, payment obligations in connection with self-insurance or similar obligations, and operating leases, trade contracts and bank overdrafts (and letters of credit in respect thereof) in the ordinary course of business;

(11) Indebtedness incurred in connection with the Third-Party Vendor Financing Program or any Qualified Receivables Transaction; provided that any Liens on such Indebtedness are permitted by Section 1112;

(12) any guarantee by the Company or a Restricted Subsidiary of Indebtedness of the Company or any Restricted Subsidiary so long as the incurrence of such Indebtedness would otherwise be permitted to be incurred under the Indenture and such guarantee is otherwise not prohibited by the Indenture and Section 1113(a), to the extent applicable to such guarantee, is complied with;

(13) Indebtedness arising from guarantees of Indebtedness of the Company or any Restricted Subsidiary or the agreements of the Company or a Restricted Subsidiary providing for indemnification, adjustment of purchase price or similar obligations, in each case, incurred or assumed in connection with the disposition of any business, assets or Capital Stock of a Subsidiary, or other guarantees of Indebtedness incurred by any person acquiring all or any portion of such business, assets, Subsidiary or Capital Stock of a Subsidiary for the purpose of financing such acquisition; provided that the maximum aggregate liability in respect of all such Indebtedness shall at no time exceed the gross proceeds (including non-cash proceeds) actually received by the Company and/or such Restricted Subsidiary in connection with such disposition;

(14) the issuance of shares of Disqualified Capital Stock by the Company to a Restricted Subsidiary of the Company; provided, however, that (a) any subsequent issuance or transfer that results in any such Disqualified Capital Stock being held by a Person other than a Restricted Subsidiary thereof and (b) any sale or other transfer of any such Disqualified Capital Stock to a Person that is not a Restricted Subsidiary thereof shall be deemed, in each case, to constitute an issuance of such Disqualified Capital Stock by the Company that was not permitted by this clause (14);

(15) obligations incurred in the ordinary course of business and not for money borrowed (for example, repurchase agreements) to purchase securities or other property,

if such obligations arise out of or in connection with the sale of the same or similar securities or properties;

(16) obligations to deliver goods or services in consideration of advance payments therefor;

(17) Indebtedness consisting of take-or-pay obligations contained in supply contracts entered into in the ordinary course of business;

(18) Refinancing Indebtedness; and

(19) additional Indebtedness of the Company and its Restricted Subsidiaries in an aggregate principal amount not to exceed \$75.0 million at any one time outstanding (which amount may, but need not, be incurred in whole or in part under the Credit Agreement).

For purposes of determining compliance with Section 1107 of this Supplemental Indenture, in the event that an item of Indebtedness meets the criteria of more than one of the categories of Permitted Indebtedness described in clauses (1) through (19) above or is entitled to be incurred pursuant to the Consolidated Fixed Charge Coverage Ratio provisions of Section 1107(a), the Company shall, in its sole discretion, classify such item of Indebtedness in any manner that complies with Section 1107. In addition, the Company may, at any time, change the classification of an item of Indebtedness (or any portion thereof) to any other clause, and in part under any one or more of the clauses listed above, or to Section 1107(a); provided that the Company would be permitted to incur such item of Indebtedness (or portion thereof) pursuant to such other clause or clauses, as the case may be, or Section 1107(a), as the case may be, at such time of reclassification. Accrual of interest, accretion or amortization of original issue discount or other discounts or premiums, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, and the payment of dividends on Disqualified Capital Stock or Preferred Stock in the form of additional shares of the same class of Disqualified Capital Stock or Preferred Stock and any other changes in reported Indebtedness required by GAAP and other non-cash changes in Indebtedness due to fluctuations in interest rates, will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Capital Stock or Preferred Stock for purposes of Section 1107.

“Permitted Investment Intermediate Ratings Condition” means the condition that the Company’s senior unsecured debt is rated at least “BB” by S&P and “Ba2” by Moody’s.

“Permitted Investments” means:

(1) Investments by the Company or any Restricted Subsidiary of the Company in any Person that is or will become immediately after such Investment a Restricted Subsidiary of the Company or that will merge or consolidate into the Company or a Restricted Subsidiary of the Company;

(2) Investments in the Company by any Restricted Subsidiary of the Company;

(3) Investments in cash in (a) euros or dollars and Cash Equivalents or, to the extent determined by the Company or a Foreign Subsidiary in good faith to be necessary for local working capital requirements and operational requirements of the Foreign Subsidiaries, other cash and cash equivalents denominated in the currency of any jurisdiction which are, as determined in good faith by the Company or such Foreign Subsidiary, necessary or desirable for reasonable business purposes and, in the case of cash equivalents, are otherwise substantially similar to the items specified in the definition of "Cash Equivalents," and (b) cash and Cash Equivalents denominated in the currency of the jurisdiction of organization or place of business of a Foreign Subsidiary that are otherwise substantially similar to items specified in the definition of "Cash Equivalents," except that if such jurisdiction prohibits the repatriation of working capital to the United States, any specific rating required in the definition of "Cash Equivalents" shall be deemed to be satisfied if such Investments have, at the time of the acquisition, the highest rating from any rating agency of any Investments available to be issued in such currency; provided that the aggregate amount of Investments made pursuant to this clause (3)(b) shall not exceed the equivalent of \$50.0 million at any time outstanding;

(4) loans and advances to employees and officers of the Company and its Subsidiaries to purchase Capital Stock of the Company for bona fide business purposes;

(5) Currency Agreements and Interest Swap Obligations entered into in the ordinary course of the Company's or its Restricted Subsidiaries' businesses and not for speculative purposes and otherwise in compliance with this Supplemental Indenture;

(6) additional Investments having an aggregate fair market value, taken together with all other Investments made or deemed to be made pursuant to this clause (6) that are at that time outstanding, not to exceed \$750.0 million at the time of such Investment (with the fair market value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(7) Investments in securities of trade creditors or customers received pursuant to any plan of reorganization or similar arrangement upon the bankruptcy, work-out or insolvency of such trade creditors or customers or as a result of a foreclosure by the Company or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default;

(8) Investments made by the Company or its Restricted Subsidiaries as a result of consideration received in connection with any sale or other transfer of assets, to the extent applicable, in compliance with Section 1109 of this Supplemental Indenture;

(9) Permitted Joint Venture Investments;

(10) receivables owing to the Company or any Restricted Subsidiary or other trade credit provided by the Company or any Restricted Subsidiary if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; provided, however, that such trade terms may include such concessionary trade terms as the Company or any such Restricted Subsidiary deems reasonable under the circumstances;

(11) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;

(12) stock, obligations or securities received as security for, or in settlement of, debts created in the ordinary course of business and owing to the Company or any of its Restricted Subsidiaries or in satisfaction of judgments or claims;

(13) Investments relating to purchase or acquisition of products from vendors, manufacturers or suppliers in the ordinary course of business;

(14) Investments owned by the Company and any Restricted Subsidiary existing on the Issue Date, any extension or renewal thereof that does not increase the principal amount thereof (other than to reflect any accrued interest, dividends or other amounts with respect thereto and any expenses incurred in connection with such extension or renewal) and conversions of any such debt Investments into equity Investments and contributions or other transfers of such Investments to the Company or any of its Restricted Subsidiaries (other than for cash);

(15) Investments in connection with pledges, deposits, payments or performance bonds made or given in the ordinary course of business in connection with or to secure statutory, regulatory or similar obligations, including obligations under health, safety or environmental obligations;

(16) any Investment by Ridge Re of cash that may legally be made by a Bermuda insurance company; and

(17) Investments made by the Company or any Subsidiary at any time the Permitted Investment Covenant Intermediate Ratings Condition is satisfied; provided that on any Reinstatement Date, Investments made at any time that the Permitted Investment Intermediate Ratings Condition was satisfied that are not of the type described in any of clauses (1) through (5) and (7) through (16) of this definition (such Investments, "Excess Investments") shall be deemed to have been made and shall be applied to reduce (A) the amount of Investments available to be made on and after the Reinstatement Date pursuant to clause (6) of this definition and/or (B) the amount of Restricted Payments available to be made after the Reinstatement Date under clause (iii) of Section 1108(a); provided further that the Company shall have the exclusive right to allocate and choose the order in

which Excess Investments are applied under clauses (A) and/or (B) above; provided that such reductions by themselves shall not cause the amount available at any time to be made either as Investments pursuant to clause (6) of this definition or Restricted Payments pursuant to clause (iii) of Section 1108(a) to be reduced to below an amount equal to \$75.0 million per calendar year in each case; provided further that such amount shall be prorated only for the number of calendar days between the Reinstatement Date and the earlier of (A) the end of the calendar year in which the Reinstatement Date occurs and (b) the maturity of the Notes of the applicable series.

“Permitted Joint Venture Investments” means any Investment (A) in a joint venture, partnership or other arrangement with a Person or Persons to the extent necessary or desirable, as determined by the Company, to (x) facilitate, or as contemplated by, the Business Effectiveness Actions or (y) facilitate Qualified Receivables Transactions and (B) in Fuji Xerox Co., Limited.

“Person” means an individual, partnership, corporation, limited liability company, unincorporated organization, trust or joint venture, or a governmental agency or political subdivision thereof.

“Predecessor Note” of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 407 in exchange for a mutilated security or in lieu of a lost, destroyed or stolen Note shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note.

“Preferred Stock” of any Person means any Capital Stock of such Person that has preferential rights to any other Capital Stock of such Person with respect to dividends or redemptions or upon liquidation.

“Purchase Money Indebtedness” means Indebtedness of the Company and its Restricted Subsidiaries incurred for the purpose of financing all or any part of the purchase price, or the cost of installation, construction or improvement, of property or equipment; provided, however, that (1) the amount of such Indebtedness shall not exceed such purchase price or cost, (2) such Indebtedness shall not be secured by any asset other than the specified asset being financed or, in the case of real property or fixtures, including additions and improvements, the real property to which such asset is attached and (3) such Indebtedness shall be incurred within 180 days after such acquisition of such asset by the Company or such Restricted Subsidiary or such installation, construction or improvement.

“Qualified Capital Stock” means any Capital Stock that is not Disqualified Capital Stock.

“Qualified Receivables Transaction” means any transaction or arrangement or series of transactions or arrangements entered into by the Company or any of its Subsidiaries in

order to monetize or otherwise finance, or as a result of which it may receive earlier than otherwise due amounts that will become receivable or be earned in the future in respect of, a discrete pool (which may be fixed or revolving) of receivables, leases or other financial assets, including financing contracts and any transaction or arrangement that is not a sale or transfer but pursuant to and by virtue of which a Person succeeds to, and becomes entitled to, the rights under or in respect of such receivables, leases or other financial assets (in each case whether now existing or arising in the future), and which may include a Lien on (a) receivables, (b) deposit or other accounts (and the funds or investments from time to time credited thereto) established in connection with a Qualified Receivables Transaction to secure obligations of the Company or any of its Subsidiaries arising in connection with or otherwise related to such transaction, (c) any promissory note issued by the Company or any of its Subsidiaries evidencing the repayment of amounts directly or indirectly distributed to the Company or any of its Subsidiaries from any such accounts and (d) any assets of or Capital Stock or any warrants, options or other rights to acquire Capital Stock in each and any Receivables SPE used to facilitate such transaction, provided that such transaction or arrangement does not constitute or create Indebtedness secured by a Lien that is not permitted by Section 1112.

“Receivables SPE” means a Restricted Subsidiary that is a special purpose entity that (a) borrows against receivables or purchases, leases or otherwise acquires receivables or transfers receivables to one or more third-party purchasers or another Receivables SPE in connection with a Qualified Receivables Transaction, (b) engaged in other activities that are necessary or desirable to effectuate the activities described in the definitions of “Qualified Receivables Transaction” or “Third-Party Vendor Financing Program,” or (c) is established or then used solely for the purpose of, and has no business other than, owning a Receivables SPE, servicing receivables owned by a Receivables SPE, owning or holding title to the property or assets giving rise to such receivables or any activities incidental thereto (including those described in the definitions of “Qualified Receivables Transaction” or “Third-Party Vendor Financing Program”).

“Redemption Date,” when used with respect to any Note to be redeemed, in whole or in part, means the date fixed for such redemption by or pursuant to the Indenture.

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

“Reference Date” has the meaning specified in Section 1108.

“Refinance” means, in respect of any security or Indebtedness, to refinance, extend, renew, refund, repay, prepay, redeem, defease or retire, or to issue a security or Indebtedness in exchange or replacement for, such security or Indebtedness in whole or in part. “Refinanced” and “Refinancing” shall have correlative meanings.

“Refinancing Indebtedness” means any Refinancing by the Company or any Restricted Subsidiary of the Company of Indebtedness permitted by Section 1107 of this

Supplemental Indenture (other than pursuant to clauses (3), (5), (6), (7), (8), (9), (10), (11), (13), (14), (15), (16), (17) or (19) of the definition of “Permitted Indebtedness”), in each case that does not:

(1) result in an increase in the aggregate principal amount of Indebtedness of such Person as of the date of such proposed Refinancing (plus the amount of (i) any premium required to be paid under the terms of the instrument governing such Indebtedness, (ii) accrued interest on the Indebtedness being Refinanced and (iii) reasonable expenses incurred by the Company in connection with such Refinancing); or

(2) create Indebtedness with: (a) a Weighted Average Life to Maturity that is less than the Weighted Average Life to Maturity of the Indebtedness being Refinanced; or (b) a final maturity earlier than the final maturity of the Indebtedness being Refinanced; provided that (x) if such Indebtedness being Refinanced is Indebtedness of the Company, then such Refinancing Indebtedness shall be Indebtedness solely of the Company and (y) if such Indebtedness being Refinanced is subordinate or junior to the Notes, then such Refinancing Indebtedness shall be subordinate to the Notes at least to the same extent and in the same manner as the Indebtedness being Refinanced.

“Regular Record Date” for the interest payable on any Interest Payment Date means the June 1 or December 1 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date.

“Reinstatement Date” means, after the satisfaction of the Permitted Investment Intermediate Ratings Condition, the first date on which the Permitted Investment Intermediate Ratings Condition is no longer satisfied.

“Replacement Assets” has the meaning specified in Section 1109.

“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, the secretary, any assistant secretary, the treasurer, any assistant treasurer, the cashier, any assistant cashier, 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.

“Restricted Payments” has the meaning specified in Section 1108.

“Restricted Payments Basket” has the meaning specified in Section 1108.

“Restricted Subsidiary” of any Person means any Subsidiary of such Person which at the time of determination is not an Unrestricted Subsidiary.

“Reversion Date” has the meaning set forth in Section 1115 of this Supplemental Indenture.

“Rule 144A” means Rule 144A promulgated under the Securities Act.

“S&P” means Standard & Poor’s Rating Service, a division of The McGraw-Hill Companies, Inc., and its successors.

“Sale and Leaseback Transaction” means any direct or indirect arrangement with any Person or to which any such Person is a party, providing for the leasing to the Company or a Restricted Subsidiary of any property, whether owned by the Company or any Restricted Subsidiary at the Issue Date or later acquired, which has been or is to be sold or transferred by the Company or such Restricted Subsidiary to such Person or to any other Person from whom funds have been or are to be advanced by such Person on the security of such property.

“Securities” has the meaning specified in the recitals to this Supplement Indenture.

“Securities Act” means the Securities Act of 1933, as amended, or any successor statute or statutes thereto.

“Security Register” and “Security Registrar” have the respective meanings specified in Section 405.

“Series B Convertible Preferred Stock” means the 10.0 million shares of Series B Convertible Preferred Stock of the Company issued to the Company’s Employee Stock Ownership Plan Trust, as in effect on January 17, 2002.

“Significant Subsidiary,” with respect to any Person, means any Restricted Subsidiary of such Person that satisfies the criteria for a “significant subsidiary” set forth in Rule 1.02 of Regulation S-X under the Exchange Act as such Regulation is in effect on January 17, 2002.

“Special Record Date” for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 408.

“Specified Redemption” has the meaning set forth in Section 1201 of this Supplemental Indenture.

“Specified Redemption Date” has the meaning set forth in the definition of “Treasury Rate.”

“Specified Subsidiary” means any Subsidiary of the Company from time to time having a Consolidated Net Worth Amount of at least \$100.0 million; provided, however, that

each of Xerox Financial Services, Inc., Xerox Credit Corporation and any other Subsidiary principally engaged in any business or businesses other than development, manufacture and/or marketing of (x) business equipment (including, without limitation, reprographic, computer (including software) and facsimile equipment), (y) merchandise or (z) services (other than financial services) shall be excluded as a "Specified Subsidiary" of the Company.

"Stated Maturity" when used with respect to any Indebtedness or any installment of interest thereon means the dates specified in such Indebtedness as the fixed date on which the principal of or premiums on such Indebtedness or such installment of interest is due and payable, and shall not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

"Subordinated Indebtedness" means Indebtedness of the Company that is subordinated or junior in right of payment to the Notes.

"Subsidiary," with respect to any Person, means:

(1) any corporation of which the outstanding Capital Stock having at least a majority of the votes entitled to be cast in the election of directors under ordinary circumstances shall at the time be owned, directly or indirectly, by such Person; or

(2) any other Person of which at least a majority of the voting interest under ordinary circumstances is at the time, directly or indirectly, owned by such Person.

"Supplemental Indenture" has the meaning specified in the first paragraph hereto.

"Surviving Entity" has the meaning specified in Section 901(a) of this Supplemental Indenture.

"Suspended Covenants" means the covenants and provisions contained in Sections 1107, 1108, 1109, 1110 and 1111 of this Supplemental Indenture.

"Suspension Period" has the meaning specified in Section 1115 of this Supplemental Indenture.

"Synthetic Purchase Agreement" shall mean any agreement pursuant to which the Company or any of its Subsidiaries is or may become obligated to make any payment the amount of which is determined by reference to a derivative agreement that relates to the price or value at any time of any Capital Stock of the Company; provided that no phantom stock or similar plan providing for payments only to current or former directors, officers or employees of the Company or any Subsidiary (or to their heirs or estates or successors or assigns) shall be deemed to be a Synthetic Purchase Agreement.

“Third-Party Vendor Financing Program” means any arrangement by the Company or any Restricted Subsidiary of third-party vendor financing directly or indirectly for customers of the Company or any Restricted Subsidiary, including (a) the sale of a financing business, (b) transfers of all or any portion of the business of, and assets relating to the business of, providing billing, collection and other services in respect of finance, lease and other receivables, (c) Qualified Receivables Transactions and (d) other arrangements for the indirect financing of receivables wherein a third-party financier makes loans to Restricted Subsidiaries that are Finance SPEs in respect of receivables generated by the Company or any Restricted Subsidiary, whether generated prior to or during such arrangements and whether the relevant transaction is consolidated balance sheet (including the Program Agreement dated as of October 21, 2002 between General Electric Capital Corporation, the Company, Xerox Lease Funding, LLC and Xerox Lease Equipment LLC as thereafter amended, modified or supplemented from time to time and any Qualified Receivables Transactions and similar arrangements for indirect financings of receivables between the Company or any Restricted Subsidiary and General Electric Capital Corporation or any of its affiliates).

“Trust Indenture Act” or “TIA” means the Trust Indenture Act of 1939, as amended.

“Trustee” means the Person named as the Trustee in the first paragraph hereto until a successor Trustee shall have become such pursuant to the applicable provisions of this Supplemental Indenture, and thereafter “Trustee” shall mean such successor Trustee.

“Unrestricted Subsidiary” of any Person means:

(1) the Subsidiary to be so designated has total assets of \$1,000 or less or any Subsidiary of such Person that at the time of determination shall be or continue to be designated an Unrestricted Subsidiary by the Board of Directors of such Person in the manner provided below; and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Board of Directors may designate any Subsidiary (including any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary owns any Capital Stock of, or owns or holds any Lien on any property of, the Company or any other Subsidiary of the Company that is not a Subsidiary of the Subsidiary to be so designated; provided that:

(1) the Company certifies to the Trustee that such designation complies with Section 1108 of this Supplemental Indenture, including that the Company would be permitted to make, at the time of such designation, (a) a Permitted Investment or (b) an Investment pursuant to Section 1108(a), in either case, in an amount (the “Designation Amount”) equal to the fair market value of the Company’s proportionate interest in such Subsidiary on such date; and

(2) each Subsidiary to be so designated and each of its Subsidiaries has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of the Company or any of its Restricted Subsidiaries.

The Board of Directors may designate any Unrestricted Subsidiary to be a Restricted Subsidiary only if it contemporaneously becomes a Guarantor or:

(1) immediately after giving effect to such designation, the Company is able to incur at least \$1.00 of additional Indebtedness (other than Permitted Indebtedness) in compliance with Section 1107 of this Supplemental Indenture; and

(2) immediately before and immediately after giving effect to such designation, no Default or Event of Default shall have occurred and be continuing.

Any such designation by the Board of Directors shall be evidenced to the Trustee by promptly filing with the Trustee a copy of the Board Resolution giving effect to such designation and an Officers' Certificate certifying that such designation complied with the foregoing provisions.

"U.S. Government Obligations" means securities that are (i) direct obligations of the United States for the timely payment of which its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States, the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any such U.S. Government Obligation or a specific payment of principal of or interest on any such U.S. Government Obligation held by such custodian for the account of the holder of such depository receipt; provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of principal of or interest on the U.S. Government Obligation evidenced by such depository receipt.

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the number of years obtained by dividing (a) the then outstanding aggregate principal amount of such Indebtedness into (b) the sum of the total of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payment of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) which will elapse between such date and the making of such payment.

“Wholly Owned Restricted Subsidiary” of any Person means any Wholly Owned Subsidiary of such Person which at the time of determination is a Restricted Subsidiary of such Person.

“Wholly Owned Subsidiary” of any Person means any Subsidiary of such Person of which all the outstanding voting securities (other than in the case of a Foreign Subsidiary, directors’ qualifying shares or an immaterial amount of shares required to be owned by other Persons pursuant to applicable law) are owned by such Person or any Wholly Owned Subsidiary of such Person.

SECTION 202. Rules of Construction.

Unless the context otherwise requires:

- (a) the terms defined in this Article Two have the meanings assigned to them in this Article Two, and include the plural as well as the singular;
- (b) all terms used herein which are defined in the Trust Indenture Act or the rules and regulations of the Commission thereunder, either directly or by reference therein, have the meanings assigned to them therein;
- (c) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP;
- (d) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Supplemental Indenture as a whole and not to any particular Article, Section or other subdivision;
- (e) references to any Article, Section or other subdivision in this Supplemental Indenture, unless otherwise described, are references to an Article, Section or subdivision of this Supplemental Indenture;
- (f) “or” is not exclusive; and
- (g) words used herein implying any gender shall apply to every gender.

SECTION 203. Compliance Certificates and Opinions.

Upon any application or request by the Company to the Trustee to take any action under any provision of this Supplemental Indenture, the Company shall furnish to the Trustee an Officers’ Certificate stating that all conditions precedent, if any, provided for in the Indenture (including any covenant compliance with which constitutes a condition precedent) relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the

case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Supplemental Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in the Indenture (other than pursuant to Section 1105) shall include:

- (1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (3) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (4) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

SECTION 204. 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. In giving such opinion, such counsel may rely upon opinions of local counsel reasonably satisfactory to the Trustee. 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, 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 the Indenture, they may, but need not, be consolidated and form one instrument.

SECTION 205. Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by the Indenture to be given or taken by Holders of Notes of a series may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by Holders of notes of such series in person or by agents duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. 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 Supplemental Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 205.

(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 authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) The principal amount and serial numbers of Notes, if a Certificated Note held by any Person, and the date of holding the same, shall be proved by the applicable Security Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Note of any series shall bind every future Holder of the same Note and the Holder of every Note 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 Note.

SECTION 206. Notices, etc., to Trustee and Company.

Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders of Notes of a series or other document provided or permitted by the 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 or with the Trustee at its Corporate Trust Office, to the attention of its Corporate Trust Department;

(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 it at the address of its principal office specified in the first paragraph of this Supplemental Indenture, or at any other address previously furnished in writing to the Trustee by the Company.

SECTION 207. Notice to Holders; Waiver.

Where the Indenture provides notice of any event to Holders by the Company or the Trustee, 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 its address as it appears in the applicable 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 mailed to a Holder in the manner herein prescribed shall be conclusively deemed to have been received by such Holder when so mailed, whether or not such Holder actually receives such notice. Where the 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 or irregularities in regular mail service or by reason of any other cause, it shall be impracticable to mail notice of any event to Holders when such notice is required to be given pursuant to any provision of the Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice for every purpose hereunder.

Holders may communicate pursuant to Section 312(b) of the Trust Indenture Act with other Holders with respect to their rights under the Indenture or the series of Notes they hold. The Company, the Trustee, the Registrar and anyone else shall have the protection of Section 312(c) of the Trust Indenture Act.

SECTION 208. 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 of this Supplemental Indenture.

SECTION 209. Successors.

All agreements of the Company in the Indenture and the Notes shall bind its successors. All agreements of the Trustee in the Indenture shall bind its successors.

SECTION 210. Separability Clause.

In case any provision in the Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 211. Benefits of Indenture.

Nothing in the Indenture, in the Notes, express or implied, shall give to any Person, other than the parties to this Supplemental Indenture, any Paying Agent, any Security Registrar and their successors hereunder and the Holders, any benefit or any legal or equitable right, remedy or claim under the Indenture.

SECTION 212. **GOVERNING LAW.**

THE INDENTURE AND THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK BUT WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

SECTION 213. Conflict with Trust Indenture Act.

If any provision of this Supplemental Indenture limits, qualifies or conflicts with any provision of the Trust Indenture Act or another provision which is required or deemed to be included in the Indenture by any of the provisions of the Trust Indenture Act, such provision or requirement of the Trust Indenture Act shall control.

If any provision of the 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 the Indenture as so modified or excluded, as the case may be.

SECTION 214. Legal Holidays.

In any case where any Interest Payment Date, Redemption Date, date established for the payment of Defaulted Interest, Stated Maturity, Maturity Date, Change of Control Payment Date or Net Proceeds Offer Payment Date of any Note shall not be a Business Day, then (notwithstanding any other provision of the Indenture or of the Notes) payment of interest or principal (and premium, if any) need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the Interest Payment Date, Redemption Date, date established for the payment of Defaulted Interest, Stated Maturity, Maturity Date, Change of Control Payment Date or Net Proceeds Offer Payment Date; provided that no interest shall accrue for the period from and after such Interest Payment Date, Redemption Date, date established for the payment of Defaulted Interest, Stated Maturity, Maturity Date, Change of Control Payment Date or Net Proceeds Offer Payment Date, as the case may be. In such event, no interest shall accrue with respect to such payment for the period from and after such Interest Payment Date, Redemption Date, date established for the payment of Defaulted Interest, Stated Maturity, Maturity Date,

Change of Control Payment Date or Net Proceeds Offer Payment Date, as the case may be, to the next succeeding Business Day and, with respect to any Interest Payment Date, interest for the period from and after such Interest Payment Date shall accrue with respect to the next succeeding Interest Payment Date. If a regular record date is a date that is not a Business Day, such record date shall not be affected.

SECTION 215. Unclaimed Money; Prescription.

If money deposited with the Trustee or any applicable agent for the payment of principal of, premium, if any, or interest on the Notes remains unclaimed for two years, the Trustee and such Paying Agent shall return the money to the Company. After that, Holders entitled to the money must look to the Company for payment unless applicable abandoned property law designates another Person and all liability of the Trustee and such Paying Agent shall cease. Other than as set forth in this paragraph, the Indenture does not provide for any periods for the escheatment of the payment of principal of, premium, if any, or interest and on the Notes.

SECTION 216. No Recourse Against Others.

No past, present or future director, officer, employee, promoter, adviser, incorporator or shareholder of the Company, as such, shall have any liability for any obligations of the Company under the Notes 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 applicable series of Notes by accepting a Note waives and releases all such liability, to the extent permitted by applicable law. The waiver and release are part of the consideration for issuance of the Notes.

SECTION 217. Multiple Originals.

The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Supplemental Indenture.

SECTION 218. No Adverse Interpretation of Other Agreements.

This Supplemental Indenture may not be used to interpret another indenture, loan, security or debt agreement of the Company. No such indenture, loan, security or debt agreement may be used to interpret this Supplemental Indenture.

ARTICLE THREE

RESERVED

ARTICLE FOUR

RESERVED

ARTICLE FIVE

SATISFACTION AND DISCHARGE

SECTION 501. Satisfaction and Discharge of Indenture.

The Indenture will be discharged with respect to a particular series of Notes and will cease to be of further effect (except as to surviving rights of transfer or exchange of the applicable Notes, as expressly provided for in the Indenture) solely as to all Outstanding Notes of such series of Notes under the Indenture when with respect to such series of Notes:

(1) either:

(a) all the Notes of such series previously authenticated and delivered (except lost, stolen or destroyed Notes of such series which have been replaced or paid and Notes of such series for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust) have been delivered to the Trustee for cancellation; or

(b) all Notes of such series not theretofore delivered to the Trustee for cancellation have become due and payable within one year or as a result of a mailing of a notice of redemption and the Company has irrevocably deposited or caused to be deposited with the Trustee cash or non-callable U.S. Government Obligations or a combination thereof in an amount sufficient to pay and discharge the entire Indebtedness on the Notes not of such series theretofore delivered to the Trustee for cancellation, for principal of, premium, if any, and interest on the Notes of such series to the date of deposit together with irrevocable instructions from the Company directing the Trustee to apply such funds to the payment thereof at maturity or redemption, as the case may be;

(2) the Company has paid all other sums payable with respect to such series of Notes under the Indenture by the Company; and

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel stating that all conditions precedent under the Indenture relating to

the satisfaction and discharge of the Indenture with respect to such series of Notes as it applies to such series of Notes have been complied with.

Notwithstanding the satisfaction and discharge of the Indenture with respect to a series of Notes, the obligations of the Company to the Trustee under Section 706 and, if money shall have been deposited with the Trustee pursuant to subclause (B) of clause (1) of this Section 501, the obligations of the Trustee under Section 502 and Section 1103 shall survive such satisfaction and discharge, in each case, with respect to a series of Notes.

SECTION 502. Application of Trust Money.

Subject to the provisions of Section 1103, all money deposited with the Trustee pursuant to Section 501 shall be held in trust and applied by it, in accordance with the provisions of the applicable series of Notes and the 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 premium, if any) and interest for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

ARTICLE SIX

REMEDIES

SECTION 601. Events of Default.

“Event of Default,” wherever used herein, means any one of the following events with respect to a series of Notes:

- (1) the failure to pay interest on Notes of such series when the same becomes due and payable and the default continues for a continuous period of 30 days;
- (2) the failure to pay the principal on Notes of such series, when such principal becomes due and payable, at maturity, upon redemption or otherwise (including the failure to make a payment to purchase Notes of such series tendered pursuant to a Change of Control Offer or a Net Proceeds Offer);
- (3) a default in the observance or performance of any other covenant or agreement contained in the Indenture which default continues for a period of 90 days after the Company receives written notice specifying the default (and demanding that such default be remedied) from the Trustee or the Holders of at least 25% of the outstanding principal amount of the Notes of such series (except in the case of a default with respect to Section 901, which will constitute an Event of Default with such notice requirement but without such passage of time requirement);

(4) the failure to pay at final maturity (giving effect to any applicable grace periods and any extensions thereof) the principal amount of any Indebtedness of the Company or any Restricted Subsidiary of the Company, or the acceleration of the final Stated Maturity of any such Indebtedness, if the aggregate principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness in default for failure to pay principal at final maturity or which has been accelerated, aggregates \$50.0 million or more at any time;

(5) one or more judgments for the payment of money in an aggregate amount in excess of the lesser of (i) \$75.0 million or (ii) the highest amount of one or more judgments that would result in a default or an event of default under any other indenture pursuant to which the Company or any of its Restricted Subsidiaries has issued Capital Markets Debt (in each case excluding any amounts adequately covered by insurance from a solvent and unaffiliated insurance company), shall have been rendered against the Company or any of its Restricted Subsidiaries and such judgments remain undischarged, unpaid or unstayed for a period of 90 days after such judgment or judgments become final and non-appealable;

(6) the entry by a court of competent jurisdiction of (A) a decree or order for relief in respect of the Company or any Significant Subsidiary in an involuntary case or proceeding under any applicable Bankruptcy Law or (B) a decree or order adjudging the Company or any Significant Subsidiary bankrupt or insolvent, or seeking reorganization, arrangement, adjustment or composition of or in respect of the Company or any Significant Subsidiary under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Significant Subsidiary or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and any such decree or order for relief shall continue to be in effect, or any such other decree or order shall be unstayed and in effect, for a period of 60 consecutive days; or

(7) (A) the commencement by the Company or any Significant Subsidiary of a voluntary case or proceeding under any applicable Bankruptcy Law or any other case or proceeding to be adjudicated bankrupt or insolvent, (B) the Company or any Significant Subsidiary consents to the entry of a decree or order for relief in respect of the Company or such Significant Subsidiary in an involuntary case or proceeding under any applicable Bankruptcy Law or to the commencement of any bankruptcy or insolvency case or proceeding against it, (C) the Company or any Significant Subsidiary files a petition or answer or consent seeking reorganization or relief under any applicable federal or state law, (D) the Company or any Significant Subsidiary (x) consents to the filing of such petition or the appointment of, or taking possession by, a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of the Company or such Significant Subsidiary or of any substantial part of its property, (y) makes an assignment for the benefit of creditors or (z) admits in writing its inability to pay its debts generally as they become due or (E)

the Company or any Significant Subsidiary takes any corporate action in furtherance of any such actions in this clause (8); or

(8) any Guarantee of any Guarantor ceases to be in full force and effect (other than in accordance with the terms of such Guarantee and the Indenture) or is declared null and void and unenforceable or found to be invalid or any Guarantor denies its liability under its Guarantee (other than by reason of release of a Guarantor from its Guarantee in accordance with the terms of the Indenture and such Guarantee).

SECTION 602. Acceleration of Maturity; Rescission and Annulment.

(a) If an Event of Default (other than an Event of Default specified in clauses (6) or (7) above with respect to the Company) shall occur and be continuing with respect to a series of Notes, the Trustee or the Holders of at least 25% in principal amount of Outstanding Notes of the affected series of Notes under the Indenture may declare the principal of, and premium, if any, and accrued interest on all the Notes of such series under the Indenture to be due and payable by notice in writing to the Company and the Trustee specifying the respective Event of Default and that it is a “notice of acceleration”, and the same shall become immediately due and payable. If an Event of Default specified in Sections 601(6) or 601(7) with respect to the Company occurs and is continuing, then all unpaid principal of, and premium, if any, and accrued and unpaid interest on all of the Outstanding Notes shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

(b) At any time after a declaration of acceleration with respect to a series of Notes as described in paragraph (a) above, the Holders of a majority in principal amount of Notes of such series under the Indenture may rescind and cancel such declaration and its consequences:

(1) if the rescission would not conflict with any judgment or decree;

(2) if all existing Events of Default with respect to such series have been cured or waived except nonpayment of principal or interest that has become due solely because of the acceleration;

(3) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid; and

(4) if the Company has paid the Trustee its reasonable compensation and reimbursed the Trustee for its expenses, disbursements and advances.

No such rescission shall affect any subsequent Default or impair any right consequent thereto.

SECTION 603. Collection of Indebtedness and Suits for Enforcement by Trustee.

The Company covenants that if:

(a) default is made in the payment of any installment of interest on any Note of any series when such interest becomes due and payable and such default continues for a period of 30 days, or

(b) default is made in the payment of the principal of (or premium, if any, on) any Note of any series at the maturity thereof,

the Company shall, upon demand of the Trustee, pay to the Trustee for the benefit of the Holders of Notes of such series, the whole amount then due and payable on such Notes for principal (and premium, if any) and interest, and interest on any overdue principal (and premium, if any) and, to the extent that payment of such interest shall be legally enforceable, upon any overdue installment of interest, at the rate borne by the applicable series of Notes, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the applicable series of Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the applicable series of Notes, wherever situated.

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 of the affected series of Notes by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in the Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

SECTION 604. Trustee May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon any series of Notes or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of any series of Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the

payment of overdue principal, premium, if any, or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(i) to file and prove a claim for the whole amount of principal (and premium, if any) and interest owing and unpaid in respect of any series of Notes and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders of such series allowed in such judicial proceeding, and

(ii) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or similar official in any such judicial proceeding is hereby authorized by each Holder with respect to any series of Notes of which it is a 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 applicable Holders, to pay the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 706.

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

SECTION 605. Trustee May Enforce Claims Without Possession of Notes.

All rights of action and claims under the Indenture or any series of Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name and as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of affected series of Notes in respect of which such judgment has been recovered.

SECTION 606. Application of Money Collected.

Any money or property collected by the Trustee pursuant to this Article Six shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest, upon presentation of the Notes and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 706;

SECOND: To the payment of the amounts then due and unpaid for principal of (and premium, if any, on,) and interest on the Notes of the series 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 Notes for principal (and premium, if any) and interest, respectively; and

THIRD: The balance, if any, to the Company.

SECTION 607. Limitation on Suits.

No Holder of any Notes of a series shall have any right to institute any proceeding, judicial or otherwise, with respect to the 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 principal amount of the Outstanding Notes of such series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default with respect to such series of Notes in its own name as Trustee hereunder;
- (3) such Holder or Holders have offered to the Trustee indemnity reasonably satisfactory to the Trustee 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 reasonably satisfactory 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 or more in principal amount of the Outstanding Notes of such series;

it being understood and intended that no one or more Holders of any series of Notes shall have any right in any manner whatever by virtue of, or by availing of, any provision of the Indenture to affect, disturb or prejudice the rights of any other Holders of the same series of Notes, or to obtain or to seek to obtain priority or preference over any other Holders of the same series of Notes, or to enforce any right under the Indenture, except in the manner herein provided and for the equal and ratable benefit of all the Holders of the same series of Notes.

SECTION 608. Unconditional Right of Holders to Receive Principal, Premium and Interest.

Notwithstanding any other provision in the Indenture, the Holder of any Note shall have the right, which is absolute and unconditional, to receive payment, as provided herein

(including, if applicable, Article Thirteen) and in such Note, of the principal of (and premium, if any, on) and (subject to Section 408) interest on, such Note on the respective Stated Maturities expressed in such Note (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

SECTION 609. Restoration of Rights and Remedies.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under the 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 610. Rights and Remedies Cumulative.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in Section 407(d), 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, subject to the provisions of Section 607, 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 611. Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder of any Note to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article Six or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

SECTION 612. Control by Holders.

The Holders of not less than a majority in principal amount of the Outstanding Notes of any series of Notes shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to such series of Notes; provided that

- (1) such direction shall not be in conflict with any rule of law or with the Indenture,
- (2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and
- (3) the Trustee need not take any action which might involve it in personal liability or be unjustly prejudicial to the Holders of such series of Notes not consenting.

SECTION 613. Waiver of Past Defaults.

The Holders of not less than a majority in principal amount of the Outstanding Notes of any series of Notes may on behalf of the Holders of all the Notes of such series waive with respect to such series of Notes only, any past Default or Event of Default hereunder and its consequences, except a Default or Event of Default:

- (1) in respect of the payment of the principal of (or premium, if any, on) or interest on any Note of such series, or
- (2) in respect of a covenant or provision of this Supplemental Indenture which under Article Ten cannot be modified or amended without the consent of the Holder of each Outstanding Note of such series affected.

Upon any such waiver, such Default or 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 the Indenture with respect to such series of Notes; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

SECTION 614. Waiver of Stay or Extension Laws.

Each of the Company and the Guarantors covenants (to the extent that it may lawfully do so) that it shall 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 the Indenture; and each of the Company and the Guarantors (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it shall not hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE SEVEN

THE TRUSTEE

SECTION 701. Notice of Defaults.

Within 90 days after the occurrence of any Default with respect to a series of Notes under the Indenture, the Trustee shall transmit in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act, notice of such Default hereunder known to the Trustee, to Holders of the affected series of Notes unless such Default shall have been cured or waived; provided, however, that, except in the case of a Default or Event of Default in the payment of the principal of (or premium, if any, on) or interest on any Note, the Trustee shall be protected in withholding such notice if and so long as the Board of Directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interest of the Holders of such series; and provided further that in the case of any Default or Event of Default of the character specified in Section 601(3), no such notice to Holders shall be given until at least 30 days after the occurrence thereof.

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 the Indenture, 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 such Person's own affairs.

SECTION 702. Certain Rights of Trustee.

Subject to the provisions of Sections 315(a) through 315(d) of the Trust Indenture Act:

(1) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, 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;

(2) 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;

(3) whenever in the administration of the 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;

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

(5) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by the Indenture at the request or direction of any of the Holders pursuant to the Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(6) 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 at all reasonable times to examine the books, records and premises of the Company personally or by agent or attorney;

(7) 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

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

The Trustee shall not be required 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.

SECTION 703. Trustee Not Responsible for Recitals or Issuance of Notes.

The recitals contained herein and in the Notes, except for 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 the Indenture or of the Notes, except that the Trustee represents that it is duly authorized to execute and deliver the Indenture, authenticate the Notes and perform its obligations hereunder and that the statements made by it in any Statement of Eligibility of Form T-1 supplied or to be supplied to the Company are or will be, as the case may be, true and accurate,

subject to the qualifications set forth therein. The Trustee shall not be accountable for the use or application by the Company of Notes or the proceeds thereof.

SECTION 704. Trustee May Hold Notes.

The Trustee, any Paying Agent, any Security Registrar or any other agent of the Company or of the Trustee, in its individual or any other capacity, may become the owner or pledgee of Notes and, subject to Sections 310(b) and 311 of the Trust Indenture Act, 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 705. Money Held in Trust.

Cash in U.S. dollars or U.S. Government Obligations 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 such cash or U.S. Government Obligations received by it hereunder except as otherwise agreed in writing with the Company.

SECTION 706. Compensation and Reimbursement.

The Company agrees:

- (1) to pay to the Trustee from time to time reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);
- (2) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of the 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 gross negligence or bad faith; and
- (3) to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without gross negligence or bad faith on its part, arising out of or in connection with the acceptance, administration or enforcement 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.

The obligations of the Company under this Section 706 to compensate the Trustee, to pay or reimburse the Trustee for expenses, disbursements and advances and to indemnify and hold harmless the Trustee shall constitute indebtedness and shall survive the satisfaction and discharge of the Indenture. As security for the performance of such obligations of the Company, the Trustee shall have a claim prior to the Notes upon all property and funds held or collected by the Trustee

as such, except funds held in trust for the payment of principal of (and premium, if any, on) or interest on particular Notes.

SECTION 707. Corporate Trustee Required; Eligibility.

There shall at all times be a Trustee hereunder which shall be eligible to act as Trustee under Section 310(a)(1) of the Trust Indenture Act and shall have a combined capital and surplus of at least \$100.0 million. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of federal, state, territorial or District of Columbia supervising or examining authority, then for the purposes of this Section 707, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 707, it shall resign immediately with respect to the Notes in the manner and with the effect hereinafter specified in this Article Seven.

SECTION 708. 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 Seven shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 709.

(b) The Trustee may resign at any time by giving at least 60 days prior written notice thereof to the Company addressed to the Company. If the instrument of acceptance by a successor Trustee required by Section 709 shall not have been delivered to the Trustee within 90 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 with respect to any series of Notes may be removed at any time by Act of the Holders of not less than a majority in principal amount of the Outstanding Notes of such series, delivered to the Trustee and to the Company addressed to the Company.

(d) If at any time:

(1) the Trustee shall fail to comply with the provisions of Section 310(b) of the Trust Indenture Act after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Note for at least six months, or

(2) the Trustee shall cease to be eligible under Section 707 and shall fail to resign after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Note for at least six months, 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 315(e) of the Trust Indenture Act, any Holder who has been a bona fide Holder of a Note for at least six months may, on behalf of itself 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 with respect to any such series of Notes, the Company shall promptly appoint a successor Trustee for the applicable series of Notes. 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 Notes of the applicable series of Notes 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 of the applicable series of Notes and supersede the successor Trustee appointed by the Company. If no successor Trustee shall have been so appointed by the Company or the Holders of the applicable series of Notes and accepted appointment in the manner hereinafter provided, any Holder who has been a bona fide Holder of a Note for at least six months may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Company shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee to the Holders of Notes of the applicable series of Notes in the manner provided for in Section 207. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

SECTION 709. 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; but, 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 for more fully and certainly vesting in and confirming 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 Seven.

SECTION 710. Merger, Conversion, Consolidation or Succession to Business.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article Seven, without the execution or filing of any paper or any further act on the part of any of the parties to this Supplemental Indenture. In case any Notes 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 Notes so authenticated with the same effect as if such successor Trustee had itself authenticated such Notes; and in case at that time any of the Notes shall not have been authenticated, any successor Trustee may authenticate such Notes either in the name of any predecessor hereunder or in the name of the successor Trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in the Indenture provided that the certificate of the Trustee shall have; provided, however, that the right to adopt the certificate of authentication of any predecessor Trustee or to authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

ARTICLE EIGHT

HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY

SECTION 801. Disclosure of Names and Addresses of Holders; Holders' List.

(a) Every Holder of Notes, by receiving and holding the same, agrees with the Company and the Trustee that none of the Company or the Trustee or any agent of either of them shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders in accordance with Section 312 of the Trust Indenture Act, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 312(b) of the Trust Indenture Act.

(b) The Registrar shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the Trustee is not the Registrar, the Company shall furnish to the Trustee, in writing no later than the record date for each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders.

SECTION 802. Reports by Trustee.

Within 60 days after May 15 of each year commencing with the first May 15 after the Issue Date, the Trustee shall transmit to the Holders, in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act, a brief report dated as of such May 15 if required by Section 313(a) of the Trust Indenture Act.

ARTICLE NINE

MERGER, CONSOLIDATION AND SALE OF ASSETS

SECTION 901. Company May Consolidate, etc., Only on Certain Terms.

(a) The Company will not, in a single transaction or series of related transactions, consolidate or merge with or into any Person, or sell, assign, transfer, lease, convey or otherwise dispose of (or cause or permit any Restricted Subsidiary of the Company to sell, assign, transfer, lease, convey or otherwise dispose of) all or substantially all of the Company's assets (determined on a consolidated basis for the Company and the Company's Restricted Subsidiaries) whether as an entirety or substantially as an entirety to any Person unless:

(1) either:

(a) the Company shall be the surviving or continuing corporation; or

(b) the Person (if other than the Company) formed by such consolidation or into which the Company is merged or the Person which acquires by sale, assignment, transfer, lease, conveyance or other disposition the properties and assets of the Company and of the Company's Restricted Subsidiaries substantially as an entirety (the "Surviving Entity");

(x) shall be a corporation organized and validly existing under the laws of the United States or any State thereof or the District of Columbia; and

(y) shall expressly assume, by supplemental indenture (in form and substance satisfactory to the Trustee), executed and delivered to the Trustee, the due and punctual payment of the principal of, and premium, if any, and interest on all of the Notes of each series and the performance of every covenant of the Notes and the Indenture on the part of the Company to be performed or observed;

(2) if such transaction or series of related transactions occurs other than during a Suspension Period, immediately after giving effect to such transaction and the assumption contemplated by clause (1)(b)(y) above (including giving effect to any Indebtedness

(including Acquired Indebtedness) incurred or anticipated to be incurred in connection with or in respect of such transaction), the Company or such Surviving Entity, as the case may be, shall either (x) be able to incur at least \$1.00 of additional Indebtedness (other than Permitted Indebtedness) pursuant to Section 1107(a) of this Supplemental Indenture or (y) shall have a Consolidated Fixed Charge Coverage Ratio immediately after such transaction or series of related transactions equal to or greater than the Company's Consolidated Fixed Charge Coverage Ratio immediately prior to such transaction or series of related transactions;

(3) immediately after giving effect to such transaction and the assumption contemplated by clause (1)(b)(y) above (including, without limitation, giving effect to any Indebtedness (including Acquired Indebtedness) incurred or anticipated to be incurred and any Lien granted in connection with or in respect of the transaction), no Default or Event of Default shall have occurred or be continuing; and

(4) the Company or the Surviving Entity shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, assignment, transfer, lease, conveyance or other disposition and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, comply with the applicable provisions of the Indenture and that all conditions precedent in the Indenture relating to such transaction have been satisfied.

(b) For purposes of the foregoing, the transfer (by lease, assignment, sale or otherwise, in a single transaction or series of transactions) of all or substantially all of the properties or assets of one or more Restricted Subsidiaries of the Company, the Capital Stock of which constitutes all or substantially all of the properties and assets of the Company, shall be deemed to be the transfer of all or substantially all the properties and assets of the Company.

(c) Notwithstanding the foregoing, the Company need not comply with clause (2) of paragraph (a) of this Section 901 in connection with (x) a sale assignment, transfer, conveyance or other disposition of assets between or among the Company and any of its Wholly Owned Restricted Subsidiaries or (y) any merger of the Company with or into any Wholly Owned Restricted Subsidiary or (z) a merger by the Company with an Affiliate incorporated or organized solely for the purpose of reincorporating or reorganizing the Company in another jurisdiction.

SECTION 902. Successor Substituted.

Upon any consolidation, merger, sale, assignment, conveyance, transfer, lease or other transaction described in, and complying with the provisions of, Section 901 in which the Company is not the continuing corporation, the Surviving Entity shall succeed to, and be substituted for, and may exercise every right and power of, the Company, as the case may be, under the Indenture and the Notes with the same effect as if such Surviving Entity had been named as

such, and the Company shall be discharged from all obligations and covenants under the Indenture and the Notes, provided that, in the case of a transfer by lease, the predecessor shall not be released from its obligations with respect to the payment of principal (premium, if any) and interest on the Notes.

ARTICLE TEN

SUPPLEMENTAL INDENTURES

SECTION 1001. Supplemental Indentures Without Consent of Holders.

Without the consent of any Holders, the Company and the Guarantors, 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 to this Supplemental Indenture, in form satisfactory to the Trustee, for any of the following purposes:

- (1) to evidence the succession of another Person to the Company and complying with Article Nine of this Supplemental Indenture; 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 add any additional Events of Default; or
- (4) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee pursuant to the requirements of Section 709; or
- (5) to cure any ambiguity, defect or inconsistency, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make clear any other provisions with respect to matters or questions arising under the Indenture; provided that such action shall not adversely affect the interests of the Holders in any material respect; or
- (6) to add Guarantors pursuant to Section 1113; or
- (7) to secure the Notes pursuant to the requirements of Section 1112 or otherwise; or
- (8) to comply with any requirements of the Commission in order to effect and maintain the qualification of the Indenture under the Trust Indenture Act.

SECTION 1002. Supplemental Indentures and Waivers With Consent of Holders.

With the consent of the Holders of not less than a majority in principal amount of the Outstanding Notes of a series of Notes, by Act of said Holders delivered to the Company and the Trustee, the Company and the Guarantors, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental to the Indenture for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of modifying in any manner the rights of the Holders of such series of Notes under the Indenture. However, no such supplemental indenture or waiver (including a waiver pursuant to Section 613) shall, without the consent of the Holder of each Outstanding Note of such series affected thereby,

- (1) reduce the amount of Notes of such series whose Holders must consent to an amendment;
- (2) reduce the rate of or change or have the effect of changing the time for payment of interest, including defaulted interest, on any such series of Notes;
- (3) reduce the principal of or change or have the effect of changing the fixed maturity of any Notes of such series, or change the date on which any Notes of such series may be subject to redemption or reduce the redemption price therefor;
- (4) make any Notes of such series payable in money other than that stated in the Notes;
- (5) make any change in provisions of the Indenture protecting the right of each Holder to receive payment of principal of and interest on Note of such series on or after the due date thereof or to bring suit to enforce such payment, or permitting Holders of a majority in principal amount of Notes of such series to waive Defaults or Events of Default;
- (6) after the Company's obligation to purchase Notes of such series arises hereunder, amend, change or modify in any material respect the obligation of the Company to make and consummate a Change of Control Offer in the event of a Change of Control or, after such Change of Control has occurred, modify any of the provisions or definitions with respect thereto; provided, that for purposes of this clause (6), a Change of Control shall not be deemed to have occurred upon the entering into or execution of any agreement or instrument notwithstanding that the consummation of the transactions contemplated by such agreement or instrument would result in a Change of Control as defined herein if such agreement or instrument expressly provides that it shall be a condition to closing thereunder that the Holders of the Notes of such series shall have waived the Change of Control on or prior to such closing unless and until such condition is waived by the parties to such agreement or instrument or the Change of Control has actually occurred;

(7) release of any Guarantor from its Guarantee except as provided in this Supplemental Indenture, or, with respect to Guarantees issued solely pursuant to Section 1113(b) of the Supplemental Indenture, as provided in a supplemental indenture pursuant to which such Guarantee has been issued; or

(8) modify or change any provision of the Indenture or the related definitions, in each case, affecting the ranking of the Notes of such series in a manner which adversely affects the Holders thereof.

It shall not be necessary for any Act of Holders under this Section 1002 to approve the particular form of any proposed supplemental indenture or waiver, but it shall be sufficient if such Act shall approve the substance thereof.

SECTION 1003. Execution of Supplemental Indentures.

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article Ten or the modifications thereby of the trusts created by the Indenture, the Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by the 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 the Indenture or otherwise.

SECTION 1004. Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture with respect to any series of Notes under this Article Ten, the Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of the Indenture for all purposes; and every Holder of Notes of such series theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

SECTION 1005. Conformity with Trust Indenture Act.

Every supplemental indenture executed pursuant to this Article Ten shall conform to the requirements of the Trust Indenture Act as then in effect.

SECTION 1006. Reference in Notes to Supplemental Indentures.

Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article Ten 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 Notes 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 Notes.

SECTION 1007. Notice of Supplemental Indentures.

Promptly after the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of Sections 1001 and 1002, the Company shall give notice thereof to the Holders of each Outstanding Note affected, in the manner provided for in Section 207, setting forth in general terms the substance of such supplemental indenture; provided, however, that the Company shall not be required to give notice of any indenture supplemental to this Supplemental Indenture entered into solely for the purpose specified in Section 1001(5) or (8), notice with respect to which shall be given by the Company when it is next required to give notice pursuant to this Section 1007.

SECTION 1008. Record Date.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to consent to any supplemental indenture, agreement or instrument or any waiver, and, if a record date is fixed, shall promptly notify the Trustee of any such record date. If a record date is fixed, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to consent to such supplemental indenture, agreement or instrument or waiver or to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective with respect to such supplemental indenture, agreement or instrument or waiver which is entered into more than 120 days after such record date.

ARTICLE ELEVEN

COVENANTS

SECTION 1101. Payment of Principal, Premium, if any, and Interest.

The Company shall pay the principal of (and premium, if any, on) and interest on each series of the Notes in accordance with the terms of the Notes of such series and the Indenture. Principal, premium, if any, interest shall be considered paid on the date due if on such date the Trustee or the relevant Paying Agent hold in accordance with the Indenture money sufficient to pay all principal, premium and interest then due and the Trustee or such Paying Agent, as the case may be, are not prohibited from paying such money to the Holders of such series of Notes on that date.

SECTION 1102. Maintenance of Office or Agency.

The Company shall maintain, in the Borough of Manhattan in the City of New York, State of New York, an office or agency where Notes may be presented or surrendered for payment, where Notes may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Notes and the Indenture may be served. The Corporate Trust Office of the Trustee shall be such office or agency of the Company,

unless the Company shall designate and maintain some other office or agency for one or more of such purposes. The Company shall give prompt written notice to the Trustee of any change in the location of any 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. Unless otherwise specified with respect to the Notes as contemplated by Section 401, the Company hereby designates as a place of payment for the Notes the office or agency of the Trustee, and initially appoints the Trustee as Paying 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 where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind any such designation. The Company shall give prompt written notice to the Trustee of any such designation or rescission and any change in the location of any such other office or agency but shall not be required to give notice of such designation, rescission or change to the Holders.

SECTION 1103. Money for Note Payments to Be Held in Trust.

(a) If the Company shall at any time act as its own Paying Agent, it shall, on or before each due date of the principal of (and premium, if any, on) or interest on any of the Notes, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal (and premium, if any) or interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and shall promptly notify the Trustee of its action or failure so to act. Whenever the Company shall have one or more Paying Agents for the Notes, it shall, on or before each due date of the principal of (and premium, if any, on), or interest on, any Notes, deposit with a Paying Agent a sum sufficient to pay the principal (and premium, if any) or interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest, and (unless such Paying Agent is the Trustee) the Company shall promptly notify the Trustee of such action or any failure so to act. The Company shall 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 1103, that such Paying Agent will:

(1) hold all sums held by it for the payment of the principal of (and premium, if any, on) or interest on Notes in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Trustee notice of any default by the Company (or any other obligor upon the Notes) in the making of any payment of principal (and premium, if any) or interest; and

(3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

SECTION 1104. Corporate Existence.

Subject to Article Nine of this Supplemental Indenture, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and its material rights (charter and statutory), licenses and franchises; provided that the Company shall not be required to preserve any such right, license or franchise if the Board of Directors of the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Restricted Subsidiaries, taken as a whole.

SECTION 1105. Statement by Officers as to Compliance.

The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year, an Officers' Certificate stating that in the course of the performance by the signer of its duties as an officer of the Company he would normally have knowledge of any Default or Event of Default and whether or not the signer knows of any Default or Event of Default that occurred during such period and if any specifying such Default or Event of Default, its status and what action the Company is taking or proposed to take with respect thereto. The Company shall provide an Officers' Certificate to the Trustee promptly upon any such officer obtaining knowledge of any Default or Event of Default that has occurred and, if applicable, describe such Default or Event of Default and the status thereof. For purposes of this Section 1105, such compliance shall be determined without regard to any period of grace or requirement of notice under the Indenture. The Company shall comply with Section 314(a)(4) of the Trust Indenture Act.

SECTION 1106. Purchase of Notes Upon a Change of Control.

(a) Upon the occurrence of a Change of Control, each Holder will have the right to require that the Company purchase all or a portion (equal to \$1,000 and integral multiples thereof) of such Holder's Notes pursuant to the offer described below (the "Change of Control Offer"), at a purchase price equal to 101% of the principal amount of the Notes repurchased plus accrued and unpaid interest to the date of purchase.

(b) Within 30 days following the date upon which the Change of Control occurred, the Company shall send, or cause the Trustee to send, by first class mail, a notice to each Holder, with a copy to the Trustee stating:

(i) that a Change of Control has occurred and that such Holder has the right to require the Company to purchase such Holder's Notes at a purchase price in cash equal to 101% of the principal amount thereof plus accrued and unpaid interest to the date of purchase;

(ii) the repurchase date (which shall be no earlier than 30 days nor later than 45 days from the date such notice is mailed, other than as required by law) (the “Change of Control Payment Date”);

(iii) the procedures determined by the Company, consistent with the Indenture, that a Holder must follow in order to have its Notes purchased;

(iv) that the Change of Control Offer is being made pursuant to this Section 1106 and that all Notes properly tendered into the Change of Control Offer and not withdrawn will be accepted for payment; and that the Change of Control Offer shall remain open for a period of 20 Business Days or such longer period as may be required by applicable law;

(v) the purchase price (including the amount of accrued interest, if any) for each Note and the date on which the Change of Control Offer expires;

(vi) that any Note not tendered for payment will continue to accrue interest in accordance with the terms thereof;

(vii) that, unless the Company shall default in the payment of the purchase price, any Note accepted for payment pursuant to the Change of Control Offer shall cease to accrue interest after the Change of Control Payment Date;

(viii) that Holders electing to have Notes purchased pursuant to a Change of Control Offer will be required to surrender their Notes to the Paying Agent at the address specified in the notice prior to 5:00 p.m., New York City time, on the third Business Day prior to the Change of Control Payment Date and must complete the form entitled “Option of Holder to Elect Purchase” on the reverse of the Note;

(ix) that Holders of Notes will be entitled to withdraw their election if the Paying Agent receives, not later than 5:00 p.m., New York City time, on the third Business Day prior to the Change of Control Payment Date, a facsimile transmission or letter setting forth the name of the Holders, the principal amount of Notes the Holders delivered for purchase, the Note certificate number (if any) and a statement that such Holder is withdrawing his election to have such Notes purchased;

(x) that Holders whose Notes are purchased only in part will be issued Notes of like tenor equal in principal amount to the unpurchased portion of the Notes surrendered; provided, however, that each Note purchased and each new Note issued shall be in denominations of \$1,000 or integral multiples thereof; and

(xi) a description of the circumstances and relevant facts regarding such Change of Control.

On the Change of Control Payment Date, the Company shall (i) accept for payment Notes or portions thereof in integral multiples of \$1,000 validly tendered and not withdrawn pursuant to the Change of Control Offer, (ii) deposit with the Paying Agent money, in immediately available funds, sufficient to pay the purchase price of all Notes or portions thereof validly tendered and accepted and (iii) deliver to the Trustee the Notes so accepted together with an Officers' Certificate setting forth the Notes or portions thereof tendered to and accepted for payment by the Company. The Paying Agent shall promptly mail or deliver to the Holders of Notes so accepted payment in an amount equal to the purchase price, and the Trustee shall promptly authenticate and mail or cause to be transferred by book-entry to such Holders a new Note of the same series of like tenor equal in principal amount to any unpurchased portion of the Note surrendered. Any Notes not so accepted shall be promptly mailed or delivered by the Company to the Holder thereof. Upon the payment of the purchase price for the Notes accepted for purchase, the Trustee shall cancel the Notes purchased by the Company. Any monies remaining after the purchase of all Notes validly tendered pursuant to a Change of Control Offer shall be returned within three (3) Business Days by the Paying Agent to the Company. The Company shall publicly announce the results of the Change of Control Offer as soon as practicable following the Change of Control Payment Date.

(c) The Company is not required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements of this Section 1106 applicable to a Change of Control Offer made by the Company and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

(d) The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the repurchase of Notes pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with this Section 1106 the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 1106 by virtue thereof.

SECTION 1107. Limitation on Incurrence of Additional Indebtedness.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume, guarantee, acquire, become liable, contingently or otherwise, with respect to, or otherwise become responsible for payment of (collectively, "incur") any Indebtedness (other than Permitted Indebtedness); provided, however, that the Company or any Finance SPE may incur Indebtedness (including, without limitation, Acquired Indebtedness), if on the date of the incurrence of such Indebtedness, after giving effect to the incurrence thereof, the Consolidated Fixed Charge Coverage Ratio of the Company is greater than 2.25 to 1.0.

(b) The Company will not, directly or indirectly, incur any Indebtedness which by its terms (or by the terms of any agreement governing such Indebtedness) is subordinated in right of payment to any other Indebtedness of the Company, unless such Indebtedness is also by its terms (or by the terms of any agreement governing such Indebtedness) made expressly subordinate to the Notes to the same extent and in the same manner as such Indebtedness is subordinated to other Indebtedness of the Company.

SECTION 1108. Limitation on Restricted Payments.

(a) The Company will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly:

(1) declare or pay any dividend or make any distribution (other than dividends or distributions payable in Qualified Capital Stock of the Company) on or in respect of shares of the Company's or any Restricted Subsidiary's Capital Stock to holders of such Capital Stock in their capacity as such, other than dividends, payments or distributions payable to the Company or any Restricted Subsidiary of the Company (and, if such Restricted Subsidiary is not a Wholly Owned Restricted Subsidiary, dividends or distributions payable to the other equity holders of such Restricted Subsidiary on a pro rata basis);

(2) purchase, redeem or otherwise acquire or retire for value any Capital Stock of the Company or any Restricted Subsidiary (other than (x) in exchange for Qualified Capital Stock of the Company or (y) Capital Stock of a Restricted Subsidiary held by the Company or another Restricted Subsidiary) or any warrants, rights or options to purchase or acquire shares of any class of such Capital Stock or make any payments with respect to Synthetic Purchase Agreements;

(3) make any principal payment on, purchase, defease, redeem, prepay, decrease or otherwise acquire or retire for value, prior to any scheduled final maturity, scheduled repayment or scheduled sinking fund payment, any Subordinated Indebtedness (other than the purchase, repurchase or other acquisition of Subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such purchase, repurchase or other acquisition); or

(4) make any Investment (other than Permitted Investments)

(each of the foregoing actions set forth in clauses (1), (2), (3) and (4) being referred to as a "Restricted Payment") (and for the avoidance of doubt, Permitted Investments shall not be Restricted Payments) if at the time of such Restricted Payment or immediately after giving effect thereto,

(i) a Default or an Event of Default shall have occurred and be continuing; or

(ii) the Company is not able to incur at least \$1.00 of additional Indebtedness (other than Permitted Indebtedness) in compliance with Section 1107(a); or

(iii) the aggregate amount of Restricted Payments (including such proposed Restricted Payment) made subsequent to December 31, 2001 (the amount expended for such purposes, if other than in cash, being the fair market value of such property as determined in good faith by the Company) shall exceed the sum, without duplication (the "Restricted Payments Basket"), of:

(u) 50% of the cumulative Consolidated Net Income (or if cumulative Consolidated Net Income shall be a loss, minus 100% of such loss) of the Company earned subsequent to December 31, 2001 and on or prior to the date the Restricted Payment occurs (the "Reference Date") (treating such period as a single accounting period); plus

(v) 100% of the aggregate Net Cash Proceeds received by the Company from any Person (other than a Subsidiary of the Company) from the issuance and sale subsequent to December 31, 2001 and on or prior to the Reference Date of Qualified Capital Stock of the Company or warrants, options or other rights to acquire Qualified Capital Stock of the Company (but excluding any debt security that is convertible into, or exchangeable for, Qualified Capital Stock); plus

(w) 100% of the aggregate Net Cash Proceeds of any equity contribution received by the Company from a holder of the Company's Capital Stock; plus

(x) 100% of the aggregate settlement value of Qualified Capital Stock issued by the Company in respect of the settlement of pending or threatened litigation; plus

(y) the amount by which Indebtedness of the Company (other than the Convertible Subordinated Debentures) is reduced on the Company's balance sheet upon the conversion or exchange (other than by a Subsidiary of the Company) subsequent to December 31, 2001 of such Indebtedness for Qualified Capital Stock of the Company (less the amount of any cash, or the fair value of any other property, distributed by the Company upon such conversion or exchange); plus

(z) without duplication, the sum of:

(1) the aggregate amount returned in cash on or with respect to Investments (other than Permitted Investments) made subsequent to December 31, 2001 whether through interest payments, principal payments, dividends or other distributions or payments;

(2) the Net Cash Proceeds received by the Company or any of its Restricted Subsidiaries from the disposition of all or any portion of such Investments (other than to a Subsidiary of the Company); and

(3) upon redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary, the fair market value of such Subsidiary;

provided, however, that the sum of clauses (1), (2) and (3) above shall not exceed the aggregate amount of all such Investments made subsequent to December 31, 2001.

(b) Notwithstanding the foregoing, the provisions set forth in the preceding paragraphs do not prohibit:

(1) the payment of any dividend within 60 days after the date of declaration of such dividend if the dividend would have been permitted on the date of declaration;

(2) the acquisition of any shares of Capital Stock of the Company or any warrants, rights or options to purchase or acquire shares of any class of such Capital Stock, either (i) solely in exchange for shares of Qualified Capital Stock of the Company or any warrants, rights or options to purchase or acquire shares of any class of Qualified Capital Stock of the Company or (ii) through the application of net proceeds of a substantially concurrent sale for cash (other than to a Subsidiary of the Company) of shares of Qualified Capital Stock of the Company;

(3) the repurchase, redemption or other repayment of any Subordinated Indebtedness or Preferred Stock permitted to be issued pursuant to clause (2) of the definition of "Permitted Indebtedness" either (i) solely in exchange for shares of Qualified Capital Stock of the Company or any warrants, rights or options to purchase or acquire shares of any class of Qualified Capital Stock of the Company or other Subordinated Indebtedness of the Company that is Refinancing Indebtedness or (ii) through the application of net proceeds of a substantially concurrent sale for cash (other than to a Subsidiary of the Company) of (a) shares of Qualified Capital Stock of the Company or (b) other Subordinated Indebtedness of the Company that is Refinancing Indebtedness;

(4) (x) the repurchase or other acquisition of shares of Qualified Capital Stock of the Company or any warrants, rights or options to purchase or acquire shares of any such Qualified Capital Stock, from employees, former employees, directors or former directors of the Company or any of its Subsidiaries (or permitted transferees of such employees, former employees, directors or former directors), pursuant to the terms of the agreements (including employment agreements) or plans (or amendments thereto) approved by the Board of Directors under which such individuals purchase or sell, or are granted the option to purchase or sell, shares of such Qualified Capital Stock or (y) the redemption or repayment of any outstanding de minimis Subordinated Indebtedness; provided that the aggregate amount paid under clauses (x) and (y) combined does not exceed \$25.0 million since January 17, 2002;

(5) the declaration and payment of dividends or distributions by the Company or any of its Restricted Subsidiaries on Preferred Stock so long as (a) no Event of Default has occurred and is continuing, (b) such Preferred Stock is otherwise permitted to be issued under this Supplemental Indenture and (c) such dividends or distributions are included in Consolidated Fixed Charges;

(6) the redemption of Preferred Stock of the Company or any Restricted Subsidiary (other than the Convertible Trust Preferred Securities) outstanding as of the Issue Date at any final scheduled or other mandatory redemption date thereof as in effect on the Issue Date;

(7) any repurchase of the Convertible Trust Preferred Securities upon the exercise by the holders thereof of any right to require such Restricted Subsidiary to purchase such securities through the application of the net proceeds of a substantially concurrent sale for cash (other than to a Subsidiary of the Company) of an issuance of, or solely in exchange for, either (x) junior subordinated debentures of the Company that are subordinated to the Notes pursuant to a written agreement that is, taken as a whole, no less restrictive to the holders of such junior subordinated debentures than the subordination terms of the junior subordinated debentures into which such Convertible Trust Preferred Securities are exchangeable and have a maturity (including pursuant to any sinking fund obligation, mandatory redemption or right of repurchase at the option of the holder or otherwise) no earlier than the final maturity of the Notes and that have the benefit of covenants that are, taken as a whole, no more restrictive than the covenants in this Supplemental Indenture or (y) Qualified Capital Stock of the Company or any warrants, rights or options to purchase or acquire shares of any class of Qualified Capital Stock of the Company;

(8) the redemption of the Company's Series B Convertible Preferred Stock as and when required by the terms of the Xerox Corporation Employee Stock Ownership Plan, 2000 Restatement dated March 17, 2000, as amended, provided that the aggregate amount paid pursuant to this clause (8) since the Issue Date does not exceed \$50.0 million;

(9) upon the occurrence of a Change of Control and after the completion of the offer to repurchase the Notes as described under "Change of Control" above (including the purchase of all Notes tendered), any purchase, defeasance, retirement, redemption or other acquisition of Subordinated Indebtedness required under the terms of such Subordinated Indebtedness as a result of such Change of Control;

(10) payments to holders of Capital Stock (or to the holders of Indebtedness or Disqualified Capital Stock that is convertible into or exchangeable for Capital Stock upon such conversion or exchange) in lieu of the issuance of fractional shares;

(11) the payment of consideration by a Person other than the Company or a Subsidiary to equity holders of the Company;

(12) the transactions with any Person (including any Affiliate of the Company) described in Section 1111(c)(1) and the funding of any obligations in connection therewith;

(13) (a) the repurchase or redemption by any Restricted Subsidiary of its own Capital Stock or the purchase by the Company of the Capital Stock of any Restricted Subsidiary in order to acquire all or a portion of the minority interest in such Restricted Subsidiary and (b) Investments in a Restricted Subsidiary that is not a Wholly Owned Restricted Subsidiary, in order to (i) maintain the Company's present direct or indirect ownership percentage in such Restricted Subsidiary in the event of a mandatory capital call or (ii) acquire all or a portion of the minority interest in such Restricted Subsidiary; provided that the amount of all Restricted Payments made pursuant to this clause (13) in Restricted Subsidiaries that have not at any time become 100% directly or indirectly owned by the Company does not exceed \$75.0 million in the aggregate since the Issue Date;

(14) mandatory prepayments of Subordinated Indebtedness;

(15) payments in respect of Subordinated Indebtedness the payment of which has been accelerated, in an amount taken together with all other payments made pursuant to this clause (15) since the Issue Date not to exceed \$75.0 million; and

(16) other Restricted Payments in an aggregate amount which, when taken together with all other Restricted Payments pursuant to this clause (16), does not exceed \$35.0 million.

(c) In determining the aggregate amount of Restricted Payments made subsequent to January 1, 2002 in accordance with clause (iii) of the second preceding paragraph, amounts expended pursuant to clauses (1), (4), (13), (14) and (15) of the immediately preceding paragraph shall be included in such calculation. No issuance and sale of Qualified Capital Stock pursuant to clause (2) or (3) of the immediately preceding paragraph shall increase the Restricted Payments Basket, except to the extent the proceeds thereof exceed the amounts used to effect the transactions described therein.

SECTION 1109. Limitation on Asset Sales.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

(1) the Company or the applicable Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the fair market value of the assets sold or otherwise disposed of (as determined in good faith by the Company or such Restricted Subsidiary);

(2) at least 75% of the consideration received by the Company or the Restricted Subsidiary, as the case may be, from such Asset Sale shall be in the form of cash or Cash Equivalents (provided that the amount of any Pari Passu Indebtedness or other unsubordinated liability of the Company or any Indebtedness or other liability of a Restricted Subsidiary that is assumed by the transferee of any such assets shall be deemed to be cash for the purposes of this clause (2)); and

(3) upon the consummation of an Asset Sale, the Company shall apply, or cause such Restricted Subsidiary to apply, the Net Cash Proceeds relating to such Asset Sale within 365 days of receipt thereof:

(A) (i) to repurchase or otherwise acquire any Pari Passu Indebtedness pursuant to any exercise by the holders thereof of the right to require the issuer thereof to repurchase or acquire such Pari Passu Indebtedness prior to its scheduled maturity or scheduled repayment, (ii) to prepay, repay, repurchase, redeem, defease or otherwise acquire or retire for value, on or prior to any scheduled maturity, repayment or amortization that portion of Pari Passu Indebtedness of the Company to the extent that such Pari Passu Indebtedness has a stated maturity, scheduled repayment or amortization that has or will become due prior to the final stated maturity of the Notes, (iii) any Pari Passu Indebtedness under the Credit Agreement (other than Capital Markets Debt) or (iv) any Indebtedness of a Restricted Subsidiary; provided that, in each case under this clause (A), if such Pari Passu Indebtedness was borrowed under the revolving portion of any credit facility, then a permanent reduction in the availability under the revolving portion of such credit facility will be effected;

(B) to make an Investment in or expenditures for properties and assets that replace the properties and assets that were the subject of such Asset Sale or in properties and assets (including Capital Stock of any entity) that will be used in the business of the Company and its Subsidiaries or in businesses reasonably related thereto ("Replacement Assets") or to fund the cash portion of the Business Effectiveness Actions; and/or

(C) a combination of prepayment and Investment permitted by the foregoing clauses (3)(A) and (3)(B);

provided that, notwithstanding the preceding provisions of this clause (3), if the Company or any Restricted Subsidiary:

(i) enters into any letter of intent, memorandum of understanding, agreement or other instrument (each, an “Asset Sale Agreement”) after the Issue Date that contemplates one or more Asset Sales by the Company or such Restricted Subsidiary; and

(ii) after the date of such Asset Sale Agreement and within 365 days immediately prior to the consummation of the Asset Sale(s) pursuant thereto, has applied any cash or Cash Equivalents (other than Net Cash Proceeds from any other Asset Sale) (“Applied Cash”) in any manner permitted by subclause 3(A), 3(B) or 3(C) above,

then the amount of Net Cash Proceeds relating to such Asset Sale(s) up to the amount of Applied Cash shall be deemed to have been applied by the Company or such Restricted Subsidiary in accordance with the provisions of this clause (3).

(b) Pending the application of any Net Cash Proceeds required by this Section 1109, the Company or such Restricted Subsidiary may temporarily reduce any short-term loans or any Indebtedness under the revolving portion of any credit facility, including, without limitation, under the Credit Agreement, and such temporary reductions shall not result in any permanent reduction in the availability under the revolving portion of such credit facility.

(c) On the 366th day after an Asset Sale or such earlier date, if any, as the Board of Directors of the Company or of such Restricted Subsidiary determines not to apply the Net Cash Proceeds relating to such Asset Sale as set forth in subclauses (3)(A), (3)(B) and (3)(C) of paragraph (a) (each, a “Net Proceeds Offer Trigger Date”), such aggregate amount of Net Cash Proceeds which have not been applied on or before such Net Proceeds Offer Trigger Date as permitted in subclauses (3)(A), (3)(B) and (3)(C) of paragraph (a) above or deemed to have been applied pursuant to the proviso to clause (a)(3) above (each a “Net Proceeds Offer Amount”) shall be applied by the Company or such Restricted Subsidiary to make an offer to purchase (the “Net Proceeds Offer”) to all Holders (and holders of other Pari Passu Indebtedness of the Company to the extent required by the terms thereof) of Notes of each series on a date (the “Net Proceeds Offer Payment Date”) not less than 30 nor more than 60 days following the applicable Net Proceeds Offer Trigger Date, from all Holders (and holders of other Pari Passu Indebtedness of the Company to the extent required by the terms thereof) on a pro rata basis, that amount of Notes (and other Pari Passu Indebtedness) equal to the Net Proceeds Offer Amount at a price equal to 100% of the principal amount thereof, plus accrued and unpaid interest thereon, if any, to the date of purchase; provided, however, that if at any time any non-cash consideration received by the Company or any Restricted Subsidiary of the Company, as the case may be, in connection with any Asset Sale is converted into or sold or otherwise disposed of for cash (other than interest received with respect to any such non-cash consideration), then such conversion or disposition shall be deemed to constitute an Asset Sale hereunder and the Net Cash Proceeds thereof shall be applied in accordance with this Section 1109.

(d) The Company may defer the Net Proceeds Offer until there is an aggregate unutilized Net Proceeds Offer Amount equal to or in excess of \$75.0 million resulting from one or more Asset Sales (at which time, the entire unutilized Net Proceeds Offer Amount, and not just the amount in excess of \$75.0 million, shall be applied as required pursuant to this paragraph).

(e) Notwithstanding paragraphs (a), (b) and (c) of this Section 1109, the Company and its Restricted Subsidiaries will be permitted to consummate an Asset Sale without complying with such paragraphs to the extent that:

(1) at least 75% of the consideration for such Asset Sale constitutes Replacement Assets; and

(2) such Asset Sale is for fair market value; provided that any cash or Cash Equivalents received by the Company or any of its Restricted Subsidiaries in connection with any Asset Sale permitted to be consummated under this paragraph shall constitute Net Cash Proceeds subject to the provisions of paragraphs (a), (b) and (c) of this Section 1109.

(f) Each Net Proceeds Offer will be mailed to the record Holders as shown on all registers of Holders within 45 days following the Net Proceeds Offer Trigger Date, with a copy to the Trustee and the Paying Agent. The Net Proceeds Offer shall remain open from the time of mailing for at least 20 Business Days or such longer period as may be required by applicable law and until 5:00 p.m., New York City time, on the last day of the period (the "Net Proceeds Offer Payment Date"). The notice, which shall govern the terms of the Net Proceeds Offer, shall include such disclosures as are required by law and shall state:

(i) that the Net Proceeds Offer is being made pursuant to this Section 1109 and that all Notes in integral multiples of \$1,000 validly tendered into the Net Proceeds Offer shall be accepted for payment; provided, however, that if the aggregate principal amount of Notes and other Pari Passu Indebtedness properly tendered in the Net Proceeds Offer exceeds the Net Proceeds Offer Amount, the Company shall select the Notes and other Pari Passu Indebtedness will be purchased on a pro rata basis (subject to Section 402) based upon the amount of such Notes and other Pari Passu Indebtedness tendered; and that the Net Proceeds Offer shall remain open for a period of 20 Business Days or such longer period as may be required by law;

(ii) the purchase price (including the amount of accrued interest and, if any) for each Note, the Net Proceeds Offer Payment Date and the date on which the Net Proceeds Offer expires;

(iii) that any Note not tendered for payment shall continue to accrue interest in accordance with the terms thereof;

(iv) that, unless the Company shall default in the payment of the purchase price, any Note accepted for payment pursuant to the Net Proceeds Offer shall cease to accrue interest after the Net Proceeds Offer Payment Date;

(v) that Holders electing to have Notes purchased pursuant to a Net Proceeds Offer shall be required to surrender their Notes to the Paying Agent at the address specified in the notice prior to 5:00 p.m., New York City time, on three (3) Business Days prior to the Net Proceeds Offer Payment Date and must complete any form letter of transmittal proposed by the Company and acceptable to the Trustee and the Paying Agent;

(vi) that any Holder of Notes shall be entitled to withdraw its election if the Paying Agent receives, not later than 5:00 p.m., New York City time, on three (3) Business Days prior to the Net Proceeds Offer Payment Date, a facsimile transmission or letter setting forth the name of such Holder, the principal amount of Notes the Holder delivered for purchase, the Note certificate number (if any) and a statement that such Holder is withdrawing its election to have such Notes purchased;

(vii) that Holders whose Notes are purchased only in part shall be issued Notes of like tenor equal in principal amount to the unpurchased portion of the Notes surrendered;

(viii) the instructions that Holders must follow in order to tender their Notes; and

(ix) a description of the circumstances and relevant facts regarding such Asset Sale and Net Proceeds Offer.

On the Net Proceeds Offer Payment Date, the Company shall (i) accept for payment (subject to pro ration as described in under Section 1109(c)) Notes or portions thereof in integral multiples of \$1,000 validly tendered pursuant to the Net Proceeds Offer, (ii) deposit with the Paying Agent money, in immediately available funds, sufficient to pay the purchase price of all Notes or portions thereof so tendered and accepted and (iii) deliver to the Trustee the Notes so accepted together with an Officers' Certificate setting forth the Notes or portions thereof tendered to and accepted for payment by the Company. The Paying Agent shall promptly mail or deliver to the Holders of Notes so accepted payment in an amount equal to the purchase price, and the Trustee shall promptly authenticate and mail or deliver to such Holders a new Note of the same series of like tenor equal in principal amount to any unpurchased portion of the Note surrendered. Any Notes not so accepted shall be promptly mailed or delivered by the Company to the Holder thereof. Upon the payment of the purchase price for the Notes accepted for purchase, the Trustee shall cancel and return the Notes purchased to the Company. Any monies remaining after the purchase of all Notes validly tendered pursuant to a Net Proceeds Offer shall be

returned within three Business Days by the Paying Agent to the Company. The Company shall publicly announce the results of the Net Proceeds Offer as soon as practicable following the Net Proceeds Offer Payment Date.

(g) After consummation of any Net Proceeds Offer, any Net Proceeds Offer Amount not applied to any such purchase may be used by the Company for any purpose permitted by the other provisions of the Indenture.

(h) The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the repurchase of Notes pursuant to a Net Proceeds Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 1109, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under the provisions of this Section 1109 by virtue thereof.

SECTION 1110. Limitation on Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries.

The Company will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or permit to exist or become effective any consensual, encumbrance or restriction on the ability of any Restricted Subsidiary of the Company to:

- (1) pay dividends or make any other distributions on or in respect of its Capital Stock to the Company or any Restricted Subsidiary;
- (2) make loans or advances or to pay any Indebtedness or other obligation owed to the Company or any other Restricted Subsidiary of the Company;

or

- (3) transfer any of its property or assets to the Company or any other Restricted Subsidiary of the Company,

except for such encumbrances or restrictions existing under or by reason of:

- (a) applicable law, rules, regulations and/or orders;
- (b) the Indenture (including, without limitation, any Liens permitted by the Indenture);
- (c) customary non-assignment provisions of any contract, or any lease or license governing a leasehold interest, of any Restricted Subsidiary of the Company;

(d) any agreement or instrument governing Acquired Indebtedness, which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person or the properties or assets of the Person so acquired or any Subsidiary of such Person;

(e) agreements or instruments existing on the Issue Date to the extent and in the manner such agreements are in effect on the Issue Date and any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings thereof; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are no more restrictive (as determined in the good faith judgment of the Company) in any material respect, taken as a whole, with respect to such dividend and other payment restrictions than those contained in such agreements or instruments as in effect on the Issue Date;

(f) the Credit Agreement;

(g) Purchase Money Indebtedness incurred in compliance with Section 1107 of this Supplemental Indenture that impose restrictions of the nature described in clause (3) of this Section 1110 on the property acquired;

(h) any agreement relating to Indebtedness of a Restricted Subsidiary permitted to be incurred under Section 1107 of this Supplemental Indenture;

(i) restrictions on cash or other deposits or net worth imposed under contracts entered into in the ordinary course of business;

(j) any encumbrance or restriction existing under or by reason of contractual requirements in connection with the Third-Party Vendor Financing Program or any Qualified Receivables Transaction;

(k) pursuant to any merger agreements, stock purchase agreements, asset sale agreements and similar agreements limiting the transfer of properties and assets or distributions pending consummation of the subject transaction;

(l) in the case of clause (3) of this Section 1110, any encumbrance or restriction (a) that restricts in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease, license, or similar contract, (b) by virtue of any transfer of, agreement to transfer, option or right with respect to, or Lien on, any property or assets of the Company or any Restricted Subsidiary not otherwise prohibited by the Indenture, or (c) contained in security agreements securing Indebtedness of any Restricted Subsidiary to the extent permitted by the Indenture and such encumbrance or restrictions restrict the transfer of the property subject to such security agreements;

(m) an agreement governing Indebtedness incurred to Refinance the Indebtedness issued, assumed or incurred pursuant to an agreement referred to in clause (b), (d), (e), (g), (h) or (j) above; provided, however, that the provisions relating to such encumbrance or restriction contained in any such Indebtedness are no more restrictive in any material respect than the provisions relating to such encumbrance or restriction contained in agreements referred to in such clause (b), (d), (e), (g), (h) or (j) as determined by the Company; and

(n) agreements or instruments, including, without limitation, joint venture agreements entered into to facilitate the Business Effectiveness Actions or in connection with Permitted Joint Venture Investments.

SECTION 1111. Limitations on Transactions with Affiliates.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction or series of related transactions (including, without limitation, the purchase, sale, lease or exchange of any property or the rendering of any service) with any of its Affiliates (each an "Affiliate Transaction"), other than (x) Affiliate Transactions permitted under paragraph (c) of this Section 1111 and (y) Affiliate Transactions on terms that are no less favorable in any material respect than those that might reasonably have been obtained, in the good faith judgment of the Board of Directors of the Company or the Restricted Subsidiary, as the case may be, in a comparable transaction at such time on an arm's-length basis from a Person that is not an Affiliate of the Company or such Restricted Subsidiary.

(b) Each Affiliate Transaction (and each series of related Affiliate Transactions which are similar or part of a common plan) involving aggregate payments or other property with a fair market value in excess of \$20.0 million shall be approved by the Board of Directors of the Company or such Restricted Subsidiary, as the case may be, such approval to be evidenced by a Board Resolution stating that such Board of Directors has determined that such transaction complies with the foregoing provisions.

(c) The foregoing paragraphs shall not apply to:

(1) any employment agreement, collective bargaining agreement, employee benefit plan, related trust agreement or any similar arrangement, payment of compensation and fees to, and indemnity provided on behalf of, any present or former employees, officers, directors or consultants, maintenance of benefit programs or arrangements for any present or former employees, officers or directors, including vacation plans, health and life insurance plans, deferred compensation plans, and retirement or savings plan and similar plans, and loans and advances to any present or former employees, officers, directors, consultants and shareholders, in each case entered into by the Company or any of its

Restricted Subsidiaries in the ordinary course of business or approved by the Board of Directors of the Company or such Restricted Subsidiary, as the case may be;

(2) transactions exclusively between or among the Company and any of its Restricted Subsidiaries or any joint venture in which the Company has a Permitted Joint Venture Investment or exclusively between or among such Restricted Subsidiaries; provided such transactions are not otherwise prohibited by the Indenture;

(3) any agreement, instrument or arrangement as in effect as of the Issue Date or any amendment thereto or any transaction contemplated thereby (including pursuant to any amendment thereto) in any replacement agreement thereto so long as any such amendment or replacement agreement is not more disadvantageous to the Holders in any material respect than the original agreement as in effect on the Issue Date as determined by the Company;

(4) Permitted Investments and Restricted Payments permitted by the Indenture;

(5) the issuance or sale of any Capital Stock (other than Disqualified Capital Stock) of the Company; and

(6) Permitted Joint Venture Investments and any other transactions contemplated by or to facilitate the Business Effectiveness Actions.

SECTION 1112. Limitation on Liens.

(a) The Company will not create or suffer to exist, or permit any of its Specified Subsidiaries to create or suffer to exist, any Lien, or any other type of preferential arrangement, upon or with respect to any of its properties (other than "margin stock" as that term is defined in Regulation U issued by the Board of Governors of the Federal Reserve System), whether now owned or hereafter acquired, or assign, or permit any of its Specified Subsidiaries to assign, any right to receive income, in each case to secure any Indebtedness (other than Indebtedness described in clauses (5) and (8) of the definition of "Indebtedness" herein) without making effective provision whereby all of the Notes (together with, if the Company shall so determine, any other Indebtedness of the Company or such Specified Subsidiary then existing or thereafter created which is not subordinate to the Notes) shall be equally and ratably secured with the Indebtedness secured by such security (provided that any Lien created for the benefit of the Holders of the Notes pursuant to this sentence shall provide by its terms that such Lien shall be automatically and unconditionally released and discharged upon the release and discharge of the Lien that resulted in such provision becoming applicable, unless a Default or Event of Default shall then be continuing); provided, however, that the Company or its Specified Subsidiaries may create or suffer to exist any Lien or preferential arrangement of any kind in, of or upon any of the properties or assets of the Company or its Specified Subsidiaries to secure Indebtedness if upon creation of such Lien or arrangement and after giving effect thereto, the aggregate principal amount

of Indebtedness secured by Liens would not exceed the greater of (i) \$2.0 billion and (ii) 20% of the Consolidated Net Worth of the Company; and provided, further, that the foregoing restrictions or limitations shall not apply to any of the following:

(1) deposits, Liens or pledges arising in the ordinary course of business to enable the Company or any of its Specified Subsidiaries to exercise any privilege or license or to secure payments of workers' compensation or unemployment insurance, or to secure the performance of bids, tenders, leases, contracts (other than for the payment of borrowed money) or statutory landlords' Liens or to secure public or statutory obligations or surety, stay or appeal bonds, or other similar deposits or pledges made in the ordinary course of business;

(2) Liens imposed by law or other similar Liens, if arising in the ordinary course of business, such as mechanic's, materialman's, workman's, repairman's or carrier's liens, or deposits or pledges in the ordinary course of business to obtain the release of such Liens;

(3) Liens arising out of judgments or awards against the Company or any of its Specified Subsidiaries in an aggregate amount not to exceed at any time outstanding under this clause (3) the greater of (a) 15% of the Consolidated Net Worth of the Company or (b) the minimum amount which, if subtracted from such Consolidated Net Worth, would reduce such Consolidated Net Worth below \$3.2 billion and, in each case, with respect to which the Company or such Specified Subsidiary shall in good faith be prosecuting an appeal or proceedings for review, or Liens for the purpose of obtaining a stay or discharge in the course of any legal proceedings;

(4) Liens for taxes if such taxes are not delinquent or thereafter can be paid without penalty, or are being contested in good faith by appropriate proceedings, or minor survey exceptions or minor encumbrances, easements or restrictions which do not in the aggregate materially detract from the value of the property so encumbered or restricted or materially impair their use in the operation of the business of the Company or any Specified Subsidiary owning such property;

(5) Liens in favor of any government or department or agency thereof or in favor of a prime contractor under a government contract and resulting from the acceptance of progress or partial payments under government contracts or subcontracts thereunder;

(6) Liens existing on December 1, 1991;

(7) purchase money Liens or security interests in property acquired or held by the Company or any Specified Subsidiary in the ordinary course of business to secure the purchase price thereof or Indebtedness incurred to finance the acquisition thereof;

(8) Liens existing on property at the time of its acquisition;

(9) the rights of Xerox Credit Corporation relating to a certain reserve account established pursuant to an operating agreement dated as of November 1, 1980, between the Company and Xerox Credit Corporation;

(10) the replacement, extension or renewal of any of the foregoing;

(11) Liens on any assets of any Specified Subsidiary of up to \$500.0 million incurred since December 1, 1991 in connection with the sale or assignment of assets of such Specified Subsidiary for cash where the proceeds are applied to repayment of Indebtedness of such Specified Subsidiary and/or invested by such Specified Subsidiary in assets which would be reflected as receivables on the balance sheet of such Specified Subsidiary.

(b) In addition, if after January 17, 2002 any Capital Markets Debt of the Company or any Restricted Subsidiary becomes secured by a Lien pursuant to any provision similar to the covenant in the immediately preceding paragraph, then, for so long as such Capital Markets Debt of the Company is secured by such Lien (provided that any Lien created for the benefit of the Holders of the Notes pursuant to this sentence shall be automatically and unconditionally released and discharged upon the release and discharge of the Lien that resulted in the imposition of the Lien hereunder):

(A) in the case of a Lien securing Subordinated Indebtedness, the Notes shall be secured by a Lien on the same property as such Lien that is senior in priority to such Lien; and

(B) in all other cases, the Notes shall be equally and ratably secured by a Lien on the same property as such Lien.

SECTION 1113. Subsidiary Guarantees.

(a) If on or after January 17, 2002:

(1) any other Capital Market Debt of the Company is or becomes guaranteed by any Restricted Subsidiary of the Company; or

(2) any one or more Wholly Owned Domestic Restricted Subsidiaries (singly or in the aggregate) would at the end of any fiscal quarter constitute a Significant Subsidiary (which term for the purposes of this Section 1113 shall be limited to any Person that satisfies only the asset criteria set forth in clauses (1) and (2) of paragraph (w) of Rule 1.02 of Regulation S-X under the Exchange Act) (other than (i) Xerox Financial Services, Inc. and each of its Subsidiaries (other than Xerox Credit Corporation) for so long as its respective business is conducted

in a manner similar to that on January 17, 2002, (ii) Xerox Credit Corporation or any other Restricted Subsidiary of the Company, in each case so long as it is primarily a special purpose financing vehicle of the Company or its Restricted Subsidiaries (a “Financing Subsidiary.”) or any holding company whose principal asset is Capital Stock of a Financing Subsidiary or (iii) any Domestic Restricted Subsidiary so long as its primary asset is Capital Stock of one or more Foreign Subsidiaries and/or its primary asset is Indebtedness of one or more Foreign Subsidiaries or any combination of the foregoing),

then, if such Restricted Subsidiary is not already a Guarantor, the Company shall cause, in the case of (1), such Restricted Subsidiary that is guaranteeing Company Capital Markets Debt, and, in the case of (2), such Domestic Restricted Subsidiary(ies), to execute and deliver to the Trustee a supplemental indenture in form reasonably satisfactory to the Trustee pursuant to which such Person shall fully and unconditionally guarantee all of the Company’s obligations under the Notes and the Indenture, including the prompt payment in full when due of the principal of, premium on, if any, interest and, without duplication, Defaulted Interest, if any, on the Notes and all other amounts payable by the Company thereunder and hereunder, subject to any applicable grace period, whether at maturity, by acceleration or otherwise, and interest on any overdue principal and any overdue interest on the Notes and all other obligations of the Company to the Holders or the Trustee hereunder or under the Notes on the terms set forth in Article 14.

(b) Notwithstanding the foregoing, the Company shall have the right to cause any Restricted Subsidiary to execute a Guarantee in respect of the Company’s obligations under the Notes, provided that such Restricted Subsidiary shall execute and deliver to the Trustee a supplemental indenture in a form reasonably satisfactory to the Trustee in respect of such Guarantee.

SECTION 1114. Reports to Holders.

Whether or not required by the rules and regulations of the Commission, so long as any Notes are outstanding, the Company will file a copy of the following information and reports with the Commission for public availability within the time periods specified in the Commission’s rules and regulations (unless the Commission will not accept such a filing, in which case the Company shall furnish such information and reports to Holders):

(1) all quarterly and annual financial information that would be required to be contained in a filing with the Commission on Forms 10-Q and 10-K if the Company were required to file such Forms, including a “Management’s Discussion and Analysis of Financial Condition and Results of Operations” that describes the financial condition and results of operations of the Company and its consolidated Subsidiaries and, with respect to the annual information only, a report thereon by the Company’s certified independent accounts; and

(2) all current reports that would be required to be filed with the Commission on Form 8-K if the Company were required to file such reports; in each case within the time periods specified in the Commission's rules and regulations.

SECTION 1115. Suspension Period.

For purposes of this Article Eleven, during a Suspension Period with respect to a series of Notes, the Suspended Covenants will not apply with respect to such series of Notes. The remaining provisions and covenants of this Article Eleven will continue to apply at all times so long as any Notes remain Outstanding.

“Suspension Period” means with respect to a series of Notes any period (a) beginning on the date that:

(1) the applicable series of Notes has Investment Grade Status, provided that prior to the assignment of the ratings contemplated by the definition of Investment Grade Status, the Company has advised Moody's and S&P that the Suspended Covenants will not apply during such Suspension Period;

(2) no Default or Event of Default has occurred and is continuing; and

(3) the Company has delivered an Officers' Certificate to the Trustee certifying that the conditions set forth in clauses (1) and (2) above are satisfied;

and (b) ending on the date (the “Reversion Date”) that the applicable series of Notes ceases to have the applicable ratings from both Moody's and S&P specified in the definition of “Investment Grade Status.”

On each Reversion Date, all Indebtedness incurred during the Suspension Period prior to such Reversion Date will be deemed to have been outstanding on the Issue Date and classified as permitted under clause (4) of the definition of “Permitted Indebtedness.”

For purposes of calculating the amount available to be made as Restricted Payments under clause (iii) of paragraph (a) of Section 1108, calculations under that clause will be made with reference to December 31, 2001 as set forth in that clause. Accordingly, (x) Restricted Payments made during the Suspension Period not otherwise permitted pursuant to any of clauses (1) through (15) under paragraph (b) of Section 1108 will reduce the amount available to be made as Restricted Payments under clause (iii) of paragraph (a) such Section; provided, that such reduction by itself shall not cause the amount available to be made as Restricted Payments under clause (iii) of paragraph (a) of such Section on the Reversion Date to be reduced to below an amount equal to \$75.0 million per calendar year; provided further that such amount shall be prorated only for the number of calendar days between the Reversion Date and the earlier of (A) the end of the calendar year in which the Reversion Date occurs and (B) the

Ten Year Note maturity date and (y) the items specified in subclauses (v) through (z) of clause (iii) of Section 1108 that occur during the Suspension Period will increase the amount available to be made as Restricted Payments under clause (iii) of Section 1108. Any Restricted Payments made during the Suspension Period that (i) are of the type described in clause (4), (8), (13) or (14) under Section 1108(b) or (ii) that would have been made pursuant to clause (15) of Section 1108(b) if such covenant were then applicable, shall reduce the amounts permitted to be incurred under such clause (4), (8), (13), (14) or (15), as the case may be, on the Reversion Date.

For purposes of Section 1109, on the Reversion Date, the unutilized Net Proceeds Offer Amount will be reset to zero.

ARTICLE TWELVE

RESERVED

ARTICLE THIRTEEN

LEGAL DEFEASANCE AND COVENANT DEFEASANCE

SECTION 1301. Company's Option to Effect Legal Defeasance or Covenant Defeasance.

The Company may, at its option and at any time, with respect to any series of Notes, elect to have either Section 1302 or Section 1303 be applied to all Outstanding Notes of such series upon compliance with the conditions set forth below in this Article Thirteen.

SECTION 1302. Legal Defeasance and Discharge.

The Company may, at its option and at any time, elect to have its and the Guarantors' obligations discharged with respect to any series of the Outstanding Notes ("Legal Defeasance"). Such Legal Defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by such series of Outstanding Notes, except for:

- (1) the rights of Holders of such series to receive payments in respect of the principal of, premium, if any, and interest on such series of Notes when such payments are due from the trust fund referred to below;
- (2) the Company's obligations with respect to Sections 404, 406, 407 and 1102;
- (3) the rights, powers, trust, duties and immunities of the Trustee under Article Seven and the Company's obligations in connection therewith; and
- (4) the provisions of this Article Thirteen of this Supplemental Indenture.

SECTION 1303. Covenant Defeasance.

The Company may, at its option and at any time, elect to have the obligations of the Company released with respect to any series of Notes with respect to Sections 1106 through and including 1115 and Section 901(a)(2) ("Covenant Defeasance") and thereafter any omission to comply with such obligations shall not constitute a Default or Event of Default with respect to such series of Notes. In the event Covenant Defeasance occurs, clauses (4) and (5) in Section 601 will no longer constitute Events of Default with respect to such Notes. The Company may exercise its Legal Defeasance option notwithstanding its prior exercise of its Covenant Defeasance option.

SECTION 1304. Conditions to Legal Defeasance or Covenant Defeasance.

The following shall be the conditions to application of either Section 1302 or Section 1303:

In order to exercise either Legal Defeasance or Covenant Defeasance:

(1) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders of the applicable series of Notes, cash in U.S. dollars, non-callable U.S. Government Obligations, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium, if any, and interest on the applicable Notes on the stated date for payment thereof or on the applicable redemption date, as the case may be;

(2) in the case of Legal Defeasance, the Company shall have delivered to the Trustee an Opinion of Counsel in the United States reasonably acceptable to the Trustee confirming that:

- (a) the Company has received from, or there has been published by, the Internal Revenue Service a ruling; or
- (b) since the date of the Indenture, there has been a change in the applicable federal income tax law,

in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the applicable Holders will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(3) in the case of Covenant Defeasance, the Company shall have delivered to the Trustee an Opinion of Counsel in the United States reasonably acceptable to the Trustee confirming that the applicable Holders will not recognize income, gain or loss for

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

(4) no Default or Event of Default shall have occurred and be continuing on the date of such deposit or insofar as Events of Default from bankruptcy or insolvency events are concerned, at any time in the period ending on the 91st day after the date of deposit;

(5) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under the Indenture or any other material agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound;

(6) the Company shall have delivered to the Trustee an Officers' Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders over any other creditors of the Company or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Company or others;

(7) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance have been complied with; and

(8) No event or condition shall exist that would prevent the Company from making payments of the principal of, premium, if any, and interest on the Notes on the date of such deposit on the date of such deposit.

Notwithstanding the foregoing, the Opinion of Counsel required by clause (2) above with respect to a Legal Defeasance need not be delivered if all Notes not theretofore delivered to the Trustee for cancellation (1) have become due and payable or (2) will become due and payable on the maturity date 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.

SECTION 1305. Deposited Money and U.S. Government Obligations to Be Held in Trust; Other Miscellaneous Provisions.

Subject to the provisions of Section 1103, all money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively, for purposes of this Section 1305, the "Trustee") pursuant to Section 1304 in respect of the Outstanding Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and the 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 Holders of such Notes of all sums due and to become due thereon in respect of principal (and

premium, if any) and interest, but such money need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Governmental Obligations deposited pursuant to Section 1304 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the Outstanding Notes.

Anything in this Article Thirteen to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or U.S. Government Obligations held by it as provided in Section 1304 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance, as applicable, in accordance with this Article Thirteen.

SECTION 1306. Reinstatement.

If the Trustee or any Paying Agent is unable to apply any money in accordance with Section 1305 by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under the Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 1302 or 1303, as the case may be, until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 1305, and the Company shall execute all documents reasonably satisfactory to the Trustee evidencing such revival and reinstatement; provided, however, that if the Company makes any payment of principal of (or premium, if any, on) or interest on any Note following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE FOURTEEN

GUARANTEE OF NOTES

SECTION 1401. Guarantee.

Subject to the provisions of this Article Fourteen, each Guarantor in respect of any series of Notes hereby jointly and severally unconditionally guarantees, on a senior unsecured basis, to each Holder of a Note of such series authenticated and delivered by the Trustee and to the Trustee and its successors, irrespective of (i) the validity and enforceability of the Indenture, the Notes of such series or the obligations of the Company or any other Guarantors to the Holders of the applicable series of Notes or the Trustee hereunder or thereunder or (ii) the absence of any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or default of a Guarantor, that: (a) the principal of, premium,

if any, interest and Defaulted Interest with respect to the Notes of such series shall be duly and punctually paid in full when due, whether at maturity, by acceleration or otherwise, and interest on the overdue principal and (to the extent permitted by law) interest or Defaulted Interest with respect to the applicable series of Notes and all other obligations of the Company or any Guarantor to the Holders of the applicable series of Notes or the Trustee hereunder or thereunder (including amounts due the Trustee under Section 706 of this Supplemental Indenture) and all other obligations under the Indenture with respect to such series of Notes or the applicable series of Notes shall be promptly paid in full or performed, all in accordance with the terms of this Supplemental Indenture and thereof and (b) in case of any extension of time of payment or renewal of any Notes of any series or any of such other obligations, the same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed, or failing performance of any other obligation of the Company to the Holders of the applicable series of Notes, for whatever reason, each Guarantor shall be obligated to pay, or to perform or cause the performance of, the same immediately. An Event of Default under the Indenture or the applicable series of Notes shall constitute an event of default under the Guarantee, and shall entitle the Holders of any affected series of Notes or the Trustee to accelerate the obligations of the Guarantors of such series of Notes hereunder in the same manner and to the same extent as the obligations of the Company.

Each Guarantor, by execution of the Guarantee, waives the benefit of diligence, presentment, demand for payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever and covenant that such Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes, this Indenture and such Guarantee. The Guarantee is a guarantee of payment and not of collection. If any Holder or the Trustee is required by any court or otherwise to return to the Company or to any Guarantor, or any custodian, trustee, liquidator or other similar official acting in relation to the Company or such Guarantor, any amount paid by the Company or such Guarantor to the Trustee or such Holder of the applicable series of Notes, the Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect. Each Guarantor further agrees that, as between it, on the one hand, and the Holders of the applicable series of Notes and the Trustee, on the other hand, (a) subject to this Article Fourteen, the maturity of the obligations guaranteed hereby may be accelerated as provided in Article Six of this Supplemental Indenture for the purposes of the Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby and (b) in the event of any acceleration of such obligations as provided in Article Six of this Supplemental Indenture, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of such Guarantee.

The Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Company for liquidation or reorganization, should the Company become insolvent or make an assignment for the benefit of creditors or should a

receiver or trustee be appointed for all or any significant part of the Company's assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the applicable series of Notes are pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the applicable series of Notes, whether as a "voidable preference," "fraudulent transfer" or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the applicable series of Notes shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

No shareholder, officer, director, employee or incorporator, past, present or future, or any Guarantor, as such, shall have any personal liability under this Guarantee by reason of his, her or its status as such shareholder, officer, director, employee or incorporator.

SECTION 1402. Execution and Delivery of Guarantee.

To further evidence the Guarantee set forth in Section 1401 of this Supplemental Indenture, each Guarantor hereby agrees that a notation of such Guarantee, substantially in the form included in Exhibit A to this Supplemental Indenture, shall be endorsed on each Note authenticated and delivered by the Trustee after this Article Fourteen with respect to such Guarantor becomes effective in accordance with Section 1404 of this Supplemental Indenture and such Guarantee shall be executed by either manual or facsimile signature of an officer of each Guarantor. The validity and enforceability of any Guarantee shall not be affected by the fact that it is not affixed to any particular Note.

Each of the Guarantors hereby agrees that its Guarantee set forth in Section 1401 of this Supplemental Indenture shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Guarantee.

If an officer of a Guarantor whose signature is on the Indenture or a Guarantee no longer holds that office at the time the Trustee authenticates the Note on which such Guarantee is endorsed or at any time thereafter, such Guarantor's Guarantee of such Note shall be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of any Guarantee set forth in this Supplemental Indenture on behalf of the Guarantor.

SECTION 1403. Limitation of Guarantee.

The obligations of each Guarantor are limited to the maximum amount as shall, after giving effect to all other contingent and fixed liabilities of such Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Guarantee or pursuant to its contribution

obligations under the Indenture, result in the obligations of such Guarantor under the Guarantee not constituting a fraudulent conveyance or fraudulent transfer under federal or state law. Each Guarantor that makes a payment or distribution under a Guarantee shall be entitled to a contribution from each other Guarantor in a pro rata amount based on the net assets of each Guarantor, determined in accordance with GAAP.

SECTION 1404. Waiver of Subrogation.

Each Guarantor, by execution of its Guarantee, waives to the extent permitted by law any claim or other rights which it may now or hereafter acquire against the Company that arise from the existence, payment, performance or enforcement of such Guarantor's obligations under such Guarantee and the Indenture, including, without limitation, any right of subrogation, reimbursement, exoneration, indemnification, and any right to participate in any claim or remedy of any Holder of the applicable series of notes against the Company, whether or not such claim, remedy or right arises in equity, or under contract, statute or common law, including, without limitation, the right to take or receive from the Company, directly or indirectly, in cash or other property or by set-off or in any other manner, payment on account of such claim or other rights. If any amount shall be paid to any Guarantor in violation of the preceding sentence and the Notes shall not have been paid in full, such amount shall have been deemed to have been paid to such Guarantor for the benefit of, and held in trust for the benefit of, the Holders of the applicable series of Notes, and shall forthwith be paid to the Trustee for the benefit of such Holders to be credited and applied upon the applicable series of Notes, whether matured or unmatured, in accordance with the terms of the Indenture. Each Guarantor, by execution of its Guarantee, shall acknowledge that it shall receive direct and indirect benefits from the financing arrangements contemplated by the Indenture and that the waiver set forth in this Section 1404 is knowingly made in contemplation of such benefits.

SECTION 1405. Release of Guarantee.

Any Guarantee executed pursuant to clause (1) of paragraph (a) of Section 1113 of this Supplemental Indenture (including, without limitation, any Guarantee of the Notes issued as of the Issue Date), shall be automatically and unconditionally released upon the release of the guarantee that resulted in such clause (1) of paragraph (a) of Section 1113 of this Supplemental Indenture becoming applicable (other than by reason of payment under such guarantee) so long as such Restricted Subsidiary is not at such time guaranteeing any other Capital Markets Debt of the Company and no Default or Event of Default is then continuing. In addition, any Guarantee executed pursuant either to clause (1) or clause (2) of paragraph (a) of Section 1113 of this Supplemental Indenture shall provide by its terms that such Guarantee shall be automatically and unconditionally released upon: (i) the designation of the Restricted Subsidiary that gave such Guarantee as an Unrestricted Subsidiary in compliance with the provisions of the Indenture or (ii) any transaction, including without limitation, any sale, exchange or transfer, to any Person not an Affiliate of the Company, of the Company's Capital Stock in, or all or substantially all the property of, such Restricted Subsidiary, which transaction is in compliance with the terms of the

Indenture, and which results in the Restricted Subsidiary that gave such Guarantee ceasing to be a Subsidiary of the Company and, in the case of either clause (i) or clause (ii), such Restricted Subsidiary is released from all guarantees, if any, by it of other Capital Markets Debt of the Company.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, and attested, all as of the day and year first above written.

XEROX CORPORATION

Attest: _____
Name:
Title:

By: _____
Name:
Title:

WELLS FARGO BANK MINNESOTA,
NATIONAL ASSOCIATION, as Trustee

By: _____

Guarantors:

XEROX INTERNATIONAL JOINT MARKETING,
INC.:

By: _____
Name:
Title:

INTELLIGENT ELECTRONICS, INC.:

By: _____
Name:
Title:

[FORM OF NOTE GUARANTEE]

Each of the undersigned (the "Guarantors") hereby jointly and severally unconditionally guarantees, to the extent set forth in the Second Supplemental Indenture dated as of [], by and between Xerox Corporation, as issuer, the Guarantors and Wells Fargo Bank Minnesota, National Association, as Trustee, to the Indenture, dated as of June 25, 2003 between the Company and the Trustee (the "Base Indenture" and as supplemented by the Supplemental Indenture, the "Indenture"), and subject to the provisions of the Indenture, (a) the due and punctual payment of the principal of, and premium, if any, and interest on the applicable series of Notes, when and as the same shall become due and payable, whether at maturity, by acceleration or otherwise, the due and punctual payment of interest on overdue principal of, and premium and, to the extent permitted by law, interest, and the due and punctual performance of all other obligations of the Company to the Holders of the applicable series of Notes or the Trustee, all in accordance with the terms set forth in Article Fourteen of the Supplemental Indenture and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that the same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise.

The obligations of the Guarantors to the Holders of the applicable series of and to the Trustee pursuant to this Guarantee and the Indenture are expressly set forth in Article Fourteen of the Supplemental Indenture and reference is hereby made to the Supplemental Indenture for the precise terms and limitations of this Guarantee.

This Guarantee is subject to automatic and unconditional release as set forth in Section 1405 of the Supplemental Indenture.

[Signatures on Following Pages]

IN WITNESS WHEREOF, each of the Guarantors has caused this Guarantee to be signed by a duly authorized officer.

The Guarantors:

[GUARANTORS]

A-2

December 30, 2003

Xerox Corporation Registration Statement on Form S-3

Xerox Corporation
Xerox International Joint Marketing, Inc.
800 Long Ridge Road
P.O.Box 1600
Stamford, CT 06904-1600

Ladies and Gentlemen:

As Senior Counsel to Xerox Corporation, a New York corporation (the "Company"), I am familiar with the Registration Statement on Form S-3 filed by the Company and the Delaware Guarantors (as defined below) with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), on December 30, 2003 (the "Registration Statement"). The Registration Statement relates to the issuance and sale from time to time, pursuant to Rule 415 of the General Rules and Regulations promulgated under the Securities Act, of the following securities with an aggregate initial public offering price of up to \$2,500,000,000 or the equivalent thereof, based on the applicable exchange rate at the time of sale, in one or more foreign currencies, currency unit or units or composite currency or currencies as shall be designated by the Company: (i) senior debt securities, subordinated debt securities or convertible debt securities of the Company, in one or more series (in each case, the "Debt Securities"), which may be issued pursuant to an indenture relating to such Debt Securities in the form filed as an exhibit to the Registration Statement (the "Indenture"); (ii) shares of preferred stock of the Company, \$1.00 par value per share, or convertible preferred stock of the Company, \$1.00 par value per share, in one or more series (in each case, the "Preferred Stock"); (iii) shares of common stock of the Company, \$1.00 par value per share (the "Common Stock"); (iv) warrants to purchase Debt Securities, Preferred Stock or Common Stock (collectively, the "Warrants") under one or more warrant agreements (each, a "Warrant Agreement") proposed to be entered into between the Company and warrant agent(s) to be named therein (each, a "Warrant Agent"); (v) guarantees of the Debt Securities (the "Guarantees") that may be issued from time to time by Xerox International Joint Marketing, Inc. (the "Delaware Guarantor") and Intelligent Electronics, Inc., (vi) shares of the Company's Preferred Stock represented by depositary shares ("Depositary Shares"), evidenced by depositary receipts (the "Receipts"), which may be issued pursuant to one or more deposit agreements (each a "Deposit Agreement") proposed to be entered into between the Company and a depositary to be named therein; (vii) stock purchase contracts of the Company and debt purchase contracts of the Company (together, "Securities Purchase Contracts"); (viii) stock purchase units and debt purchase units (together, the "Securities Purchase Units"); and (ix) such indeterminate amount of Debt Securities and number of shares of Preferred Stock or Common Stock as may be issued upon conversion, exchange or exercise of any Debt Securities, Preferred Stock or Warrants, including such shares of Preferred Stock or Common Stock as may be issued pursuant to anti-dilution adjustments, in amounts, at prices and on terms to be determined

at the time of offering (the "Indeterminate Securities"). The Debt Securities, the Preferred Stock, the Common Stock, the Warrants, the Guarantees, the Depositary Shares, the Securities Purchase Contracts, the Securities Purchase Units and the Indeterminate Securities are collectively referred to herein as the "Offered Securities."

This opinion is delivered in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act.

In rendering the opinions set forth herein, I or other attorneys of the Company who report directly to me have examined and relied on originals or copies of the following:

- (i) the Registration Statement;
- (ii) the forms of Indenture filed as exhibits to the Registration Statement;
- (iii) the Restated Certificate of Incorporation of the Company, as amended, and certified by the Secretary of State of the State of New York as being currently in effect (the "Certificate of Incorporation");
- (iv) the certificate of incorporation of the Delaware Guarantor, certified by the Secretary of State of the State of Delaware as being currently in effect;
- (v) the Amended and Restated By-Laws of the Company as currently in effect (the "By-Laws");
- (vi) the bylaws of the Delaware Guarantor, as currently in effect;
- (vii) certain resolutions adopted to date by the board of directors of the Company (the "Board of Directors"), relating to the Offered Securities; and
- (viii) certain resolutions adopted to date by the board of directors of the Delaware Guarantor, relating to the Offered Securities.

I or other attorneys of the Company who report directly to me have also examined originals or copies, certified or otherwise identified to my satisfaction, of such records of the Company and the Delaware Guarantor and such agreements, certificates and receipts of public officials, certificates of officers or other representatives of the Company and the Delaware Guarantor and others, and such other documents as I have deemed necessary or appropriate as a basis for the opinions set forth below.

In my examination, I have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to me as originals, the conformity to original documents of all documents submitted to me as facsimile, electronic, certified or photostatic copies, and the authenticity of the originals of such documents. In making my examination of executed documents or documents to be executed, I have assumed that the parties thereto, other than the Company and the Delaware Guarantor, had or will have the power, corporate or other, to

enter into and perform all obligations thereunder and have also assumed the due authorization by all requisite action, corporate or other, and the execution and delivery by such parties of such documents and the validity and binding effect thereof on such parties. As to any facts material to the opinions expressed herein that I did not independently establish or verify, I have relied on statements and representations of officers and other representatives of the Company, the Delaware Guarantor, of public officials and others.

My opinions set forth herein are limited to the General Corporation Law of the State of Delaware and those laws of the State of New York and the United States of America, in each case, that, in my experience, are normally applicable to transactions of the type contemplated by the Registration Statement and to the extent that judicial or regulatory orders or decrees or consents, approvals, licenses, authorizations, validations, filings, recordings or registrations with governmental authorities are relevant, to those required under such laws (all of the foregoing being referred to as "Opined on Law"). I do not express any opinion with respect to the law of any jurisdiction other than Opined on Law or as to the effect of any such non-Opined on Law on the opinions herein stated. The Offered Securities may be issued from time to time on a delayed or continuous basis, and this opinion is limited to the laws, including the rules and regulations, as in effect on the date hereof, which laws are subject to change with possible retroactive effect.

Based upon the foregoing and subject to the limitations, qualifications, exceptions and assumptions set forth herein, I am of the opinion that:

1. With respect to any series of Debt Securities (the "Offered Debt Securities"), when (i) the Registration Statement, as finally amended (including all necessary post-effective amendments), has become effective under the Securities Act and the Indenture and trustee thereunder have been qualified under the Trust Indenture Act of 1939, as amended (the "TIA"); (ii) the Indenture governing the Offered Debt Securities is duly authorized, executed and delivered by the trustee named therein and any Debt Securities that may be issued are executed in accordance with the Indenture by duly authorized officers of such trustee; (iii) an appropriate prospectus supplement or term sheet with respect to the Offered Debt Securities has been prepared, delivered and filed in compliance with the Securities Act and the applicable rules and regulations thereunder; (iv) if the Offered Debt Securities are to be sold pursuant to a firm commitment underwritten offering, an underwriting agreement with respect to the Offered Debt Securities has been duly authorized, executed and delivered by the Company and the other parties thereto; (v) the Board of Directors, including any appropriate committee appointed thereby, and appropriate officers of the Company have taken all necessary corporate action to approve the issuance and terms of the Offered Debt Securities and related matters; (vi) the terms of the Offered Debt Securities and of their issuance and sale have been duly established in conformity with the Indenture so as not to violate any applicable law, the Certificate of Incorporation or the By-Laws or result in a default under or breach of any agreement or instrument binding upon the Company and so as to comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company and the applicable trustee; and (vii) the Offered Debt Securities have been duly executed and authenticated in accordance with the

provisions of the Indenture and delivered upon payment of the agreed-upon consideration therefor, and duly issued and sold in the applicable form to be filed as an exhibit to the Registration Statement or any amendment thereto and in the manner contemplated in the Registration Statement or any prospectus supplement or term sheet relating thereto, the Offered Debt Securities (including any Debt Securities duly issued upon conversion, exchange or exercise of any other Debt Securities, Preferred Stock, Securities Purchase Contracts or Warrants), when issued and sold in accordance with the Indenture and the applicable underwriting agreement, if any, or any other duly authorized, executed and delivered, valid and binding purchase or agency agreement, will be valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except to the extent that enforcement thereof may be limited by (a) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally, (b) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity), (c) public policy considerations which may limit the rights of the parties to obtain remedies, (d) the waivers of any usury defense contained in the Indenture which may be unenforceable, (e) requirements that a claim with respect to any Offered Debt Securities denominated other than in United States dollars (or a judgment denominated other than in United States dollars in respect of such claim) be converted into United States dollars at a rate of exchange prevailing on a date determined pursuant to applicable law, and (f) governmental authority to limit, delay or prohibit the making of payments outside the United States or in foreign currencies, currency units or composite currencies.

2. With respect to the shares of any series of Preferred Stock (the "Offered Preferred Stock"), when (i) the Registration Statement, as finally amended (including all necessary post-effective amendments), has become effective under the Securities Act; (ii) an appropriate prospectus supplement or term sheet with respect to the Offered Preferred Stock has been prepared, delivered and filed in compliance with the Securities Act and the applicable rules and regulations thereunder; (iii) if the Offered Preferred Stock is to be sold pursuant to a firm commitment underwritten offering, an underwriting agreement with respect to the Offered Preferred Stock has been duly authorized, executed and delivered by the Company and the other parties thereto; (iv) the Board of Directors, including any appropriate committee appointed thereby, and appropriate officers of the Company have taken all necessary corporate action to approve the issuance and terms of the Offered Preferred Stock and related matters, including the adoption of a Certificate of Designation for the Offered Preferred Stock in accordance with the applicable provisions of New York law (the "Certificate of Designation"), in the form to be filed as an exhibit to the Registration Statement, any amendment thereto or any document incorporated by reference therein; (v) the filing of the applicable Certificate of Designation with the Secretary of State of the State of New York has duly occurred; (vi) the terms of the Offered Preferred Stock and of their issuance and sale have been duly established in conformity with the Certificate of Incorporation, including the applicable Certificate of Designation, and the By-Laws so as not to violate any applicable law, the Certificate of Incorporation or the By-Laws or result in a default under or breach of any agreement or instrument binding upon the Company and so as to comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the

Company; and (vii) certificates representing the shares of the Offered Preferred Stock are duly executed, countersigned, registered and delivered upon payment of the agreed-upon consideration therefor and duly issued and sold in the applicable form to be filed as an exhibit to the Registration Statement or any amendment thereto and in the manner contemplated in the Registration Statement or any prospectus supplement or term sheet relating thereto, the shares of the Offered Preferred Stock (including any Preferred Stock duly issued upon conversion, exchange or exercise of any Debt Securities, other Preferred Stock, Securities Purchase Contracts or Warrants), when issued or sold in accordance with the applicable Certificate of Designation and the underwriting agreement or any other duly authorized, executed and delivered, valid and binding purchase or agency agreement, will be duly authorized, validly issued, fully paid and nonassessable, provided that the consideration therefor is not less than the par value thereof.

3. With respect to any offering of Common Stock (the "Offered Common Stock"), when (i) the Registration Statement, as finally amended (including all necessary post-effective amendments), has become effective under the Securities Act; (ii) an appropriate prospectus supplement or term sheet with respect to the Offered Common Stock has been prepared, delivered and filed in compliance with the Securities Act and the applicable rules and regulations thereunder; (iii) if the Offered Common Stock is to be sold pursuant to a firm commitment underwritten offering, an underwriting agreement with respect to the Offered Common Stock has been duly authorized, executed and delivered by the Company and the other parties thereto; (iv) the Board of Directors, including any appropriate committee appointed thereby, and appropriate officers of the Company have taken all necessary corporate action to approve the issuance and terms of the Offered Common Stock and related matters; (v) the terms of the Offered Common Stock and of their issuance and sale have been duly established in conformity with the Certificate of Incorporation and the By-Laws so as not to violate any applicable law, the Certificate of Incorporation or the By-Laws or result in a default under or breach of any agreement or instrument binding upon the Company and so as to comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company; and (vi) certificates representing the shares of Offered Common Stock are duly executed, countersigned, registered and delivered upon payment of the agreed-upon consideration therefor and duly issued and sold in the applicable form to be filed as an exhibit to the Registration Statement or any amendment thereto and in the manner contemplated in the Registration Statement or any prospectus supplement or term sheet relating thereto, the shares of Offered Common Stock (including any Common Stock duly issued upon conversion, exchange or exercise of any Debt Securities, Preferred Stock, Securities Purchase Contracts or Warrants), when issued and sold in accordance with the applicable underwriting agreement with respect to the Offered Common Stock or any other duly authorized, executed and delivered, valid and binding purchase or agency agreement, will be duly authorized, validly issued, fully paid and nonassessable, provided that the consideration therefor is not less than the par value thereof.

4. With respect to any series of Warrants (the "Offered Warrants"), when (i) the Registration Statement, as finally amended (including all necessary post-effective amendments), has become effective under the Securities Act; (ii) an appropriate

prospectus supplement or term sheet with respect to the Offered Warrants has been prepared, delivered and filed in compliance with the Securities Act and the applicable rules and regulations thereunder; (iii) if the Offered Warrants are to be sold pursuant to a firm commitment underwritten offering, an underwriting agreement with respect to the Offered Warrants has been duly authorized, executed and delivered by the Company and the other parties thereto; (iv) the applicable Warrant Agreement has been duly authorized, executed and delivered by the parties thereto and does not violate any applicable law, the Certificate of Incorporation or By-Laws or result in a default under or breach of any agreement or instrument binding upon the Company and so as to comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company; (v) the Board of Directors, including any appropriate committee appointed thereby, and appropriate officers of the Company have taken all necessary corporate action to approve the issuance and terms of the Offered Warrants and related matters; (vi) the terms of the Offered Warrants and of their issuance and sale have been duly established in conformity with the applicable Warrant Agreement so as not to violate any applicable law, the Certificate of Incorporation or By-Laws or result in a default under or breach of any agreement or instrument binding upon the Company and so as to comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company; and (vii) the Offered Warrants have been duly executed, delivered and countersigned in accordance with the provisions of the applicable Warrant Agreement and duly issued and sold in the applicable form to be filed as an exhibit to the Registration Statement or any amendment thereto and in the manner contemplated in the Registration Statement or any prospectus supplement or term sheet relating thereto, the Offered Warrants, when issued and sold in accordance with the applicable Warrant Agreement and the applicable underwriting agreement or any other duly authorized, executed and delivered, valid and binding purchase or agency agreement, will be valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except to the extent that enforcement thereof may be limited by (a) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally, (b) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity); and (c) public policy considerations which may limit the rights of parties to obtain remedies.

5. With respect to any Guarantee of Offered Debt Securities issued by the Delaware Guarantor, (the "Offered Guarantee"), when (i) the Registration Statement, as finally amended (including all necessary post-effective amendments), has become effective under the Securities Act and the Indenture and trustee thereunder has been qualified under the TIA; (ii) an appropriate prospectus supplement or term sheet with respect to the Offered Guarantee has been prepared, delivered and filed in compliance with the Securities Act and the applicable rules and regulations thereunder; (iii) if the Offered Guarantee is to be issued pursuant to a firm commitment underwritten offering, an underwriting agreement with respect to the Offered Guarantee has been duly authorized, executed and delivered by the Delaware Guarantor and the other parties thereto; (iv) all necessary corporate action, including any required action by the Delaware Guarantor's board of directors or any authorized committee thereof, or other action has been taken by the Delaware Guarantor to approve the issuance and terms of the Offered

Guarantee and related matters; (v) the Indenture governing the Offered Debt Securities has been duly authorized, executed and delivered by the parties thereto; (vi) a supplemental indenture (each, an applicable "Supplemental Indenture") relating to the Offered Guarantee has been duly authorized, executed and delivered by the Delaware Guarantor and the trustee named therein and does not violate any applicable law or the organizational or governing documents of the Delaware Guarantor or result in a default under or breach of any agreement or instrument binding upon the Delaware Guarantor and so as to comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Delaware Guarantor and the applicable trustee; (vii) the terms of the Offered Guarantee and of its issuance and sale have been duly established in conformity with the applicable Supplemental Indenture so as not to violate any applicable law or the organizational or governing documents of the Delaware Guarantor or result in a default under or breach of any agreement or instrument binding upon the Delaware Guarantor and so as to comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Delaware Guarantor and the applicable trustee; and (viii) the Offered Guarantee has been duly executed, delivered and countersigned in accordance with the provisions of the applicable Supplemental Indenture and duly issued in the manner contemplated in the Registration Statement or any prospectus supplement or term sheet relating thereto, the Offered Guarantee, when issued and sold in accordance with the applicable Supplemental Indenture and the applicable underwriting agreement or any other duly authorized, executed and delivered, valid and binding purchase or agency agreement, will be valid and binding obligations of the Delaware Guarantor, enforceable against the Delaware Guarantor in accordance with its terms, except to the extent that enforcement thereof may be limited by (a) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally, (b) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity); and (c) public policy considerations which may limit the rights of parties to obtain remedies.

6. With respect to any offering of Depositary Shares (the "Offered Depositary Shares"), when (i) the Registration Statement, as finally amended (including all necessary post-effective amendments), has become effective under the Securities Act; (ii) an appropriate prospectus supplement or term sheet with respect to the Offered Depositary Shares has been prepared, delivered and filed in compliance with the Securities Act and the applicable rules and regulations thereunder; (iii) if the Offered Depositary Shares are to be sold pursuant to a firm commitment underwritten offering, the underwriting agreement with respect to the Offered Depositary Shares has been duly authorized, executed and delivered by the Company and other parties thereto; (iv) the Board of Directors, including any appropriate committee appointed thereby, and appropriate officers of the Company have taken all necessary corporate action to approve the issuance and terms of the Offered Depositary Shares and related matters, including the adoption of a Certificate of Designation for the related series of Preferred Stock in accordance with the applicable provisions of New York law in the form to be filed as an exhibit to the Registration Statement, any amendment thereto or any document incorporated by reference therein; (v) the filing of such Certificate of Designation with the Secretary of State of the State of New York has duly occurred; (vi) the terms of the

Offered Depositary Shares and of their issuance and sale have been duly established in conformity with the Certificate of Incorporation, including the applicable Certificate of Designation, and the By-Laws so as not to violate any applicable law, the Certificate of Incorporation or the By-Laws, or result in a default under or breach of any agreement or instrument binding upon the Company and so as to comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company; (vii) the applicable Deposit Agreement has been duly executed and delivered by the parties thereto; (viii) the related series of Preferred Stock has been duly authorized and validly issued in accordance with New York law and delivered to the depository for deposit in accordance with the Deposit Agreement; and (ix) the Receipts evidencing the Depositary Shares have been duly issued against deposit of the related series of Preferred Stock with the depository in accordance with the Deposit Agreement, the Depositary Shares will be validly issued and the Receipts will entitle the holders thereof to the rights specified therein and in the Deposit Agreement.

7. With respect to any offering of Securities Purchase Contracts, (the "Offered Securities Purchase Contracts"), when (i) the Registration Statement, as finally amended (including all necessary post-effective amendments), has become effective under the Securities Act; (ii) an appropriate prospectus supplement or term sheet with respect to the Offered Securities Purchase Contracts has been prepared, delivered and filed in compliance with the Securities Act and the applicable rules and regulations thereunder; (iii) if the Offered Securities Purchase Contracts are to be sold pursuant to a firm commitment underwritten offering, the underwriting agreement with respect to the Offered Securities Purchase Contracts has been duly authorized, executed and delivered by the Company and other parties thereto; (iv) the Board of Directors, including any appropriate committee appointed thereby, and appropriate officers of the Company have taken all necessary corporate action to approve the issuance and terms of the Offered Securities Purchase Contracts and related matters, (v) the terms of the Offered Securities Purchase Contracts and of their issuance and sale have been duly established in conformity with the Certificate of Incorporation and the By-Laws so as not to violate any applicable law, the Certificate of Incorporation or the By-Laws, or result in a default under or breach of any agreement or instrument binding upon the Company and so as to comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company; and (vi) the applicable Securities Purchase Contracts have been duly executed and delivered and duly issued and sold in the applicable form to be filed as an exhibit to the Registration Statement or any amendment thereto and in the manner contemplated in the Registration Statement or any prospectus supplement or term sheet relating thereto, the Securities Purchase Contracts will be valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except to the extent that enforcement thereof may be limited by (a) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally, (b) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity); and (c) public policy considerations which may limit the rights of parties to obtain remedies.

8. With respect to any offering of Securities Purchase Units (the "Offered Securities Purchase Units"), when (i) the Registration Statement, as finally amended (including all necessary post-effective amendments), has become effective under the Securities Act; (ii) an appropriate prospectus supplement or term sheet with respect to the Offered Securities Purchase Units has been prepared, delivered and filed in compliance with the Securities Act and the applicable rules and regulations thereunder; (iii) if the Offered Securities Purchase Units are to be sold pursuant to a firm commitment underwritten offering, the underwriting agreement with respect to the Offered Securities Purchase Units has been duly authorized, executed and delivered by the Company and other parties thereto; (iv) the Board of Directors, including any appropriate committee appointed thereby, and appropriate officers of the Company have taken all necessary corporate action to approve the issuance and terms of the Offered Securities Purchase Units and related matters, (v) the terms of the Offered Securities Purchase Units and of their issuance and sale have been duly established in conformity with the Certificate of Incorporation and the By-Laws so as not to violate any applicable law, the Certificate of Incorporation or the By-Laws, or result in a default under or breach of any agreement or instrument binding upon the Company and so as to comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company; and (vi) the applicable Securities Purchase Units have been duly executed and delivered and duly issued and sold in the applicable form to be filed as an exhibit to the Registration Statement or any amendment thereto and in the manner contemplated in the Registration Statement or any prospectus supplement or term sheet relating thereto, the Securities Purchase Units will be valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except to the extent that enforcement thereof may be limited by (a) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally, (b) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity); and (c) public policy considerations which may limit the rights of parties to obtain remedies.

I hereby consent to the filing of this opinion with the Commission as an exhibit to the Registration Statement. I also consent to the reference to me under the heading "Validity of the Securities and the Guarantees" in the Registration Statement. In giving this consent, I do not thereby admit that I am in the category of persons whose consent is required under Section 7 of the Securities Act or the Rules and Regulations of the Commission promulgated thereunder. This opinion is expressed as of the date hereof unless otherwise expressly stated, and I disclaim any undertaking to advise you of any subsequent changes of the facts stated or assumed herein or any subsequent changes in applicable law.

Very truly yours,

/s/ Samuel K. Lee
Samuel K. Lee
Senior Counsel

XEROX GLOBAL SERVICES, INC.

**411 Eagleview Boulevard
Suite 100
Exton, PA 19341**

**Phone: 610.458.5500
Facsimile: 610.458.6690**

December 30, 2003

Xerox Corporation
and Intelligent Electronics, Inc.
800 Long Ridge Road
P.O. Box 1600
Stamford, Connecticut 06904-1600

Re: Xerox Corporation Registration Statement on Form S-3

Ladies and Gentlemen:

The undersigned, an attorney-at-law admitted to practice in the State of Pennsylvania, is an Attorney with Xerox Corporation, a New York corporation (the "Company"), and has acted as counsel to Intelligent Electronics, Inc., a Pennsylvania corporation (the "Guarantor"), in connection with the Registration Statement on Form S-3, as filed by the Company with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act") on December 30, 2003 (the "Registration Statement"). The Registration Statement relates to the issuance and sale from time to time, pursuant to Rule 415 of the General Rules and Regulations promulgated under the Securities Act, of securities with an aggregate initial public offering price of up to \$2,500,000,000 or the equivalent thereof, based on the applicable exchange rate at the time of sale, in one or more foreign currencies, currency unit or units or composite currency or currencies as shall be designated by the Company, such securities including: (i) senior debt securities, subordinated debt securities or convertible debt securities of the Company, in one or more series (in each case, the "Debt Securities"), which may be issued under one or more indentures relating to such Debt Securities (each an "Indenture") and (ii) unconditional guarantees of the Debt Securities (the "Guarantees") that may be issued from time to time by certain subsidiaries of the Company, including the Guarantor (such guarantees of the Guarantor, the "Pennsylvania Guarantees").

This opinion is delivered in accordance with the requirement of Item 601(b)(5) of Regulation S-K under the Securities Act.

In rendering the opinions set forth herein, I have examined and relied on originals or copies of the following:

- (i) the Registration Statement;
- (ii) the documents filed by the Company pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and incorporated by reference into the Registration Statement as of the date hereof;
- (iii) the forms of Indenture, filed as exhibits 4(b)(1) through 4(b)(5) to the Registration Statement;
- (iv) the certificate of incorporation of the Guarantor, as amended to date;
- (v) the bylaws of the Guarantor, as currently in effect; and
- (vi) certain resolutions adopted to date by the board of directors of the Guarantor relating to the registration of the Guarantees.

I have also examined originals or copies, certified or otherwise identified to my satisfaction, of such records of the Company and the Guarantor and such agreements, certificates and receipts of public officials, certificates of officers or other representatives of the Company and the Guarantor and others, and such other documents as I have deemed necessary or appropriate as a basis for the opinions set forth below.

In my examination, I have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as facsimile, electronic, certified or photostatic copies, and the authenticity of the originals of such documents. In making my examination of executed documents or documents to be executed, I have assumed that the parties thereto, other than the Company and the Guarantor, had or will have the power, corporate or other, to enter into and perform all obligations thereunder and have also assumed the due authorization by all requisite action, corporate or other, and the execution and delivery by such parties of such documents and the validity and binding effect thereof on such parties. As to any facts material to the opinions expressed herein that I did not independently establish or verify, I have relied on statements and representations of officers and other representatives of the Company, the Guarantor, of public officials and others.

I am qualified to practice law in the State of Pennsylvania and I do not express any opinion as to the laws of any other jurisdiction other than the laws of the United States of America to the extent specifically referred to herein. The Pennsylvania Guarantees may be issued from time to time on a delayed or continuous basis, and this opinion is limited to the laws, including the rules and regulations, as in effect on the date hereof, which laws are subject to change with possible retroactive effect.

Based upon the foregoing and subject to the limitations, qualifications, exceptions and assumptions set forth herein, I am of the opinion that, with respect to any Pennsylvania Guarantee, when (i) the Registration Statement, as finally amended (including all necessary post-effective amendments), has become effective under the Securities Act; (ii) an appropriate prospectus supplement or term sheet with respect to the

Pennsylvania Guarantee has been prepared, delivered and filed in compliance with the Securities Act and the applicable rules and regulations thereunder; (iii) if the Pennsylvania Guarantee is to be issued pursuant to a firm commitment underwritten offering, an underwriting agreement with respect to the Pennsylvania Guarantee has been duly authorized, executed and delivered by the Guarantor and the other parties thereto; (iv) all necessary corporate action, including any required action by the Guarantor's board of directors or any authorized committee thereof, or other action has been taken by the Guarantor to approve the issuance and terms of the Pennsylvania Guarantee and related matters; (v) the terms of the Pennsylvania Guarantee and of its issuance sale have been duly established in conformity with the applicable Indenture so as not to violate any applicable law or the organizational or governing documents of the Guarantor or result in a default under or breach of any agreement or instrument binding upon the Guarantor so as to comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Guarantor and the applicable trustee; (vi) the applicable Indenture has been duly authorized, executed and delivered by the parties thereto; and (vii) the Pennsylvania Guarantee has been duly executed, delivered and countersigned in accordance with the provisions of the applicable Indenture and duly issued in the manner contemplated in the Registration Statement or any prospectus supplement or term sheet relating thereto, the Pennsylvania Guarantee, when issued in accordance with the applicable Indenture and the applicable underwriting agreement or any other duly authorized, executed and delivered, valid and binding purchase or agency agreement, will be valid and binding obligations of the Guarantor, enforceable against the Guarantor in accordance with its terms, except to the extent that enforcement thereof may be limited by (a) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally, (b) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity); and (c) public policy considerations which may limit the rights of parties to obtain remedies.

I hereby consent to the filing of this opinion with the Commission as an exhibit to the Registration Statement. I also consent to the reference to myself under the heading "Validity of the Securities and the Guarantees" in the Registration Statement. In giving this consent, I do not thereby admit that I am in the category of persons whose consent is required under Section 7 of the Securities Act or the Rules and Regulations of the Commission promulgated thereunder. This opinion is expressed as of the date hereof unless otherwise stated, and I disclaim any undertaking to advise you of any subsequent changes of the facts stated or assumed herein or any subsequent changes in applicable law.

Very truly yours,

/s/ Christine A. Perantoni
Christine A. Perantoni
Attorney

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in this Registration Statement on Form S-3 of our report dated January 28, 2003, except for Notes 9, 15 and 20 which are as of April 30, 2003, March 27, 2003 and June 25, 2003, respectively, relating to the financial statements, which appears in the Company's Current Report on Form 8-K dated July 23, 2003. We also consent to the incorporation by reference of our report dated January 28, 2003 relating to the financial statement schedule, which appears in the Company's Annual Report on Form 10-K for the year ended December 31, 2002. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/S/ PRICEWATERHOUSECOOPERS LLP

PricewaterhouseCoopers LLP
Stamford, CT
December 30, 2003

CONSENT OF INDEPENDENT AUDITOR

We consent to the reference to our firm under the heading "Experts" in the Registration Statement (Form S-3) and related Prospectus of Xerox Corporation for the registration of the securities listed on the cover page of the Prospectus, aggregating \$2,500,000,000, and to the incorporation by reference therein of our report dated April 21, 2003, with respect to the consolidated financial statements of Fuji Xerox Co., Ltd. and Subsidiaries included in Amendment No.1 to Xerox Corporation's Annual Report (Form 10-K/A) for the year ended December 31, 2002, filed with the Securities and Exchange Commission.

/s/ Ernst & Young

Tokyo, Japan
December 26, 2003

CERTIFICATE

I, Martin S. Wagner, Assistant Secretary of Xerox Corporation, a New York corporation (the "Company"), Secretary of Intelligent Electronics, Inc., a Pennsylvania corporation ("IE") and Secretary of Xerox International Joint Marketing, Inc., a Delaware corporation ("XIJM"), DO HEREBY CERTIFY that: (1) Exhibit A is a true and correct copy of a resolution duly adopted at a meeting of the Board of Directors of the Company duly held and convened on December 10, 2003, at which meeting a duly constituted quorum of the Board of Directors was present and acting throughout and that such resolution has not been modified, rescinded or revoked and is at present in full force and effect; (2) Exhibit B is a true and correct copy of a resolution duly adopted by unanimous written consent of the Board of Directors of IE and that such resolution has not been modified, rescinded or revoked and is at present in full force and effect; and (3) Exhibit C is a true and correct copy of a resolution duly adopted by unanimous written consent of the Board of Directors of XIJM and that such resolution has not been modified, rescinded or revoked and is at present in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed this Certificate this 30th day of December 2003.

/s/ MARTIN S. WAGNER
MARTIN S. WAGNER
ASSISTANT SECRETARY
FOR XEROX CORPORATION,
SECRETARY FOR EACH OF
INTELLIGENT ELECTRONICS, INC.
AND XEROX INTERNATIONAL JOINT
MARKETING, INC.

RESOLVED: that each officer and director of the Company who may be required to execute the Registration Statements or any amendment thereto (whether on behalf of the Company or as an officer or director thereof) be and hereby is authorized to execute a power of attorney appointing L. A. Zimmerman, R. L. Seegal, D. H. Marshall and S. K. Lee, and each of them, as true and lawful attorneys and agents to execute in his or her name, place and stead (in any such capacity) the Registration Statements and any and all amendments thereto, and any and all documents in connection therewith, and to file the same, in electronic or paper form, with the SEC, each of said attorneys and agents to have power to act with or without the other and to have the full power and authority to do and perform in the name and on behalf of each of said officers and directors, or both, as the case may be, every act whatsoever necessary or advisable to be done in the premises as fully and to all intents and purposes as any such officer and director might or could do in person.

RESOLVED, that each officer and director of the Company who may be required to execute the Registration Statements or any amendment thereto (whether on behalf of the Company or as an officer or director thereof) be and hereby is authorized to execute a power of attorney appointing L. A. Zimmerman, R. L. Seegal, S. K. Lee and D. H. Marshall, and each of them, as true and lawful attorneys and agents to execute in his or her name, place and stead (in any such capacity) the Registration Statements and any and all amendments thereto, and any and all documents in connection therewith, and to file the same, in electronic or paper form, with the SEC, each of said attorneys and agents to have power to act with or without the other and to have the full power and authority to do and perform in the name and on behalf of each of said officers and directors, or both, as the case may be, every act whatsoever necessary or advisable to be done in the premises as fully and to all intents and purposes as any such officer and director might or could do in person.

RESOLVED, that each officer and director of the Company who may be required to execute the Registration Statements or any amendment thereto (whether on behalf of the Company or as an officer or director thereof) be and hereby is authorized to execute a power of attorney appointing L. A. Zimmerman, R. L. Seegal, S. K. Lee and D. H. Marshall, and each of them, as true and lawful attorneys and agents to execute in his or her name, place and stead (in any such capacity) the Registration Statements and any and all amendments thereto, and any and all documents in connection therewith, and to file the same, in electronic or paper form, with the SEC, each of said attorneys and agents to have power to act with or without the other and to have the full power and authority to do and perform in the name and on behalf of each of said officers and directors, or both, as the case may be, every act whatsoever necessary or advisable to be done in the premises as fully and to all intents and purposes as any such officer and director might or could do in person.

POWER OF ATTORNEY

Xerox Corporation (the "Company") and each person whose signature appears below authorize each of L. A. Zimmerman, R. L. Seegal, D. H. Marshall and S. K. Lee (each an "appointee") to file, either in paper or electronic form, from time to time one or more registration statements and amendments thereto (including post-effective amendments), under the Securities Act of 1933, as amended, for the purpose of registering the offering and sale of an unlimited amount of securities of the Company (including, but not limited to, equity securities, debt securities, convertible securities and preferred stock) in an aggregate principal amount not to exceed U.S. \$2.5 billion, which registration statements and amendments shall contain such information and exhibits as any such appointee deems advisable. Each such person hereby appoints each appointee as attorney-in-fact, with full power to act alone, to execute any such registration statements and any and all amendments thereto and any and all other documents in connection therewith, in the name of and on behalf of the Company and each such person, individually and in each capacity stated below, including the power to enter electronically such company identification numbers, passwords and other information as may be required to effect such filing as prescribed under the rules and regulations of the Securities and Exchange Commission (the "SEC"), and to file, either in paper or electronic form, with the SEC a form of this Power of Attorney. Each such person individually and in such capacities stated below hereby grants to said attorneys-in-fact, and each of them, full power and authority to do and perform each and every act and thing whatsoever that said attorney or attorneys may deem necessary or advisable to carry out fully the intent of the foregoing as the undersigned could do personally or in the capacities as aforesaid.

XEROX CORPORATION

Dated: December 10, 2003

By: /s/ Anne M. Mulcahy

 Anne M. Mulcahy
 Chairman of the Board and
 Chief Executive Officer

/s/ Anne M. Mulcahy

 Chairman of the Board, Chief Executive Officer and Director
 (Principal Executive Officer)

(Anne M. Mulcahy)

/s/ Lawrence A. Zimmerman

 Senior Vice President and Chief Financial Officer
 (Principal Financial Officer)

(Lawrence A. Zimmerman)

/s/ Gary R. Kabureck

(Gary R. Kabureck)

Vice President and Assistant Controller
(Principal Accounting Officer)

/s/ Antonia Ax:son Johnson

(Antonia Ax:son Johnson)

Director

/s/ Vernon E. Jordan, Jr.

(Vernon E. Jordan, Jr.)

Director

/s/ Yotaro Kobayashi

(Yotaro Kobayashi)

Director

/s/ Hilmar Kopper

(Hilmar Kopper)

Director

/s/ Ralph S. Larsen

(Ralph S. Larsen)

Director

/s/ N. J. Nicholas, Jr.

(N. J. Nicholas, Jr.)

Director

/s/ John E. Pepper

(John E. Pepper)

Director

/s/ Ann N. Reese

(Ann N. Reese)

Director

POWER OF ATTORNEY

INTELLIGENT ELECTRONICS, INC. (the "Company") and each person whose signature appears below hereby authorize each of L. A. Zimmerman, R. L. Seegal, S. K. Lee and D. H. Marshall (each an "appointee") to file, either in paper or electronic form, from time to time, one or more registration statements and amendments thereto (including post-effective amendments) under the Securities Act of 1933, as amended, for the purpose of registering the offering, issuance and exchange of securities of the Company, which registration statements and amendments shall contain such information and exhibits as any such appointee deems advisable. Each such person hereby appoints each appointee as attorney-in-fact, with full power to act alone, to execute any such registration statements and any and all amendments thereto and any and all other documents in connection therewith, in the name of and on behalf of the Company and each such person, individually and in each capacity stated below, including the power to enter electronically such company identification numbers, passwords and other information as may be required to effect such filing as prescribed under the rules and regulations of the Securities and Exchange Commission (the "SEC"), and to file, either in paper or electronic form, with the SEC a form of this Power of Attorney. Each such person individually and in such capacities stated below hereby grants to said attorneys-in-fact, and each of them, full power and authority to do and perform each and every act and thing whatsoever that said attorney or attorneys may deem necessary or advisable to carry out fully the intent of the foregoing as the undersigned could do personally or in the capacities as aforesaid.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Power of Attorney has been signed by the following person in the capacities on the 23rd day of December, 2003.

<u>Name</u>	<u>Capacities</u>
<u>/s/ James Joyce</u> James Joyce	President, Chief Executive Officer
<u>/s/ Robert Hope</u> Robert Hope	Treasurer, Chief Financial Officer, Chief Accounting Officer
<u>/s/ Thomas Dolan</u> Thomas Dolan	Sole Director

POWER OF ATTORNEY

XEROX INTERNATIONAL JOINT MARKETING, INC. (the "Company") and each person whose signature appears below hereby authorize each of L. A. Zimmerman, R. L. Seegal, S. K. Lee and D. H. Marshall (each an "appointee") to file, either in paper or electronic form, from time to time, one or more registration statements and amendments thereto (including post-effective amendments) under the Securities Act of 1933, as amended, for the purpose of registering the offering, issuance and exchange of securities of the Company, which registration statements and amendments shall contain such information and exhibits as any such appointee deems advisable. Each such person hereby appoints each appointee as attorney-in-fact, with full power to act alone, to execute any such registration statements and any and all amendments thereto and any and all other documents in connection therewith, in the name of and on behalf of the Company and each such person, individually and in each capacity stated below, including the power to enter electronically such company identification numbers, passwords and other information as may be required to effect such filing as prescribed under the rules and regulations of the Securities and Exchange Commission (the "SEC"), and to file, either in paper or electronic form, with the SEC a form of this Power of Attorney. Each such person individually and in such capacities stated below hereby grants to said attorneys-in-fact, and each of them, full power and authority to do and perform each and every act and thing whatsoever that said attorney or attorneys may deem necessary or advisable to carry out fully the intent of the foregoing as the undersigned could do personally or in the capacities as aforesaid.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Power of Attorney has been signed by the following person in the capacities on the 23rd day of December 2003.

Name**Capacities**

/s/ James A. Firestone

President, Chief Executive Officer, Treasurer, Chief Financial Officer,
Principal Accounting Officer and Sole Director

James A. Firestone

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM T-1

STATEMENT OF ELIGIBILITY
UNDER THE TRUST INDENTURE ACT OF 1939 OF A
CORPORATION DESIGNATED TO ACT AS TRUSTEE

CHECK IF AN APPLICATION TO DETERMINE ELIGIBILITY OF A TRUSTEE PURSUANT TO SECTION 305(b)(2)

WELLS FARGO BANK, NATIONAL ASSOCIATION

(Exact name of trustee as specified in its charter)

A National Banking Association

(Jurisdiction of incorporation or
organization if not a U.S. national
bank)

94-1347393

(I.R.S. Employer
Identification No.)

420 Montgomery Street

San Francisco, California

(Address of principal executive offices)

94104-1207

(Zip code)

**Wells Fargo & Company
Law Department, Trust Section
MAC N9305-175**

**Sixth Street and Marquette Avenue, 17th Floor
Minneapolis, Minnesota 55479
(612) 667-4608**

(Name, address and telephone number of agent for service)

XEROX CORPORATION

(Exact name of obligor as specified in its charter)

New York

(State or other jurisdiction of
incorporation or organization)

16-0468020

(I.R.S. Employer
Identification No.)

800 Long Ridge Road

P.O. Box 1600

Stamford, Connecticut

(Address of principal executive offices)

06904-1600

(Zip code)

Debt Securities

(Title of the indenture securities)

Item 1. General Information. Furnish the following information as to the trustee:

- (a) Name and address of each examining or supervising authority to which it is subject.

Comptroller of the Currency
Treasury Department
Washington, D.C.

Federal Deposit Insurance Corporation
Washington, D.C.

Federal Reserve Bank of San Francisco
San Francisco, California 94120

- (b) Whether it is authorized to exercise corporate trust powers.

The trustee is authorized to exercise corporate trust powers.

Item 2. Affiliations with Obligor. If the obligor is an affiliate of the trustee, describe each such affiliation.

None with respect to the trustee.

No responses are included for Items 3-14 of this Form T-1 because the obligor is not in default as provided under Item 13.

Item 15. Foreign Trustee. Not applicable.

Item 16. List of Exhibits. List below all exhibits filed as a part of this Statement of Eligibility.

- Exhibit 1. A copy of the Articles of Association of the trustee now in effect.
- Exhibit 2. A copy of the Comptroller of the Currency Certificate of Corporate Existence for Wells Fargo Bank, National Association, dated November 28, 2001.
- Exhibit 3. A copy of the authorization of the trustee to exercise corporate trust powers. A copy of the Comptroller of the Currency Certificate of Corporate Existence (with Fiduciary Powers) for Wells Fargo Bank, National Association, dated April 23, 1993.
- Exhibit 4. Copy of By-laws of the trustee as now in effect.
- Exhibit 5. Not applicable.
- Exhibit 6. The consent of the trustee required by Section 321(b) of the Act.
- Exhibit 7. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority.

Exhibit 8. Not applicable.

Exhibit 9. Not applicable.

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Wells Fargo 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 Minneapolis and State of Minnesota on the 26th day of December 2003.

WELLS FARGO BANK, NATIONAL ASSOCIATION

/s/ JANE Y. SCHWEIGER

Jane Y. Schweiger
Vice President

WELLS FARGO BANK, NATIONAL ASSOCIATION

ARTICLES OF ASSOCIATION

EFFECTIVE OCTOBER 30, 1998

ARTICLE I—NAME

The title of the Association shall be WELLS FARGO BANK, NATIONAL ASSOCIATION.

ARTICLE II—OFFICES

1. Main Office. The main office of the Association shall be in the City and County of San Francisco, State of California. The Board of Directors shall have the power to change the location of the main office to any other place within the City and County of San Francisco, State of California, without the approval of the stockholders, but subject to the approval of the Comptroller of the Currency.

2. Branch Offices. The Board of Directors 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 stockholders but subject to the approval of the Comptroller of the Currency.

3. Conduct of Business. The general business of the Association shall be conducted at its main office and its branches.

ARTICLE III—BOARD OF DIRECTORS

1. Number; Vacancy. The Board of Directors of the Association shall consist of not less than five nor more than twenty-five persons, 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 stockholders 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.

2. Appointment of Officers. The Board of Directors shall appoint one of its members as the President of the Association. The President shall also be the Chairman of the Board unless the Board of Directors appoints another Director to be the Chairman of the Board. The Board of Directors shall have the power to appoint or to determine the manner of appointing the other officers of the Association.

3. Powers. The Board of Directors shall have the power to define or to determine the manner of defining the duties of the officers and employees of the Association; to fix or to determine the manner of fixing the salaries to be paid to them; to dismiss or to determine the manner of dismissing 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 By-Laws that it may be lawful for the Board of Directors to make; and generally to do and perform all acts that it may be legal for a Board of Directors to do and perform.

ARTICLE IV—MEETINGS OF STOCKHOLDERS

1. Annual Meeting. The annual meeting of the stockholders 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 therefor in the By-Laws, 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 such lawful regulations as may be prescribed by the Board of Directors.

2. Special Meetings. Special meetings of the stockholders of this Association unless otherwise regulated by statute, for any purpose or purposes whatsoever, may be called at any time by the Board of Directors, the chief executive officer or by one or more stockholders holding not less than one-fifth of the voting power of the Association.

3. Notice of Meetings. Unless otherwise regulated by statute, a notice of the time, place and purpose of every annual and special meeting of the stockholders shall be given by first-class mail, postage prepaid, mailed at least ten days prior to the date of such meeting to each stockholder of record at his address as shown upon the books of the Association.

4. Written Consents. Unless otherwise regulated by statute, any action required or permitted to be taken by the stockholders may be taken without a meeting, if all stockholders shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the stockholders. Such action by written consent shall have the same force and effect as the unanimous vote of the stockholders.

ARTICLE V—INDEMNITY

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 or 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 Capital Stock 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 entire number of Directors. The foregoing right of indemnification or reimbursement 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, or employees.

ARTICLE VI—CAPITAL

1. Capitalization. The Association is authorized to issue a total of 112,200,000 shares of common stock (the “Common Stock”) and 1,225,000 shares of preferred stock. The aggregate par value of all the shares of Common Stock which the Association shall be authorized to issue shall be \$1,122,000,000, and the par value of each share of Common Stock which the Association shall

be authorized to issue shall be Ten Dollars (\$10.00). The aggregate par value of all the shares of preferred stock which the Association shall be authorized to issue shall be \$12,250, and the par value of each share of preferred stock which the Association shall be authorized to issue shall be One Cent (\$0.01).

2. Voting Rights. Each holder of Common Stock shall be entitled to vote on all matters, one vote for each share of Common Stock held by him, provided that, in all elections of Directors, each holder of Common Stock shall have the right to vote the shares allocated to the number of shares owned by him for as many persons as there are Directors to be elected, or to cumulate such votes and give one candidate as many votes as the number of Directors to be elected multiplied by the number of votes allocable to his share shall equal, or to distribute such votes on the same principle among as many candidates as he shall think fit.

3. Debt Obligations. The Association, at any time and from time to time, may authorize the issue of debt obligations, whether or not subordinated, without the approval of the stockholders.

4. Preferred Stock, Series A.

A. Designation. 1,225,000 shares of the preferred stock of the Association are designated as 7³/₄% Noncumulative Preferred Stock, Series A (hereinafter referred to as the "Series A Preferred Shares" or the "Series"). The Series A Preferred Shares shall have a liquidation preference of \$1,000 per share (the "Liquidation Preference"). The number of authorized Series A Preferred Shares may be reduced by further resolution duly adopted by the Board of Directors of the Association (the "Board") and by the filing of articles of amendment stating that such reduction has been so authorized. The number of authorized shares of this Series shall not be increased.

B. Dividends. (a) Dividends on the Series A Preferred Shares shall be payable at a rate of 7³/₄% of the Liquidation Preference per annum, if, when and as declared by the Board out of assets of the Association legally available therefor. If declared, dividends on the Series A Preferred Shares shall be payable quarterly in arrears on January 15, April 15, July 15 and October 15 of each year (a "Dividend Date"), commencing on the first Dividend Date after the Time of Exchange (as defined below). Dividends will accrue from the first day of the fiscal quarter ending on each Dividend Date

(each a "Dividend Period"), whether or not declared or paid for the prior Dividend Period. Each declared dividend shall be payable to the holder of record of the Series A Preferred Shares as it appears at the close of business on the stock register of the Association on such record date, not exceeding 45 days preceding the payment date thereof, as shall be fixed by the Board.

(b) If the Board fails to declare a dividend on the Series A Preferred Shares for any Dividend Period, then the holder of the Series A Preferred Shares will have no right to receive a dividend on such shares for that Dividend Period, and the Association will have no obligation to pay a dividend for that Dividend Period, whether or not dividends are declared and paid for any future Dividend Period with respect to either the Series A Preferred Shares or the Common Stock of the Association.

(c) If full dividends on the Series A Preferred Shares for any Dividend Period shall not have been declared and paid, or declared and a sum sufficient for the payment thereof shall not have been set apart for such payment, no dividends shall be declared or paid or set aside for payment and no other distribution shall be declared or made or set aside for payment upon the Common Stock or any other capital stock of the Association ranking junior to or on a parity with the Series A Preferred Shares as to dividends or amounts upon liquidation, nor shall any Common Stock or any other capital stock of the Association ranking junior to or on a parity with the Series A Preferred Shares as to dividends or amounts upon liquidation be redeemed, purchased or otherwise acquired for any consideration (or any monies to be paid to or made available for a sinking fund for the redemption of any such stock) by the Association (except by conversion into or exchange for other capital stock of the Association ranking junior to the Series A Preferred Shares as to dividends and amounts upon liquidation), until such time as dividends on all outstanding Series A Preferred Shares have been (i) declared and paid declared for three consecutive Dividend Periods and (ii) declared and paid or declared and a sum sufficient for the payment thereof has been set apart for payment for the fourth consecutive Dividend Period. Notwithstanding the above, nothing in this subparagraph shall prevent the Association from treating an amount consented to by a holder of the Common Stock under the provisions of section 565 of the Internal Revenue Code of 1986, as amended (the "Code"), as a dividend for purposes of the dividends paid deduction under section 561 of the Code.

(d) When dividends are not paid in full (or a sum sufficient for such full payment is not set apart) upon the Series A Preferred Shares and the shares of any other series of capital stock of the Association ranking on a parity as to

dividends with the Series A Preferred Shares, all dividends declared upon the Series A Preferred Shares and any such other series of capital stock shall be declared pro rata so that the amount of dividends declared per share on the Series A Preferred Shares and such other series of capital stock shall, in all cases, bear to each other the same ratio that full dividends, for the then-current Dividend Period, per share on the Series A Preferred Shares (which shall not include any accumulation in respect of unpaid dividends for prior Dividend Periods) and full dividends, including required or permitted accumulations, if any, on such other series of capital stock bear to each other.

(e) The holder of the Series A Preferred Shares shall not be entitled to any dividend, whether payable in cash, property or stock, in excess of full dividends, as herein provided, on the Series A Preferred Shares. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Series A Preferred Shares which may be in arrears.

C. Redemption. (a) With the prior approval of the United States Office of the Comptroller of the Currency (the "OCC"), the Association, at its option, may redeem the Series A Preferred Shares, in whole or in part, at any time or from time to time, at a redemption price equal to the Liquidation Preference per share, plus accrued and unpaid dividends thereon to the date fixed for redemption.

(b) In the event the Association shall redeem any of the Series A Preferred Shares, notice of such redemption shall be given by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the redemption date, to the holder of record of the Series A Preferred Shares, at the holder's address as the same appears on the stock register of the Association. Each such notice shall state: (i) the redemption date; (ii) the number of Series A Preferred Shares to be redeemed and, if fewer than all the Series A Preferred Shares held by the holder are to be redeemed, the number of such shares to be redeemed from the holder; (iii) the redemption price; and (iv) the place or places where certificates for such shares are to be surrendered for payment of the redemption price.

(c) Notice having been mailed as aforesaid, from and after the redemption date (unless default shall be made by the Association in providing money for the payment of the redemption price), said Series A Preferred Shares shall no longer be deemed to be outstanding, and all rights of the holder thereof as a stockholder of the Association (except the right to receive from the Association the redemption price) shall cease. If such shares are represented by a certificate, upon surrender in

accordance with said notices of the a certificate for any Series A Preferred Shares so redeemed (properly endorsed or assigned for transfer, if the Board shall so require and the notice shall so state), such shares shall be redeemed by the Association at the redemption price aforesaid. In case fewer than all the Series A Preferred Shares represented by any such certificate is redeemed, a new certificate shall be issued representing the unredeemed Series A Preferred Shares without cost to the holder thereof.

(d) Any Series A Preferred Shares, which shall at any time have been redeemed, shall, after such redemption, have the status of authorized but unissued shares of Preferred Stock, without designation as to series until such shares are once more designated as part of a particular series by the Board.

D. Automatic Exchange. (a) Series A Preferred Shares will be issued only in exchange (the "Automatic Exchange") for shares of 7³/₄% Noncumulative Exchangeable Preferred Stock, Series A, \$0.01 par value per share (a "REIT Preferred Share"), of Wells Fargo Realty Corporation II, a Maryland corporation (the "REIT"), upon the terms and conditions set forth in this Section D.

(b) The Automatic Exchange will occur only if the appropriate federal regulatory agency directs in writing (a "Directive") an exchange of the REIT Preferred Shares for the Series A Preferred Shares because (i) the REIT becomes "undercapitalized" under prompt corrective action regulations, (ii) the REIT is placed into conservatorship or receivership or (iii) the appropriate federal regulatory agency, in its sole discretion, anticipates the REIT becoming "undercapitalized" in the near term (an "Exchange Event").

(c) Upon an Exchange Event, upon surrender to the Association by the holder of the REIT Preferred Shares of the certificate, if any, representing each share of the REIT Preferred Shares of the holder, the Association shall be unconditionally obligated to issue to the holder in exchange for each such REIT Preferred Share a certificate representing one Series A Preferred Share.

(d) The Automatic Exchange shall occur as of 8:00 a.m., Eastern Time, on the date for such exchange set forth in the Directive, or, if such date is not set forth in the Directive, as of 8:00 a.m., Eastern Time, on the earliest possible date such exchange could occur consistent with the Directive (the "Time of Exchange"). As of the Time of Exchange, the holder of the REIT Preferred Shares shall thereupon and thereafter be deemed to be and shall be for all purposes a holder

of Series A Preferred Shares. The Association shall deliver to the holder of REIT Preferred Shares a certificate for Series A Preferred Shares upon surrender of the certificate for the REIT Preferred Shares. Until such replacement stock certificate is delivered (or in the event such replacement certificate is not delivered), any certificate previously representing the REIT Preferred Shares shall be deemed for all purposes to represent Series A Preferred Shares.

(e) In the event the Automatic Exchange occurs, any accrued and unpaid dividends on the REIT Preferred Shares as of the Time of Exchange would be deemed to be accrued and unpaid dividends on the Series A Preferred Shares.

E. Conversion. The holder of Series A Preferred Shares shall not have any rights to convert such shares into shares of any other class or series of capital stock of the Association.

F. Liquidation Rights. (a) Upon the voluntary or involuntary dissolution, liquidation or winding up of the Association, the holder of the Series A Preferred Shares shall be entitled to receive and to be paid out of the assets of the Association available for distribution to its stockholder, before any payment or distribution shall be made on the Common Stock or on any other class of stock ranking junior to the Series A Preferred Shares upon liquidation, the amount of the Liquidation Preference per share, plus the quarterly accrued and unpaid dividend thereon to the date of liquidation.

(b) After the payment to the holder of the Series A Preferred Shares of the full preferential amounts provided for in this Section F, the holder of the Series A Preferred Shares as such shall have no right or claim to any of the remaining assets of the Association.

(c) If, upon any voluntary or involuntary dissolution, liquidation or winding up of the Association, the amounts payable with respect to the Liquidation Preference and any other shares of capital stock of the Association ranking as to any such distribution on a parity with the Series A Preferred Shares are not paid in full, the holder of the Series A Preferred Shares and of such other shares will share ratably in any such distribution of assets of the Association in proportion to the full respective liquidating distributions to which they are entitled.

(d) Neither the sale of all or substantially all the property or business of the Association, nor the merger or consolidation of the Association into or with any other

Association, nor the merger or consolidation of any other Association into or with the Association shall be deemed to be a dissolution, liquidation or winding up, voluntary or involuntary, of the Association for purposes of this Section F.

(e) Upon the dissolution, liquidation or winding up of the Association, the holder of the Series A Preferred Shares then outstanding shall be entitled to be paid out of the assets of the Association available for distribution to its stockholder all amounts to which the holder is entitled pursuant to paragraph (a) of this Section F before any payment shall be made to the holder of any class of capital stock of the Association ranking junior to the Series A Preferred Shares upon liquidation.

G. Ranking. For purposes of these articles, any stock of any class or classes of the Association shall be deemed to rank:

(a) Prior to the Series A Preferred Shares, either as to dividends or upon liquidation, if the holder of such class or classes shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of the Association, as the case may be, in preference or priority to the holder of the Series A Preferred Shares;

(b) On a parity with the Series A Preferred Shares, either as to dividends or upon liquidation, whether or not the dividend rates, dividend payment dates or redemption or liquidation prices per share or sinking fund provisions, if any, be different from those of the Series A Preferred Shares, if the holder of such stock shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of the Association, as the case may be, without preference or priority, one over the other, as between the holder of such stock and the holder of the Series A Preferred Shares; and

(c) Junior to the Series A Preferred Shares, either as to dividends or upon liquidation, if such class shall be Common Stock or if the holder of the Series A Preferred Shares shall be entitled to receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of the Association, as the case may be, in preference or priority to the holder of shares of such class or classes.

H. Voting Rights. The Series A Preferred Shares shall not have any voting rights, either general or special, unless required by applicable law.

ARTICLE VII—PERPETUAL EXISTENCE

The corporate existence of the Association shall continue until terminated in accordance with the laws of the United States.

ARTICLE VIII—AMENDMENT

These Articles of Association may be amended at any regular or special meeting of the stockholders by the affirmative vote of the holders of a majority of the Capital Stock of the Association, unless the vote of the holders of a greater amount of Capital Stock is required by law, and in that case by the vote of the holders of such greater amount.



Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

Certificate of Corporate Existence

I, John D. Hawke, Jr., Comptroller of the Currency, do hereby certify that:

1. The comptroller of the Currency, pursuant to Revised Statutes 324, et. seq., as amended, 12 U.S.C. 1, et seq., as amended, has possession, custody and control of all records pertaining to the chartering of all National Banking Associations.
2. "Wells Fargo Bank, National Association," San Francisco, California, (Charter No. 1741) is a National Banking Association formed under the laws of the United States and is authorized thereunder to transact the business of banking on the date of this Certificate.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the Treasury Department in the City of Washington and District of Columbia, this 28th day of November, 2001.



John D. Hawke, Jr.

Comptroller of the Currency



Comptroller of the Currency
Administrator of National Banks

Western District Office
50 Fremont Street, Suite 3900
San Francisco, CA 94105-2292

CERTIFICATE OF CORPORATE EXISTENCE
(WITH FIDUCIARY POWERS)

I, JOHN C. BEERS, on behalf of the office of the Comptroller of the Currency, hereby certify that:

1. The Office of the Comptroller of the Currency, pursuant to Revised Statutes 324, et seq., as amended, 12 U.S.C. 1, et seq., as amended, has possession, custody and control of all records pertaining to the chartering, regulations and supervision of all National Banking Associations;
2. Wells Fargo Bank, National Association, San Francisco, California, Charter Number 1741, is a National Banking Association formed under the laws of the United States of America and authorized hereunder and continues to hold authority to transact the business of banking (and to act in all fiduciary capacities) permitted thereby on the date of this certificate.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of the Office of the Comptroller of the Currency, in the City of San Francisco, California, to be affixed this 23rd day of April, A.D. 1993.

JOHN C. BEERS
Manager, Licensing

BY-LAWS
OF
WELLS FARGO BANK, NATIONAL ASSOCIATION
(As amended May 24, 2001)

ARTICLE I

MEETINGS OF STOCKHOLDERS

SECTION 1. **Annual Meetings.** All annual meetings of the stockholders of Wells Fargo Bank, National Association (the "Bank") shall be held at such time and place as may be authorized from time to time by the Board of Directors. At such meetings, directors shall be elected, and any other business may be transacted which is within the powers of the stockholders.

SECTION 2. **Special Meetings.** Special meetings of the stockholders, unless otherwise regulated by statute, for any purpose or purposes whatsoever, may be called at any time by the Board of Directors, the Chief Executive Officer or one or more stockholders holding not less than one-fifth of the voting power of the Bank. Such meetings shall be held at the head office of the Bank or other convenient place duly authorized by the Board of Directors.

SECTION 3. **Notice of Meetings.** Unless otherwise provided by statute, a notice of the time, place and purpose of every annual and special meeting of the stockholders shall be given by first-class mail, postage prepaid, mailed at least 10 days prior to the date of such meeting to each stockholder of record at his or her address as shown upon the books of the Bank, or if no address is shown, at 464 California Street, San Francisco, California. Except as otherwise provided by statute, the transactions of any meeting of stockholders, however called and noticed and wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, each of the stockholders entitled to vote, not present in person or by proxy, signs a written waiver of notice of such meeting. All such waivers shall be filed with the records of the Bank or made a part of the minutes of the meeting.

SECTION 4. **Proxies.** Stockholders may vote at any meeting of the stockholders by proxies duly authorized in writing, but no officer or employee of the Bank shall act as proxy. 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 5. **Quorum.** Except as otherwise provided by law, the attendance of the holders of a majority of the capital stock issued and outstanding and entitled to vote, either present in person or represented by proxy, is requisite and shall constitute a quorum for the transaction of business at all meetings of the stockholders. A majority of the votes cast shall decide every question or matter submitted to the stockholders at any meeting, unless otherwise provided by law or by the Articles of Association.

SECTION 6. **Written Consents.** Any action required or permitted to be taken by the stockholders may be taken without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholder who have not consented in writing. Any such written consent shall be filed with the minutes of the proceedings of the stockholders.

ARTICLE II DIRECTORS

SECTION 1. **Corporate Powers; Number.** The corporate powers of this Bank shall be vested in and exercised by a Board of Directors consisting of five members.

SECTION 2. **Election, Vacancies.** The directors shall be elected by ballot at the annual meeting of the stockholders. Each director shall serve until the organizational meeting of the Board of Directors held pursuant to Section 3 of this Article in

the year next following his or her election and until his or her successor has been elected and has qualified. Vacancies in the Board of Directors shall be filled by the majority vote of the other directors then in office or by the stockholders.

SECTION 3. **Organizational Meeting**. The directors, without further notice, shall meet following the adjournment of the stockholders' meeting at which they have been elected and shall, pursuant to Section 1 of Article III hereof, proceed to elect the officers of the Bank. At said meeting the Board of Directors may consider and act upon any other business which may properly be brought before the meeting.

SECTION 4. **Place of Meetings**. The Board of Directors shall hold its meetings at the head office of the Bank or at such other place as may from time to time be designated by the Board of Directors or by the Chief Executive Officer.

SECTION 5. **Regular Meetings**. Regular meetings of the Board of Directors shall be held on such days and at such time as may be designated from time to time for such purpose by the Board of Directors. If the day of any regular meeting shall fall upon a bank holiday, the meeting shall be held at the same hour on the first day following which is not a bank holiday. No call or notice of a regular meeting need be given unless the meeting is to be held at a place other than the head office of the Bank.

SECTION 6. **Special Meetings**. Special meetings shall be held when called by the Chief Executive Officer or at the written request of two directors.

SECTION 7. **Quorum; Adjourned Meetings**. A majority of the authorized number of directors shall constitute a quorum for the transaction of business. A majority of the directors present, whether or not a quorum, may adjourn any meeting to another time and place, provided that, if the meeting is adjourned for more than 30 days, notice of the adjournment shall be given in accordance with these By-Laws.

SECTION 8. **Notice; Waivers of Notice**. Notice of special meetings and notice of regular meetings held at a place other than the head office of the Bank shall be given to each director, and notice of a meeting adjourned for more than 30 days shall be given prior to the adjourned meeting to all directors not present at the time of the adjournment. No such notice need specify the purpose of the meeting. Such notice shall be given

four days prior to the meeting if given by mail or on the day preceding the day of the meeting if delivered personally or by telephone, facsimile, telex or telegram. Such notice shall be addressed or delivered to each director at such director's address as shown upon the records of the Bank or as may have been given to the Bank by the director for the purposes of notice. Notice need not be given to any director who signs a waiver of notice (whether before or after the meeting) or who attends the meeting without protesting the lack of notice prior to its commencement. All such waivers shall be filed with and made a part of the minutes of the meeting.

SECTION 9. **Written Consents.** Any action required or permitted to be taken by the Board of Directors may be taken without a meeting if all members of the Board of Directors shall individually or collectively consent in writing to such action. Any such written consent shall be filed with the minutes of the proceedings of the Board of Directors. Such action by written consent shall have the same force and effect as the unanimous vote of the directors.

SECTION 10. **Telephonic Meetings.** A meeting of the Board of Directors or of any committee thereof may be held through the use of conference telephone or similar communications equipment, so long as all members participating in such meeting can hear one another. Participation in such a meeting shall constitute presence at such meeting.

SECTION 11. **Compensation.** Directors shall receive no compensation as such for attendance at meetings of the Board of Directors or of its committees.

SECTION 12. **Executive Committee.** There shall be an Executive Committee consisting of the Chairman of the Board, if appointed, and the President. The Executive Committee shall be subject to the control of the Board of Directors but, subject thereto, it shall have the fullest authority to act for and on behalf of the Bank and it shall have all of the powers of the Board of Directors, which, under the law, is possible for the Board of Directors to delegate to such a Committee, including the supervision of the general management, direction and superintendence of the business affairs of the Bank.

SECTION 13. **Other Committees; Alternate Members.** By resolution adopted by a majority of the authorized number of directors, the Board of Directors may constitute one or more

committees to act as or on behalf of the Board of Directors. Each such committee shall consist of one or more directors designated by the Board of Directors to serve on such committee at the pleasure of the Board of Directors. The Board of Directors may designate one or more directors as alternate members of any committee, which alternate members may replace any absent member at any meeting of such committee in the order designated. Failing such designation and in the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

SECTION 14. **Committee Members' Term of Service.** Each committee member shall serve until the organizational meeting of the Board of Directors held pursuant to Section 3 of this Article in the year next following his or her election and until his or her successor has been elected and has qualified, but any such member may be removed at any time by the Board of Directors. Vacancies in any of said committees, however created, shall be filled by the Board of Directors.

SECTION 15. **Committee Meeting Procedures.** Subject to these By-Laws and the Board of Directors, each committee shall have the power to determine the form of its organization, and the provisions of these By-Laws governing the calling, notice and place of special meetings of the Board of Directors shall apply to all meetings of any committee unless such committee fixes a time and place for regular meetings, in which case notice for such meeting shall be unnecessary. The provisions of these By-Laws regarding meetings of the Board of Directors, however called or noticed, shall apply to all meetings of any committee. A majority of the members of any such committee shall be necessary to constitute a quorum, and any act of a majority present at a meeting of any such committee of which there is a quorum present shall be the act of such committee. Any action which may be taken at a meeting of any committee of the Board may be taken without a meeting, if all members of said committee individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of said committee and shall have the same force and effect as the unanimous vote of the committee members. Each committee shall cause to be kept a full and complete record of its proceedings, which shall be available for inspection by

any director. There shall be presented at each meeting of the Board of Directors copies of the minutes of all proceedings and all actions taken by written consent of each committee since the preceding meeting of the Board of Directors.

ARTICLE III

OFFICERS

SECTION 1. **Officers, Election.** The Bank shall have a President and a Secretary. The Bank also may have a Chairman of the Board, a Chief Executive Officer, a Treasurer, a Controller and one or more Vice Chairmen, Executive Vice Presidents, Senior Managing Directors, Managing Directors, Senior Vice Presidents, Vice Presidents, Assistant Vice Presidents, Assistant Treasurers, Assistant Secretaries and such other officers as may be created from time to time by the Board, the Chief Executive Officer or any officer or committee upon whom the Board or the Chief Executive Officer may confer this power. The Chairman of the Board, if appointed, and the President shall be appointed from among the members of the Board of Directors. The following offices shall be filled only pursuant to election by the Board of Directors: Chairman of the Board, Chief Executive Officer, President, Vice Chairman, Executive Vice President, Senior Managing Director, Treasurer, Controller and Secretary. Other officers may be appointed by the Board of Directors, the Chief Executive Officer or by any officer or committee upon whom this power may be conferred in these By-Laws or by the Board of Directors or the Chief Executive Officer. Without limiting the generality of the foregoing, any Executive Vice President or Senior Managing Director may appoint officers at the level of Senior Vice President, Managing Director or below, and any Senior Vice President or Managing Director appointed by the Board of Directors may appoint officers at the level of Vice President and below. All officers shall hold office at will, at the pleasure of the Board of Directors, the Chief Executive Officer, the officer or committee having the authority to appoint such officers, and the officer or committee authorized by the Board or the Chief Executive Officer to remove such officers, and may be removed at any time, with or without notice and with or without cause. No appointment or removal of an officer by another officer or a committee shall be effective unless done by means of a written instrument signed by the officer acting or on behalf of the committee and filed with the Secretary. One person may hold more than one office at the same time, except the offices of President and Secretary may not be simultaneously held by the same person.

SECTION 2. **Chairman of the Board.** The Chairman of the Board shall, if appointed and when present, preside at all meetings of stockholders, the Board of Directors and the Executive Committee and shall, subject to these By-Laws, exercise such powers and perform such duties as may from time to time be prescribed by the Board of Directors.

SECTION 3. **President; Chief Executive Officer.** Unless another person is appointed the Chief Executive Officer by the Board of Directors, the President shall be the Chief Executive Officer of the Bank. The Chief Executive Officer shall, subject to the provisions of these By-Laws and such resolutions of the Board of Directors as shall be in effect from time to time, exercise general supervision over the business, affairs and property of the Bank and prescribe, or, to the extent that the President shall deem appropriate, designate an officer or committee to prescribe, the duties, authority and signing powers of all other officers and employees. In the absence of the Chairman of the Board, the President shall preside over the meetings of the stockholders and of the Board of Directors.

SECTION 4. **Absence or Disability of Chief Executive Officer.** In the absence or disability of the Chief Executive Officer, the person designated by the Board of Directors or, if there be no such designation, the person designated by the Chief Executive Officer shall act as the chief executive officer. The Chief Executive Officer shall at all times have on file with the Secretary his or her written designation of the person from time to time designated to act as the chief executive officer in his or her absence or disability.

SECTION 5. **Secretary.** The Secretary shall keep the minutes of the meetings of the Board of Directors and of any committee of the Board and shall perform such other duties as may be prescribed by the Board of Directors or the Chief Executive Officer. The Secretary is assigned all of the duties previously assigned to, or authorized by law, custom or usage to be performed by, a cashier. In the absence of the Secretary, one of the Assistant Secretaries, or an officer designated by the Chief Executive Officer, shall perform the duties and functions of the Secretary.

ARTICLE IV

EMERGENCY PROCEDURES

SECTION 1. **“Emergency” Defined.** As used in this Article, “emergency” shall mean any disorder, disturbance or damage caused by or resulting from any natural disaster, act of God, act of war, enemy attack, outbreak of hostilities, civil unrest or other similar cause or event beyond the control of the Bank which prevents management by the Board of Directors and conduct by the officers of the business and affairs of the Bank in the manner provided for in the Articles of Association and in the other Articles of these By-Laws. The powers and duties conferred and imposed by this Article and any resolutions adopted pursuant hereto shall be effective only during an emergency. This Article may be implemented from time to time by resolutions adopted by the Board of Directors before or during an emergency, or during an emergency by the Executive Committee or an Emergency Managing Committee constituted and then acting pursuant hereto. An emergency, once commenced, shall be deemed to continue until terminated by resolutions adopted for that purpose by the Board of Directors. During an emergency the provisions of this Article and any implementing resolutions shall supersede any conflicting provisions of any Article of these By-Laws or resolutions adopted pursuant thereto.

SECTION 2. **Conduct of Affairs.** During any emergency, the officers and employees of the Bank shall continue, so far as possible, to conduct the affairs and business of the Bank under the guidance of the Board of Directors, or the Executive Committee or any Emergency Managing Committee acting pursuant to this Article, and in accordance with known orders of governmental authorities.

SECTION 3. **Power of Executive Committee.** If, during any emergency, a quorum of either the Board of Directors or the Executive Committee cannot be found or is unable to act, any available member of the Executive Committee shall constitute a quorum of the Executive Committee and as such shall have and may exercise the fullest power to conduct and manage the business and affairs of the Bank and to relocate the head office or any other office or branch as circumstances may require, provided that the Executive Committee shall, during any emergency, comply with Sections 1 and 2 of Article I, relating to annual and special meetings of the stockholders, to the extent that such compliance is practicable. If no member of the Executive Committee is available to serve, any two or more available directors shall be

deemed to constitute a quorum of the Executive Committee for exercise of the powers conferred and performance of the duties imposed by this Section 3.

SECTION 4. Power of Emergency Managing Committee. If, during any emergency, neither a quorum of the Board of Directors nor the Executive Committee as provided in Section 3 above is available to serve, then the powers conferred and duties imposed by said Section 3 shall be vested in and devolve upon an Emergency Managing Committee consisting of all available directors, the then acting chief executive officer if he or she is available, and as many Vice Presidents or officers senior thereto as may be necessary to constitute a total of five Committee members. If officers are needed to serve on the Emergency Managing Committee initially, or to fill vacancies from time to time, such vacancies shall be filled by the available Vice Presidents and officers senior thereto assigned to the head office as constituted prior to the emergency in order of their rank and seniority. If a sufficient number of such officers is not available, such vacancies shall be filled by other Vice Presidents selected by the incumbent members of the Emergency Managing Committee. Any two members of the Emergency Managing Committee and the then acting chief executive officer, if he or she is available, shall constitute a quorum of the Emergency Managing Committee and shall have and exercise all of the powers conferred and perform the duties imposed by this Section 4. If the then acting chief executive officer is not available, any three members of the Emergency Managing Committee shall constitute a quorum of said Committee.

ARTICLE V

DEPOSITS

The Board of Directors shall have the right to establish the terms and conditions of agreements, rules and regulations upon which deposits may be made with and will be repaid by the Bank or any office of the Bank. Subject to the exercise of such right by the Board of Directors and to applicable law, and not inconsistent therewith, the Chief Executive Officer of the Bank, or such other officer or officers or committee whom he or she may authorize to perform this duty, or the designees of such officer, officers or committee, shall establish the terms and conditions of agreements, rules and regulations with respect to such deposits.

ARTICLE VI
INDEMNIFICATION

SECTION 1. **Action, etc. Other Than by or in the Right of the Bank.** The Bank shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding or investigation, whether civil, criminal or administrative, and whether external or internal to the Bank (other than a judicial action or suit brought by or in the right of the Bank), by reason of the fact that he or she is or was an Agent (as hereinafter defined) against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the Agent in connection with such action, suit or proceeding, or any appeal therein, if the Agent acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Bank and, with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful. The termination of any action, suit or proceeding — whether by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent — shall not, of itself, create a presumption that the Agent did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Bank and, with respect to any criminal action or proceeding, that the Agent had reasonable cause to believe that his or her conduct was unlawful. For purposes of this Article, an "Agent" shall be any director, officer or employee of the Bank, or any person who, being or having been such a director, officer or employee, is or was serving at the request of the Bank as a director, officer, employee, trustee or agent of another bank, corporation, partnership, joint venture, trust or other enterprise.

SECTION 2. **Action, etc. by or in the Right of the Bank.** The Bank shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed judicial action or suit brought by or in the right of the Bank to procure a judgment in its favor by reason of the fact that such person is or was an Agent (as defined above) against expenses (including attorneys' fees) and amounts paid in settlement actually and reasonably incurred by such person in connection with the defense, settlement or appeal of such action or suit if he or she acted in good faith and in a manner he or

she reasonably believed to be in or not opposed to the best interests of the Bank, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Bank unless and only to the extent that 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 as such court shall deem proper.

SECTION 3. **Determination of Right of Indemnification or Contribution.** Unless otherwise ordered by a court, any indemnification under Section 1 or 2, and any contribution under Section 6, of this Article shall be made by the Bank or an Agent unless a determination is reasonably and promptly made, either (i) by the Board of Directors acting by a majority vote of a quorum consisting of directors who were not party to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or if obtainable and such quorum so directs, by independent legal counsel in a written opinion, or (iii) by the stockholders, that such Agent acted in bad faith and in a manner that such Agent did not believe to be in or not opposed to the best interests of the Bank or, with respect to any criminal proceeding, that such Agent believed or had reasonable cause to believe that his or her conduct was unlawful.

SECTION 4. **Advances of Expenses.** Except as limited by Section 5 of this Article, costs, charges and expenses (including attorneys' fees) incurred by an Agent in defense of any action, suit, proceeding or investigation of the nature referred to in Section 1 or 2 of this Article or any appeal therefrom shall be paid by the Bank in advance of the final disposition of such matter; provided, however, that if the General Corporation Law of Delaware then would by analogy so require, such payment shall be made only if the Agent shall undertake to reimburse the Bank for such payment in the event that it is ultimately determined, as provided herein, that such person is not entitled to indemnification.

SECTION 5. **Right of Agent to Indemnification or Advance Upon Application; Procedure Upon Application.** Any indemnification under Section 1 or 2, or advance under Section 4, of this Article shall be made promptly and in any event within 90 days, upon written request of the Agent, unless with respect to an application under said Sections 1 or 2 an adverse

determination is reasonably and promptly made pursuant to Section 3 of this Article or unless with respect to an application under said Section 4 an adverse determination is made pursuant to said Section 4. The right to indemnification or advances as granted by this Article shall be enforceable by the Agent in any court of competent jurisdiction if the Board of Directors or independent legal counsel improperly denies the claim, in whole or in part, or if no disposition of such claim is made within 90 days. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any action, suit or proceeding in advance of its final disposition where any required undertaking has been tendered to the Bank) that the Agent has not met the standards of conduct which would require the Bank to indemnify or advance the amount claimed, but the burden of proving such defense shall be on the Bank. Neither the failure of the Bank (including the Board of Directors, independent legal counsel and the stockholders) to have made a determination prior to the commencement of such action that indemnification of the Agent is proper in the circumstances because he or she has met the applicable standard of conduct, nor an actual determination by the Bank (including the Board of Directors, independent legal counsel and the stockholders) that the agent had not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the Agent had not met the applicable standard of conduct. The Agent's costs and expenses incurred in connection with successfully establishing his or her right to indemnification, in whole or in part, in any such proceeding shall also be reimbursed by the Bank.

SECTION 6. **Contribution.** In the event that the indemnification provided for in this Article is held by a court of competent jurisdiction to be unavailable to an Agent in whole or in part, then in respect of any threatened, pending or completed action, suit or proceeding in which the Bank is jointly liable with the Agent (or would be if joined in such action, suit or proceeding), to the extent that would by analogy be permitted by the General Corporation Law of Delaware, the Bank shall contribute to the amount of expenses (including attorneys fees) judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Agent in such proportion as is appropriate to reflect (i) the relative benefits received by the Bank on the one hand and the Agent on the other from the transaction from which such action, suit or proceeding arose and (ii) the relative fault of the Bank on the one hand and of the Agent on the other in connection with the events which

resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Bank on the one hand and of the Agent on the other shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts.

SECTION 7. **Other Rights and Remedies.** Indemnification under this Article shall be provided regardless of when the events alleged to underlie any action, suit or proceeding may have occurred, shall continue as to a person who has ceased to be an Agent and shall inure to the benefit of the heirs, executors and administrators of such a person. All rights to indemnification and advancement of expenses under this Article shall be deemed to be provided by a contract between the Bank and the Agent who serves as such at any time while these By-Laws and other provisions of the General Corporation Law of Delaware that would by analogy be relevant and other applicable law, if any, are in effect. Any repeal or modification thereof shall not affect any rights or obligations then existing.

SECTION 8. **Insurance.** Upon resolution passed by the Board of Directors, the Bank may purchase and maintain insurance on behalf of any person who is or was an Agent against any liability asserted against such person and incurred by him or her in any such capacity, or arising out of his or her status as such, regardless of whether the Bank would have the power to indemnify such person against such liability under the provisions of this Article. The Bank may create a trust fund, grant a security interest or use other means, including without limitation a letter of credit, to ensure the payment of such sums as may become necessary to effect indemnification as provided herein.

SECTION 9. **Constituent Corporations.** For the purposes of this Article, references to the Bank include all constituent banks (including any constituent of a constituent) absorbed in a consolidation or merger as well as the resulting or surviving bank, so that any person who is or was a director, officer or employee of such a constituent bank or who, being or having been such a director, officer or employee, is or was serving at the request of such constituent bank as a director, officer, employee or trustee of another bank, corporation, partnership, joint venture, trust or other enterprise, shall stand in the same

position under the provisions of this Article with respect to the resulting or surviving bank as such person would if he or she had served the resulting or surviving bank in the same capacity.

SECTION 10. **Other Enterprises; Fines; Serving at Bank's Request.** For purposes of this Article, references to "other enterprise" in Sections 1 and 9 shall include employee benefit plans; references to "fines" shall include any excise taxes assessed against a person with respect to any employee benefit plan; and references to "serving at the request of the Bank" shall include any service by an Agent as director, officer, employee, trustee or agent of the Bank which imposes duties on, or involves services by, such Agent with respect to any employee benefit plan, its participants, or beneficiaries. A person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Bank" for purposes of this Article.

SECTION 11. **Savings Clause.** If this Article or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Bank shall nevertheless indemnify each Agent as to expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit, appeal, proceeding or investigation, whether civil, criminal or administrative, and whether internal or external, including a grand jury proceeding and an action or suit brought by or in the right of the Bank, to the full extent permitted by the applicable portion of this Article that shall not have been invalidated, or by any other applicable law.

SECTION 12. **Actions Initiated by Agent.** Anything to the contrary in this Article notwithstanding, the Bank shall indemnify any agent in connection with an action, suit or proceeding initiated by such Agent (other than actions, suits, or proceedings commenced pursuant to Section 5 of this Article) only if such action, suit or proceeding was authorized by the Board of Directors.

SECTION 13. **Statutory and Other Indemnification.** Notwithstanding any other provision of this Article, in any administrative proceeding or civil action not initiated by a federal bank regulatory agency, the Bank shall indemnify any Agent and advance expenses incurred by such Agent in any action, suit or proceeding of the nature referred to in Section 1 or 2 of

this Article to the fullest extent that would by analogy be permitted by the General Corporation Law of Delaware, as the same may be amended from time to time, except that no amount shall be paid pursuant to this Article in the event of an adverse determination pursuant to Section 3 of this Article or in respect of remuneration to the extent that it shall be determined to have been paid in violation of law. The rights to indemnification and advancement of expenses provided by any provision of this Article, including without limitation those rights conferred by the preceding sentence, shall not be deemed exclusive of, and shall not affect, any other rights to which an Agent seeking indemnification or advancement of expenses may be entitled under any provision of any law, articles of association, by-law, agreement or by any vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while serving as an Agent. The Bank may also provide indemnification and advancement of expenses to other persons or entities to the extent deemed appropriate. Notwithstanding any provision in these By-Laws, an Agent shall be indemnified in any administrative proceeding or civil action initiated by a federal bank regulatory agency to the extent reasonable and consistent with the provisions of Section 1828(k) of Title 12 of the United States Code and the implementing regulations thereunder.

ARTICLE VII
MISCELLANEOUS

SECTION 1. **Certificates of Stock.** All certificates of the Bank's stock shall be signed by the President or a Vice President and shall be countersigned by the Secretary or an Assistant Secretary and shall bear the corporate seal or a facsimile thereof.

SECTION 2. **Seal.** The seal of the Bank shall be in the form of two concentric circles between which shall be the phrases "National Association" and "Formerly Wells Fargo Bank American Trust Company" and in the center of which shall be the words "Wells Fargo Bank" surrounded by a diamond of which the upper left and lower right sides shall consist of three lines and the upper right and lower left sides shall consist of a solid line of the same width as the three lines comprising the other two sides.

SECTION 3. Execution of Written Instruments. All written instruments shall be binding upon the Bank if signed on its behalf by (i) any two of the following officers: the Chairman of the Board, the President, any Vice Chairman, any Executive Vice President or any Senior Managing Director or (ii) any one of the foregoing officers signing jointly with any Managing Director or any Senior Vice President. Whenever any other officer or person shall be authorized to execute any agreement, document or instrument by resolution of the Board of Directors, or by the Chief Executive Officer, or by any officer or committee designated by the Chief Executive Officer, or by any two of the officers identified in the immediately preceding sentence, such execution by such other officer or person shall be equally binding upon the Bank.

SECTION 4. Ownership Interests in Other Entities. With respect to any corporation, limited liability company, partnership or any other legal entity in which the Bank has or may acquire an ownership interest, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer or the Treasurer, acting alone, or any other officer or officers appointed from time to time by the Board of Directors or the Executive Committee thereof, may (a) personally authorize, sign and deliver on behalf of the Bank or authorize another person to sign and deliver on behalf of the Bank (i) any proxy, written consent, ballot or other similar instrument solicited by the entity from its owners, (ii) any stock power, assignment, bill of sale or other instrument transferring all or any part of the Bank's ownership of the entity or any agreement, instrument or other document relating thereto, (iii) any purchase of stock or other ownership interest in or contribution to the capital of such entity or any agreement, instrument or other document authorizing or evidencing the same and (iv) any agreement, consent, waiver or other document or instrument sought by the entity or an owner from the owners of the entity and (b) without limiting the generality of the foregoing, personally take, or authorize another person to take, any other action on behalf of the Bank as an owner of such entity.

SECTION 5. Amendments. Subject to the right of the stockholders to adopt, amend or repeal By-Laws, these By-Laws may be altered, amended or repealed by the affirmative vote of a majority of the authorized number of directors.

SECTION 6. Corporate Governance. To the extent not inconsistent with applicable federal banking statutes or regulations or the safety and soundness of the Bank, the Bank hereby elects to follow the corporate governance procedures of the Delaware General Corporation Law, as the same may be amended from time to time.

December 26, 2003

Securities and Exchange Commission
Washington, D.C. 20549

Gentlemen:

In accordance with Section 321(b) of the Trust Indenture Act of 1939, as amended, the undersigned hereby consents that reports of examination of the undersigned made by Federal, State, Territorial, or District authorities authorized to make such examination may be furnished by such authorities to the Securities and Exchange Commission upon its request therefor.

Very truly yours,

WELLS FARGO BANK, NATIONAL ASSOCIATION

/s/ JANE Y. SCHWEIGER

Jane Y. Schweiger
Vice President

Wells Fargo Bank National Association

FFIEC 031

Legal Title of Bank

RC-1

San Francisco

City

12

CA

94104

State

Zip Code

Transmitted to EDS as 0013098 on 10/30/2003 at 16:17:22 CST

FDIC Certificate Number - 03511

Consolidated Report of Condition for Insured Commercial and State-Chartered Savings Banks for September 30, 2003

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

	Dollar Amounts 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	8,567,000 1.a
	b. Interest-bearing balances (2)		0071	1,428,000 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	13,007,000 2.b
3.	Federal funds sold and securities purchased under agreements to resell:			
	a. Federal funds sold in domestic offices		RCON B987	176,000 3.a
	b. Securities purchased under agreements to resell (3)		RCFD B989	58,000 3.b
4.	Loans and lease financing receivables (from Schedule RC-C):			
	a. Loans and leases held for sale		5369	36,220,000 4.a
	b. Loans and leases, net of unearned income		B528	137,569,000 4.b
	c. LESS: Allowance for loan and lease losses		3123	1,267,000 4.c
	d. Loans and leases, net of unearned income and allowance (item 4.b minus 4.c)		B529	136,302,000 4.d
5.	Trading assets (from Schedule RC-D)		3545	6,839,000 5
6.	Premises and fixed assets (including capitalized leases)		2145	1,515,000 6
7.	Other real estate owned (from Schedule RC-M)		2150	82,000 7
8.	Investments in unconsolidated subsidiaries and associated companies (from Schedule RC-M)		2130	285,000 8
9.	Customers' liability to this bank on acceptances outstanding		2155	76,000 9
10.	Intangible assets:			
	a. Goodwill		3163	5,379,000 10.a
	b. Other intangible assets (from Schedule RC-M)		0426	6,233,000 10.b
11.	Other assets (from Schedule RC-F)		2160	8,209,000 11
12.	Total assets (sum of items 1 through 11)		2170	224,376,000 12

(1) Includes cash items in process of collection and unposted debits.

(2) Includes time certificates of deposit not held for trading.

(3) Includes all securities resale agreements in domestic and foreign offices, regardless of maturity.

Legal Title of Bank

RC-2

Transmitted to EDS as 0013098 on 10/30/2003 at 16:17:22 CST

FDIC Certificate Number - 03511

13

Schedule RC—Continued

	Dollar Amounts in Thousands		Bil Mil Thou	
LIABILITIES				
13. Deposits:			RCN	
a. In domestic offices (sum of totals of columns A and C from Schedule RC-E, part I)			2200	121,516,000 13.a
(1) Noninterest-bearing (1)	6631	30,651,000		13.a.1
(2) Interest-bearing	6636	90,865,000		13.a.2
b. In foreign offices, Edge and Agreement subsidiaries, and IBFs (from Schedule RC-E, part II)			RCFN	
(1) Non-interest bearing	6631	3,000	2200	17,499,000 13.b
(2) Interest bearing	6636	17,496,000		13.b.1
14. Federal funds purchased and securities sold under agreements to repurchase:			RCN	
a. Federal funds purchased in domestic offices (2)			B993	33,033,000 14.a
b. Securities sold under agreements to repurchase (3)			RCFD	
15. Trading liabilities (from Schedule RC-D)			B995	383,000 14.b
16. Other borrowed money (includes mortgage indebtedness and obligations under capitalized leases) (from Schedule RC-M)			3548	4,855,000 15
17. Not applicable			3190	13,466,000 16
18. Bank's liability on acceptances executed and outstanding			2920	76,000 18
19. Subordinated notes and debentures(4)			3200	6,905,000 19
20. Other liabilities (from Schedule RC-G)			2930	7,160,000 20
21. Total liabilities (sum of items 13 through 20)			2948	204,893,000 21
22. Minority interest in consolidated subsidiaries			3000	41,000 22
EQUITY CAPITAL				
23. Perpetual preferred stock and related surplus			3838	0 23
24. Common stock			3230	520,000 24
25. Surplus (exclude all surplus related to preferred stock)			3839	13,289,000 25
26. a. Retained earnings			3632	5,811,000 26.a
b. Accumulated other comprehensive income (5)			B530	(178,000) 26.b
27. Other equity capital components (6)			A130	0 27
28. Total equity capital (sum of items 23 through 27)			3210	19,442,000 28
29. Total liabilities, minority interest, and equity capital (sum of items 21, 22, and 28)			3300	224,376,000 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 2002		RCFD	Number	M.1
		6724	N/A	
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	4 =	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)	
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)	5 =	Directors' examination of the bank performed by other external auditors (may be required by state chartering authority)	
3 =	Attestation on bank management's assertion on the effectiveness of the bank's internal control over financial reporting by a certified public accounting firm	6 =	Review of the bank's financial statements by external auditors	
		7 =	Compilation of the bank's financial statements by external auditors	
		8 =	Other audit procedures (excluding tax preparation work)	
		9 =	No external audit work	

(1) Includes total demand deposits and noninterest-bearing time and savings deposits.

(2) Report overnight Federal Home Loan Bank advances in Schedule RC, item 16, "other borrowed money."

(3) Includes all securities repurchase agreements in domestic and foreign offices, regardless of maturity.

(4) Includes limited-life preferred stock and related surplus.

(5) Includes net unrealized holding gains (losses) on available-for-sale securities, accumulated net gains (losses) on cash flow hedges, cumulative foreign currency translation adjustments, and minimum pension liability adjustments.

(6) Includes treasury stock and unearned Employee Stock Ownership Plan shares.